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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas: Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

7 CFR Part	Marketing area	AO nos.
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
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1124	Pacific Northwest	AO–368–A27
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1131	Arizona-Las Vegas	AO–271–A35
1135	Western	AO–380–A17

SUMMARY: This final rule implements revised product-price formulas for establishing Class III and Class IV milk prices. The formulas are applicable to all Federal milk marketing orders. Each of the amended orders was approved by producers who were eligible to have their milk pooled during the representative month for voting purposes. Referenda were conducted in two markets, and dairy farmer cooperatives were polled in the other nine markets to determine whether dairy farmers approve the issuance of the orders as amended.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Associate Deputy Administrator, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231-Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–6274, e-mail: *clifford.carman@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In consideration of the economic impact of changes to the Federal milk marketing order program implemented by this final rule on small entities, AMS prepared a regulatory flexibility analysis that was included in the final decision (67 FR 67906). The analysis indicates that the Department minimized the significant economic impact of the regulations on small entities to the fullest extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from the regulations and determined, to the fullest extent possible, the impact on small businesses' abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives, attempting to maintain a balance between these competing interests. Neither small producers nor small handlers should experience any particular disadvantage as a result of the order amendments.

No additional information collection or reporting requirements will be necessitated by the amendments.

An analysis of the economic effects of the alternatives selected was done and summarized in the final decision. A complete economic analysis is available upon request from Howard McDowell, Senior Economist, Office of the Chief Economist, USDA/AMS/Dairy Programs, Stop 0229-Room 2753, 1400 Independence Avenue, SW., Washington, DC 20250–0229, (202) 720–7091, e-mail: *howard.mcdowell@usda.gov*.

Civil Rights Impact Statement

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was

conducted and published with the final decision on Federal milk order consolidation and reform. The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. This issue was reconsidered in the Final Decision (67 FR 67906) with regard to the order amendments, and the conclusion has not changed.

Copies of the Civil Rights Impact Analysis done for the Final Decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: *http://www.ams.usda.gov/dairy/*.

Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Tentative Final Decision: Issued November 29, 2000; published December 7, 2000 (65 FR 76832).

Interim Final Rule: Issued December 21, 2000; published December 28, 2000 (65 FR 82832).

Recommended Decision: Issued October 19, 2001; published November 29, 2001 (66 FR 59546).

Extension of Time: Issued November 26, 2001; published November 29, 2001 (66 FR 59546).

Final Decision: Issued October 25, 2002; published November 7, 2002 (67 FR 67906).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, for each of the aforesaid orders, it is found that:

(1) The said orders, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Northeast and other orders effective for milk marketed on or after April 1, 2003. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on October 25, 2002.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective for milk marketed on or after April 1, 2003.

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the order amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in each marketing area.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by adding paragraph (c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

(d) * * *

(1) * * *

(i) Butter; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text; by revising paragraphs (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), (p)(1), and (q)(3); and by removing paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential

specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $0.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class III skim milk price plus 3.5 times the butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class IV skim milk price plus 3.5 times the butterfat price.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.5 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 14 cents and multiplying the result by 0.99.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

(ii) Subtract 0.9 times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 15.9 cents, with the result multiplied by 1.03.

(p) * * *

(1) Multiply 0.0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and multiplying the result by 1.20.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. Section 1001.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1001.61 is revised to read as follows:

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the producer price differential for the month.

3. Section 1001.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the butterfat price for the month;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1030.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer butterfat price differential.

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1033.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. Section 1126.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1126.61 is revised to read as follows:

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. Section 1135.60 is amended by revising paragraphs (c)(3), (d)(2) and (h) to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and removing and reserving paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) [Reserved]

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

Dated: February 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–3442 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A44; DA–01–07]

Milk in the Central Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain pooling provisions of the Central Federal milk order on an interim basis. This interim order amends the *Pool plant* provisions that: Establish lower but year-round supply plant performance standards; will not consider the volume of milk shipments to distributing plants regulated by another Federal milk order as a qualifying shipment for the Central order; exclude from receipts diverted milk made by a pool plant to another pool plant in determining pool plant diversion limits; and establish a ''net shipments'' provision for milk deliveries to distributing plants. For *Producer milk,* this interim order adopts amendments that: establish higher year-round diversion limits; will base diversion limits for supply plants on deliveries to Central order distributing plants; and eliminate the ability to simultaneously pool milk on the Central milk order and a State-operated milk

order that has marketwide pooling. More than the required number of producers in the Central marketing area have approved the issuance of the interim order as amended.

EFFECTIVE DATE: March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2968, 1400 Independence Avenue, Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Approximately 9,695 of the 10,108 dairy producers (farmers), or 95.9 percent, whose milk was pooled under the Central Federal milk order at the time of the hearing, November 2001, would meet the definition of small businesses. On the processing side, approximately 10 of the 56 milk plants associated with the Central milk order during November 2001 would qualify as ''small businesses,'' constituting about 17.9 percent of the total.

Based on these criteria, more than 95 percent of the producers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Central milk marketing area and are not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

Prior documents in this proceeding:

Notice of Hearing: Issued October 17, 2001; published October 23, 2001 (66 FR 53551).

Tentative Final Decision: Issued November 8, 2002; published November 19, 2002 (67 FR 69910).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Central order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Central marketing order:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Central order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Central order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Central order effective March 1, 2003. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on November 8, 2002.

The changes that result from these amendments will not require extensive

preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective March 1, 2003. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after publication in the **Federal Register**. (Sec. 553 (d)), Administrative Procedure Act, (5 U.S.C. 551–559)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Central order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Central order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR Part 1032 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.7 is amended by:

(a) Revising the introductory text of paragraph (c),

(b) Revising paragraph (c)(1),

(c) Revising paragraph (c)(2),

(d) Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

(e) Adding a new paragraph (c)(5).

The revisions read as follows:

§ 1032.7 Pool plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 20 percent during the months of August through February and 15 percent in all other months of the Grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and from handlers described in § 1000.9(c), including milk diverted pursuant to § 1032.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (a) or (b) of this section;

(2) The operator of a pool plant located in the marketing area may include as qualifying shipments milk delivered directly from producer's farms pursuant to § 1000.9(c) or § 1032.13(c). Handlers may not use shipments pursuant to § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area;

* * * * *

(5) Shipments used in determining qualifying percentages shall be milk transferred or diverted to and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

2. Section 1032.13 is amended by:

(a) Revising paragraph (d)(2)

(b) Redesignating paragraphs (d)(3), (d)(4), and (d)(5), as (d)(4), (d)(5), and(d)(6), respectively.

(c) Adding a new paragraph (d)(3)

(d) Adding a new paragraph (e).

The revisions read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of August through February, and not more than 85 percent during the months of March through July, provided that not less than 20 percent of such receipts in the months of August through February and 15 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a) and (b);

(3) Receipts used in determining qualifying percentages shall be milk transferred to or diverted to or physically received by a plant described in § 1032.7(a) or (b) less any transfer or diversion of bulk fluid milk products from such plants.

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

Dated: February 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–3443 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–02–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1512

Requirements for Low-Speed Electric Bicycles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Public Law 107–319, 116 Stat. 2776 (the Act), enacted December 4, 2002, subjects low-speed electric bicycles to the Commission's existing regulations at 16 CFR part 1512 and 16 CFR 1500.18(a)(12) for bicycles that are solely human powered. For purposes of this requirement, the Act defines a low-speed electric bicycle as ''a two-or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.'' Public Law No. 107–319, section 1, 116 Stat. 2776 (2002). The Commission is issuing this immediately effective amendment to its requirements for bicycles at 16 CFR part 1512 to promptly inform the public of the newly enacted statutory requirement on low-speed electric bicycles.

DATES: This amendment is effective upon publication in the **Federal Register**, that is, on February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Lowell Martin, Esq., Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7628; e-mail *lmartin@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Public Law 107–319 (the Act), enacted December 4, 2002, amends the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051, *et seq.*, by adding a new

section 38 establishing requirements for low speed electric bicycles.

Specifically, section 1 of the Act makes low-speed electric bicycles subject to the Commission's existing regulations on bicycles.

(a) Notwithstanding any other provision of law, low-speed electric bicycles are consumer products within the meaning of section 3(a)(1)[of the CPSA] and shall be subject to the Commission regulations published at § 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations.

Public Law 107–319, section 1, 116 Stat. 2776.

The Act defines the term ''low-speed electric bicycle'' as follows:

(b) for purposes of this section, the term ''low-speed electric bicycle'' means a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Id.

The Commission's regulation at 16 CFR 1500.18(a)(12) makes the determination that bicycles that do not comply with the requirements of 16 CFR part 1512 present a mechanical hazard within the meaning of section 2(s) of the Federal Hazardous Substances Act (FHSA). 15 U.S.C. 1261(s). The effect of this determination is that noncomplying bicycles are ''hazardous substances'' for purposes of section 2(f)(1)(D) of the FHSA, and are also ''banned hazardous substances'' pursuant to section 2(q)(1)(A) of the FHSA. 15 U.S.C. 1261(f)(1)(D), 1261(q)(1)(A). See also, *Forester* v. *Consumer Product Safety Com'n, 559 F.2d 774, 783–786* (D.C. Cir. 1977).

The amendment to § 1512.2 of 16 CFR part 1512 promulgated today incorporates the Act's definition of ''low-speed electric bicycle,'' thereby helping to inform the public of the statutory application of part 1512 to low-speed electric bicycles.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with certain notice procedures for a rule when it finds ''good cause'' to do so. 5 U.S.C. 553(b)(3)(B). Specifically, under section 553(b)(3)(B), the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The requirement reflected in this amendment is imposed by the Act and is not discretionary with the Commission. Accordingly, the Commission hereby finds that notice and an opportunity for comment on this amendment are unnecessary.

Section 553(d)(3) of the APA authorizes an agency, ''for good cause found and published with the rule,'' to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. The Commission hereby finds that the 30 day delay in effective date is unnecessary because the requirement reflected in the amendment was imposed by the Act and is not discretionary with the Commission.

Because this amendment incorporates a requirement mandated by statute that is not discretionary with the Commission, and thus is not subject to notice and comment, this rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Because this amendment incorporates a statutory requirement not subject to agency discretion, it is not an agency action subject to the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Pursuant to Executive Order No. 12988, the Commission states the preemptive effect of this regulation as follows. Section 1 of the Act provides that its requirements ''shall supercede any State law or requirement with respect to low-speed electric bicycles to the extent that such State law or requirement is more stringent than the Federal law or requirements referred to in subsection (a)[the Commission's regulations on bicycles at 16 CFR part 1512].'' Public Law No. 107–319, section 1, 116 Stat. 2776.

List of Subjects in 16 CFR Part 1512

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

For the foregoing reasons, the Commission amends Title 16 of the Code of Federal Regulation to read as follows:

PART 1512—REQUIREMENTS FOR BICYCLES

1. The authority citation for Part 1512 is revised to read as follows:

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended, 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262); Pub. L. 107–319, 116 Stat. 2776.

§ 1512.2. [Amended]

2. Amend § 1512.2, to revise paragraph (a) to read as follows:

(a) Bicycle means:

(1) A two-wheeled vehicle having a rear drive wheel that is solely human-powered;

(2) A two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Dated: February 6, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–3423 Filed 2–11–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–009]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Submarine Base San Diego, California (33 CFR 165.1103) at the request of the U.S. Navy. The additional size will accommodate the Navy's placement of anti-small boat barrier booms on the perimeter of the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

DATES: This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–009], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C.

553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its Web site has described the current nationwide threat level as ''Elevated.'' According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the status quo within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

Background and Purpose

The Coast Guard is expanding the current security zone (33 CFR 165.1103) to allow the U.S. Navy to put anti-small boat barrier booms at Naval Submarine Base San Diego. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The expansion of this security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Submarine Base San Diego and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, Commander, U.S. Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: Seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary final 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat booms while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Submarine Base. Any hardships experienced by persons or vessels wishing to approach the Naval Submarine Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

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

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base San Diego. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 and have determined that this rule 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule, which temporarily modifies an existing security zone, is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.1103 [Suspended]

2. Temporarily suspend § 165.1103 from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

3. Add new temporary § 165.T11–031 to read as follows:

§ 165.T11–031 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water area adjacent to Naval Submarine Base, San Diego, California, described as follows: Commencing at a point on the shoreline of Ballast Point, at 32° 41′ 11.2″N, 117° 13′ 57.0″W. (Point A), thence northerly to 32° 41′ 31.8″N, 117° 14′ 00.6″W. (Point B), thence westerly to 32° 41′ 32.7″N, 117° 14′ 03.2″W. (Point C), thence southwesterly to 32° 41′ 30.5″N, 117° 14′ 17.5″W. (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A).

(b) *Effective dates.* This section is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

Stephen P. Metruck,

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

[FR Doc. 03–3464 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–008]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Base Coronado, California at the request of the U.S. Navy. The

additional size will accommodate the Navy's placement of anti-small boat barrier booms within the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Navy Region Southwest, or the Commanding Officer, Naval Base Coronado.

DATES: This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–008], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its web site has described the current nationwide threat level as ''Elevated.'' According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the status quo within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

Background and Purpose

The Coast Guard is expanding the security zone to allow the U.S. Navy to put in place anti-small boat barrier booms at Naval Base Coronado. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The expansion of this security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the U.S.S. Cole and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, U.S. Naval Base San Diego, or the Commander, Naval Base Coronado. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary final 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat booms while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Base. Any hardships experienced by persons or vessels wishing to approach the Naval Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

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

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base Coronado. In

addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

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 and have determined that this rule 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule, which temporarily modifies an existing security zone, is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.1104 [Suspended]

2. Temporarily suspend § 165.1104 from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

3. Add new temporary § 165.T11–049 to read as follows:

§ 165.T11–049 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by the following points: Beginning at 32°42′ 53.0″N, 117° 11′ 45.0W (Point A); thence running northerly to 32° 42′ 55.5″N, 117° 11′45.0″W, (Point B); thence running easterly to 32° 42′ 55.8″N, 117° 11′ 29.2″W, (Point C); thence southeasterly to 32° 42′ 49.0″N, 117° 11′ 17.0″W (Point D); thence southeasterly to 32° 42′ 41.5″N, 117° 11′ 04.5″W (Point E) thence running southerly to 32° 42′ 37.5″N, 117° 11′ 07.0″ W (Point F); thence running southerly to 32° 42′ 28.5″N, 117° 11′ 11.0″W (Point G); thence running southeasterly to 32° 42′ 22.0″N, 117° 10′ 48.0″W (Point H); thence running southerly to 32° 42′ 13.0″N, 117° 10′ 51.0″W (Point I); thence running generally northwesterly along the shoreline of Naval Base Coronado to the place of beginning.

(b) *Effective Dates.* This section is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Navy Region Southwest, or the Commanding Officer, Naval Base Coronado. Section 165.33 also contains other general requirements.

(d) *Enforcement.* The U. S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

Stephen P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–3463 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–007]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Base, San Diego, California (33 CFR 165.1101), extending it by approximately 80 feet seaward of the pier heads at the request of the U.S. Navy. The additional size will accommodate the Navy's placement of anti-small boat barrier booms perpendicular to the piers. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

DATES: This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–007] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its Web site has described the current nationwide threat level as ''Elevated.'' According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the status quo within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

Background and Purpose

The Coast Guard is expanding the security zone (33 CFR 165.1101) by temporarily extending it approximately 80 feet seaward of the pier heads to allow the U.S. Navy to deploy anti-small boat barrier booms perpendicular to the piers. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. It will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base San Diego and it will protect transiting recreational and commercial vessels and their respective crews from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port or Commander, Navy Region Southwest. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary final 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

Transportation (DOT) (44 FR 11040, February 26, 1979).

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat booms while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Base. Any hardships experienced by persons or vessels wishing to approach the Naval Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

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

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base, San Diego, California. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 and have determined that this rule 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule, which temporarily modifies an existing security zone, is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.1101 [suspended]

2. Temporarily suspend § 165.1101 from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

3. Add new temporary § 165.T11–047 to read as follows:

§ 165.T11–047 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: the water area within Naval Base, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′02.5″ N, 117°08′08.5″ W (Point B); to 32°40′55.0″ N, 117°08′00.0″ W (Point C); to 32°40′49.5″ N, 117°07′55.5″ W (Point D); to 32°40′44.6″ N, 117°07′49.3″ W (Point E); to 32°40′37.8N, 117°07′43.2″ W (Point F); to 32°40′30.9″ N, 117°07′39.0″ W (Point G); 32°40′24.5″ N, 117°07′35.0″ W (Point H); to 32°40′17.2″ N, 117°07′30.8″ W (Point I); to 32°40′10.6″ N, 117°07′30.5″ W (Point J); to 32°39′59.0″ N, 117°07′29.0″ W (Point K); to 32°39′49.8″ N, 117°07′27.2″ W (Point L); to 32°39′43.0″ N, 117°07′25.5″ W (Point M); to 32°39′36.5″ N, 117°07′24.2″ W (Point N); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point O); thence running generally northwesterly along the shoreline of the Naval Base to the place of beginning.

(b) *Effective Dates.* This section is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commander, Navy Region Southwest.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

Stephen P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–3462 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160–2309–03; I.D. 061902C]

RIN 0648–AQ13

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

ACTION: Extension of public comment period for interim final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is extending the public comment period through March 24, 2003 for an interim final rule published in the **Federal Register** on December 24, 2002. The purpose of the interim final rule is to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′N.) and west to the 120°W., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. The comment period, which originally ended on February 7, 2003, is being extended to allow for additional public comment.

DATES: Written comments on the above mentioned interim final rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Standard Time, on March 24, 2003. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Written comments on the interim final rule should be sent to Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the Environmental Assessment (EA) and biological opinion (BO) are available on the internet at *http://swr.ucsd.edu/* or may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

SUPPLEMENTARY INFORMATION: On December 24, 2002, NMFS published an interim final rule (67 FR 78388) implementing the framework for prohibiting fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′N.) and west to the 120°W., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. This interim final rule also announced the criteria that will be used for determining whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure. Based on the these criteria, NMFS determined that El Nino conditions were not present for purposes of implementing the time and area closure for January 2003. In addition, comments were requested on an alternate closure that NMFS is evaluating.

The comment period is being extended in response to a request from the public to provide more time to review the loggerhead turtle entanglement data and the sea surface temperature data available on the NOAA Coastwatch West Coast Regional Node web page at *http://cwatchwc.ucsd.edu/.*

Dated: February 7, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3494 Filed 2–7–03; 1:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 29
Wednesday, February 12, 2003

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. 2003–CE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This proposed AD would require you to inspect and correct, as necessary, the aileron control bellcrank assemblies at the wing and fuselage locations. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct increased friction in the aileron control bellcrank assemblies, which could result in failure of the aileron flight-control system. Such failure could lead to problems in controlling flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 21, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–01–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–01–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Model PC–6 airplanes. The FOCA reports one occurrence where the pilot reported increased friction on the ailerons. Inspection revealed unwanted axial movement of the aileron bellcrank assemblies, part numbers 6132.0071.51, 6132.0071.52, and 6232.0118.00. The axial movement is caused by deterioration of the adhesive bond around the bellcrank bearings which could cause the heads of the control cable attachment bolts to catch on the adjacent structure.

What are the consequences if the condition is not corrected? Increased friction in the aileron control bellcrank assemblies could result in failure of the aileron flight-control system. Such failure could lead to problems in controlling flight.

Is there service information that applies to this subject? Pilatus has issued Service Bulletin No. 27–001, dated June 5, 2002.

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

—Inspecting, before removal, the bellcrank assemblies to identify which have a circlip installed;
—Removing the bellcrank assemblies;
—Inspecting the bellcrank assemblies for loose or worn bearings;
—Inspecting the control-cable attachment bolts for correct type and for rub damage;
—Staking and locking the bearing in the housings of the wing bellcranks; and
—Reinstalling the bellcrank assemblies.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2002–642, dated November 15, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the

United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–6 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 32 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 accomplish the proposed inspections and modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 workhours × $60 per hour = $420	$300	$720	$720 × 32 = $23,040.

We have no way of estimating costs to accomplish any necessary repairs that would be required based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein 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. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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 part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft, Ltd.: Docket No. 2003–CE–01–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN) up to and including 939, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct increased friction in the aileron control bellcrank assemblies, which could result in failure of the aileron flight-control system. Such failure could lead to problems in controlling flight.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect, before removal, the wing bellcrank assemblies, part numbers (P/N) 6132.0071.51 and 6132.0071.52, for installed circlips, P/N N237. (i) If circlips are installed, perform the actions required in paragraphs (d)(5) and (d)(6). (ii) If circlips are not installed, perform all actions required by paragraphs (d)(3), (d)(4), (d)(5), (d)(6), and (d)(7).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.

Actions	Compliance	Procedures
(2) Inspect, before removal, the fuselage bellcrank assembly, P/N 6232.0118.00, for the circlip installed on the housing to prevent axial movement of the bellcrank on its bearing and the flange of the housing to the rear. If the fuselage bellcrank assembly has either no circlip and/or is not installed as required, perform the actions in paragraphs (d)(8) and (d)(9).	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(3) Remove the wing bellcrank assemblies, P/Ns 6132.0071.51 and 6132.0071.52, and inspect for worn or damaged bearings. Replace worn or damaged bearings.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD, as applicable.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(4) Stake and lock the bearing in the housing of the wing bellcranks, P/Ns 6132.0071.51 and 6132.0071.52.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD, as applicable.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(5) Inspect the wing bellcranks control-cable attachment bolts for correct type and for signs of rub damage on the heads. Replace bolts which are damaged and/or have a total length (including head) of more than 21.5 mm (0.85 in.).	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(6) Inspect the wing bellcranks support plate for signs of rub damage caused by the bolts. If damage is found:		
(i) Obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD		
(ii) Incorporate this repair scheme.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(7) Reinstall wing bellcrank assemblies.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(8) Remove the fuselage bellcrank assembly, P/N 6232.0118.00, and inspect the housing for wear, damage, and signs of axial movement of the bearing in the housing. Replace worn or damaged bearings. If any signs of axial movement of a bearing are found:		
(i) Obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD.		
(ii) Incorporate this repair scheme.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(9) Reinstall the fuselage bellcrank assembly. Ensure that the fuselage bellcrank assembly is installed so that the surface of the bellcrank with the flange of the housing is installed to the rear. The effect of this is to lock the bellcrank on the bearing tube and thus prevent movement.	Prior to further flight after the inspections required in paragraphs (d)(1), (d)(2) and (d)(8) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.

Actions	Compliance	Procedures
(10) Do not install any bellcrank assemblies, P/Ns 6132.0071.51, 6132.0071.52, and 6232.0118.00 (or FAA-approved equivalent part numbers), unless the aileron assembly has been inspected, modified, and installed.	As of the effective date of this AD	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.

Note 1: Axial movement of serviceable bearings in the housings of the wing bellcranks is permitted provided no wear or damage to the bearing is found.

Note 2: Any signs of axial movement of a bearing in the housing of the fuselage bellcrank assembly requires that you obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD and incorporate the repair scheme.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Swiss AD Number HB 2002–642, dated November 15, 2002.

Issued in Kansas City, Missouri, on February 4, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3449 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel 1 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arriel 1 series turboshaft engines. This proposal would require initial and repetitive visual inspections for ingestive erosion, and cleaning if necessary, of M02 and M03 modules. This proposal is prompted by reports from the manufacturer of ingestive erosion of M02 and M03 modules. The actions specified by the proposed AD are intended to prevent an unbalance of the gas generator rotating assembly which may lead to deterioration of the gas generator rear bearing and uncommanded engine shutdown.

DATES: Comments must be received by April 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Turbomeca S.A. Arriel 1 A, 1 A1, 1 A2, 1 B, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 turboshaft engines. The DGAC advises that approximately 225 of the Arriel engine fleet operates in a dusty or erosive atmospheric environment, containing substances such as laterite, sand, volcanic ash, and chemical particles. This atmospheric environment can lead to dust accumulation and unbalance of the gas generator rotating assembly, which may lead to deterioration of the gas generator rear bearing and also to uncommanded engine shutdown.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel 1 turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require initial and repetitive visual inspections for ingestive erosion, and cleaning if necessary, of M02 and M03 modules.

Economic Analysis

There are approximately 3,560 engines of the affected design in the worldwide fleet. The FAA estimates that about 225 of the 900 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 0.2 work hour per engine to perform each axial compressor erosion inspection, and take approximately 40 work hours per engine to perform the gas generator rotor assembly cleaning, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the proposed AD to perform one inspection and one cleaning to U.S. operators is estimated to be $542,700.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with State authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca S.A.: Docket No. 2002–NE–43–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel 1 A, 1 A1, 1 A2, 1 B, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter AS 350, AS 350B1, AS 350B2, AS 365C, AS 365C2, AS 365N, AS 365N1, AS 365N2, BK 117C1, BK 117C2, Augusta A109 K2, and Sikorsky S76 C helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent an unbalance of the gas generator rotating assembly which may lead to deterioration of the gas generator rear bearing and also to uncommanded engine shutdown, do the following:

Initial Inspections and Cleaning

(a) For engines that have been operated in a dusty or erosive atmospheric environment containing substances such as laterite, sand, volcanic ash, and chemical particles, and engines for which the operating environment cannot be determined, do the following:

(1) Perform an initial visual inspection for erosion of the axial compressor, within 50 operating hours after the effective date of this AD. Information on inspecting can be found in Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 72 0230, dated October 16, 1998.

Modification TU 175 Not Incorporated

(2) For engines that do not have Modification TU 175 incorporated, if axial compressor erosion is above 1.5 millimeters in area ''D'' as defined in the engine maintenance manual, and if the M03 module has operated more than 200 hours with this M02 module, clean the M03 module within the next 50 operating hours. Information on cleaning can be found in Turbomeca S.A. MSB No. 292 72 0230, dated October 16, 1998.

Modification TU 175 Incorporated

(3) For engines that have Modification TU 175 incorporated, if axial compressor erosion inspection requires the M02 module to be removed, and if the M03 module has operated more than 400 hours with this M02 module, clean the M03 module within the next 50 operating hours. Information on cleaning can be found in Turbomeca S.A. MSB No. 292 72 0230, dated October 16, 1998.

Reconditioning and Checks

(b) Perform reconditioning and checks of the engines. Information on reconditioning and checks can be found in Turbomeca S.A. MSB No. 292 72 0230, dated October 16, 1998.

Repetitive Inspections

(c) Repeat axial compressor erosion inspections within every 200 operating

hours-since-last-inspection (HSLI) for engines that do not have Modification TU 175 incorporated, and within every 400 operating HSLI, for engines that have Modification TU 175 incorporated, as specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Note 3: A list of authorized repair centers qualified to carry out gas generator rotating assembly maintenance and cleaning may be obtained from Turbomeca S.A. or the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 4: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 1990–064(A), Revision 1, dated March 21, 2000.

Issued in Burlington, Massachusetts, on February 5, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–3473 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN AC09

Workshops To Discuss Specific Issues Regarding the Existing Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshops.

SUMMARY: The Minerals Management Service (MMS) is giving notice of four public workshops to discuss specific issues regarding the existing Federal oil royalty valuation regulations at 30 CFR Part 206 for crude oil produced from Federal leases.

DATES: The public workshop dates are:

Workshop 1—Denver, Colorado, on March 4, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Mountain time.

Workshop 2—Houston, Texas, on March 5, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Central time.

Workshop 3—Washington, DC, on March 6, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Eastern time.

Workshop 4—Albuquerque, New Mexico, on March 6, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Mountain time.

ADDRESSES: The workshop locations are:

Workshop 1 will be held at the Minerals Management Service, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A–D, Denver, Colorado, 80226–0165, telephone number (303) 231–3302.

Workshop 2 will be held at Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032, telephone number (281) 987–6800.

Workshop 3 will be held at the Main Interior Building, 1849 C Street, NW., Washington, DC 20240 (South Penthouse Room), telephone number, (202) 208–3512.

Workshop 4 will be held at the Wyndham Albuquerque, 2910 Yale Boulevard SE., Albuquerque, New Mexico 87106, telephone number (505) 843–7000.

FOR FURTHER INFORMATION CONTACT: Paul Knueven, Minerals Management Service, Minerals Revenue Management Program, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165, telephone (303) 231–3316, fax number (303) 231–3781, e-mail *Paul.Knueven@mms.gov.*

SUPPLEMENTARY INFORMATION: MMS continues to evaluate the effectiveness and efficiency of its regulations. We believe that the Federal oil valuation rule is working well and accomplishes its objective of ensuring a fair return on federal resources. However, with our 3 years of experience with the current rule and our 5-year experience with the royalty-in-kind program, we have identified certain technical issues needing a more thorough review.

Accordingly, MMS is seeking public comment and recommendations on the following specific issues: (1) The timing and application of published indices, (2) the calculation of location and quality differentials where lessees do not have that information, (3) allowable transportation costs, (4) the rate of return allowed for calculating actual costs under non-arm's-length transportation agreements, and (5) how lessees value and report crude oil disposed of under joint operating agreements.

Because we believe the current rule is working well and is not in need of extensive revision, we request that workshop participants focus their comments on the specific issues identified above. However, if there are other significant issues, participants may address those in their comments, if time permits.

The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate.

For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: February 5, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–3467 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Reopening of public comment period and notice of public workshops.

SUMMARY: The MMS is reopening the public comment period on the proposed rule regarding the valuation for royalty purposes of crude oil produced from Indian leases.

DATES: We must receive comments on or before April 14, 2003.

ADDRESSES: Submit written comments directly to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Mineral Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have

received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, e-mail *Sharron.Gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION: The MMS published a notice of proposed rulemaking regarding the value for royalty purposes of crude oil produced from Indian leases on February 12, 1998 (63 FR 7089) and a supplementary proposed rule on January 5, 2000 (65 FR 403). In today's **Federal Register**, MMS is announcing dates, places, and times for workshops on issues related to the existing rules adopted in March 2000 governing the valuation for royalty purposes of crude oil produced from Federal leases.

The workshops will address, among other things, issues related to calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed Indian oil valuation rule, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS is reopening the comment period on the proposed Indian oil valuation rule for 60 days so it can include in the record any relevant comments received. The MMS then can consider those comments as it proceeds with the Indian oil valuation rule.

The policy of the Department of the Interior is to give the public an opportunity to participate in the rulemaking process. Accordingly, you may submit your written comments, suggestions, or objections regarding this notice to the location identified in the **ADDRESSES** section of this notice. You should submit comments on or before the date identified in the **DATES** section of this notice.

We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 5, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–3466 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–108]

RIN 2115–AE47

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

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating regulations that govern the operation of the Jordan (S337) bridge, the Gilmerton (US 13/460) bridge, and the Dominion Boulevard (US 17) bridge which all span the Southern Branch of the Elizabeth River, and the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal. We propose to extend the morning and evening rush hour closure periods between one hour and one-half hour for the Jordan and Gilmerton bridges and to add rush hour scheduled openings for the Gilmerton and Centerville Turnpike bridges. These regulations are necessary to relieve increased vehicular traffic congestion during weekday rush hours; the changes would reduce traffic delays while still providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2003.

ADDRESSES: You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398–6222. The Commander (Aowb), 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 this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, 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 (CGD05–02–108), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Virginia Cut of the Atlantic Intracoastal Waterway (AICW) extends approximately 28 statute miles from the Southern Branch of the Elizabeth River to the North Landing River. The AICW is used by recreational, public, and commercial vessels. General regulations governing the operation of bridges are set out in 33 CFR 117.1 through 117.49. Specific drawbridge regulations, which supplement the general regulations for certain AICW bridges, are set out in 33 CFR 117.997.

The City of Chesapeake has requested a change to the existing regulations for the Jordan, Gilmerton, Dominion Boulevard and Centerville Turnpike

bridges crossing the AICW, in order to balance the needs of mariners and motorists transiting in and around Chesapeake. Bridge openings at peak traffic hours during the weekdays cause considerable vehicle traffic backup. The City of Chesapeake is seeking to reduce the amount of vehicular traffic congestion during the weekday morning and evening rush hours. The City of Chesapeake is also seeking to change two of their drawbridges; Dominion Boulevard and Centerville Turnpike bridges, from opening on signal to opening on the hour and half hour between peak traffic hours. The following bridges would be affected by this proposal:

Jordan Bridge

The current regulations require the Jordan Bridge across the Southern Branch of the Elizabeth River, at AICW mile 2.8, to open on signal at any time for public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial and/or public vessels assisting in any emergency situation. From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays, the bridge need not open during rush hour closure periods for the passage of certain recreational craft or commercial vessels and it need not open during rush hour restrictions for commercial cargo vessels, including tugs and tows, unless 2 hours advance notice has been given to the Jordan Bridge Office at (757) 545–4695. At all other times, the draw opens on signal.

The City of Chesapeake, through a Resolution submitted by the Chesapeake City Council, has requested changes in the regulations governing the Jordan Bridge. They requested a change in the hours the draw would open during the morning and evening rush hours to 6:30 a.m. to 8:30 a.m. and to 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays. This change would extend the morning closure period by one hour and the evening closure period by a half hour. The provision allowing vessels in distress, public vessels of the United States, and commercial and public vessels assisting in any emergency passage through the bridge at any time would be removed since this provision is addressed in 33 CFR 117.31. Vessels carrying liquefied flammable gas and other hazardous materials would still have unimpeded access through the bridge at any time.

The proposal to continue to allow vessels carrying liquefied flammable gas or other hazardous materials unimpeded access through the bridge at any time was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Southern Branch of the Elizabeth River. The Coast Guard Marine Safety Office, Hampton Roads, issues safety zones each time liquefied flammable gas is transported through the Port of Hampton Roads.

Since tugs and tugs with tows have no place to tie up in the proximity of the bridge to wait for a bridge opening, it is proposed to continue to include them in the 2-hour advance notice requirement as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners that are referred to as ''snow birds''. Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour due to their numbers. The proposal to continue to restrict recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The request for the change to the regulations is based on increasing area highway congestion, the lengthy delays to cross bridges due to area growth that is resulting in more motorists on the highways. The area's bridges and bridge-tunnel complexes are experiencing increasing congestion which can be partially remedied by extending the bridge closure periods during peak traffic hours to help keep the main highway arteries free flowing. The Jordan Bridge is a vital link between the cities of Portsmouth and Chesapeake used widely by motorists that work at the Norfolk Naval Shipyard, other Federal agencies located within the shipyard as well as within Portsmouth, and other industries and businesses in Portsmouth and Chesapeake.

The City's request to extend the morning and evening hour closure periods Monday through Friday, except Federal holidays, is based on the need to reduce traffic congestion. The current schedule has been successful; however, it needs to be expanded since the last time the regulations governing the operation of the Jordan Bridge were updated was in the summer of 1990. A Final Rule (58 FR 16122) was published March 25, 1993. Since then the current closure periods have not been sufficient to accommodate the increase in vehicular traffic crossing this bridge.

Weekday vehicular traffic submitted by the City of Chesapeake revealed that approximately 825 vehicles cross over the bridge during the morning rush hour and approximately 2500 cross over the bridge during the evening rush hour.

The Coast Guard studied the City of Chesapeake's drawlogs for the Jordan Bridge for 2001, Monday through Friday, except Federal holidays, between the hours of 7:30 a.m. to 8:30 a.m. and 5 p.m. to 5:30 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested extended rush hour closure periods, the draw opened a total of 637 times for 2001. April had the highest number of openings; 92 times during the morning and 72 times during the evening. Recreational vessels requesting opening during the requested hours of extension totaled 30 for May 2001, 365 for October 2001, and 167 for November. Based on the frequency of bridge openings and the increase in vehicular traffic, the City of Chesapeake's request to extend the morning and evening rush hours appears reasonable.

Gilmerton Bridge

Current regulations require the Gilmerton Bridge across the Southern Branch of the Elizabeth River, AICW mile 5.8, to open on signal at any time for public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial and/or public vessels assisting in any emergency situation. From 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays the bridge need not open during rush hour closure periods for the passage of certain recreational craft or commercial vessels and need not open during rush hour closure periods for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Gilmerton Bridge at (757) 545–1512. The draw opens on signal at all other times.

The City of Chesapeake, through a Resolution submitted by the Chesapeake City Council, has requested changes in the regulations governing the Gilmerton Bridge. They requested a change in the hours the draw would open during the morning and evening rush hours to 6:30 a.m. to 8:30 a.m. and to 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays. This change would extend the morning closure period by a half hour and extend the evening closure period by a half hour. The

provision allowing vessels in distress, public vessels of the United States, and/or commercial and public vessels assisting in any emergency passage through the bridge at any time would be removed since this provision is addressed in 33 CFR 117.31. Vessels carrying liquefied flammable gas and other hazardous materials would still be given access through the bridge at any time.

The proposal to continue to provide vessels carrying liquefied flammable gas or hazardous materials unimpeded access through the bridge at any time with no restrictions was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Southern Branch of the Elizabeth River. The Hampton Roads Marine Safety Office issues safety zones each time a liquefied flammable gas carrier is transiting the Port of Hampton Roads. Also, since tugs, and tugs with tows have no place to tie up in the proximity of the bridge to wait for a bridge opening, it is proposed to continue to include them in the 2-hour advance notice requirement provision, as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners that are referred to as ''snowbirds''. Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour closure periods due to their numbers. The proposal to expand the closure periods for recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The request for the change to the regulations is based on increasing area highway congestion and lengthy delays across bridges due to area growth that is resulting in more motorists on the highways. The Gilmerton Bridge is another vital link between the cities of Portsmouth and Chesapeake and is used widely by motorists that work at the Norfolk Naval Shipyard, other Federal agencies located within the shipyard as well as within Portsmouth, and other industries and businesses in Portsmouth and Chesapeake.

The City's request to extend the morning and evening closure periods Monday through Friday, except Federal holidays, is based on the need to reduce traffic congestion. November 1994 was the last time the regulations governing the operation of this drawbridge were updated. A Final Rule (60 FR 37365) was published July 20, 1995. Since 1994, area growth has continued and the current closure periods are not sufficient to accommodate the increase in vehicular traffic crossing this bridge. Weekday vehicular traffic counts submitted by the City of Chesapeake revealed that during the morning rush hour, approximately 2200 vehicles cross the Gilmerton Bridge. During the evening rush hours, approximately 3000 vehicles cross over this bridge.

The Coast Guard studied the City of Chesapeake's drawlogs for the Gilmerton Bridge for the year of 2001, Monday through Friday, except Federal holidays, between the hours of 8 a.m. to 8:30 a.m. to 5 p.m. to 5:30 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested half-hour extension of the morning and evening rush hours, the draw opened a total of 223 times in the morning and 235 times in the evening. The highest number of openings occurred during the spring months and the fall months. The lowest openings occurred in February when vessel traffic is at its lowest due to the cold weather. Based on the number of vehicles that cross this bridge during the morning and evening rush hours and the frequency of bridge openings during the same time, the City of Chesapeake's request to extend the morning and evening rush hours by a half-hour appears reasonable.

Dominion Boulevard

Current regulations require the Dominion Boulevard Bridge across the Southern Branch of the Elizabeth River, AICW mile 8.8, to open on signal except from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the drawbridge need not open for the passage of recreational vessels. Vessels in an emergency involving danger to life or property shall be passed at any time.

The City of Chesapeake, through a Resolution submitted by Chesapeake City Council, has requested changes in the regulations governing the operation of the Dominion Boulevard Bridge also known as the Steel Bridge. This request would change the rush hour restrictions to 6:30 a.m. to 8:30 a.m. and to 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays. This change would extend the morning rush hour by a half hour at the beginning and reduce it by one half hour at the end. The evening rush hour would begin an hour later and last an hour later. A new provision would be added to change on demand openings to opening on signal on the hour and half-hour, between 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The provision to allow vessels in an emergency involving danger to life or property would be removed since this provision is addressed in 33 CFR 117.31. The City of Chesapeake also requested that new provisions be included allowing vessels carrying liquefied flammable gas or other hazardous materials access through the bridge at any time, tugs and tugs with tows and commercial cargo vessels access through the bridge with a 2-hour advance notification, and delaying the draw for 10 minutes for an approaching vessel or vessels waiting to pass through the drawspan. Recreational vessels would continue to be subject to the closure periods during the morning and evening rush hours. At all other times, the draw would open on signal.

The proposal to allow vessels carrying liquefied flammable gas or hazardous materials unimpeded access through the bridge at any time with no restrictions was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Southern Branch of the Elizabeth River. The Coast Guard Marine Safety Office, Hampton Roads, issues safety zones each time a liquefied flammable gas carrier is transiting the Port of Hampton Roads. Also, since tugs and tugs with tows have no place to tie up in the proximity of the bridge to wait for a bridge opening, it is proposed to continue to include them in the 2-hour advance notice requirement provision, as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners referred to as ''snowbirds''. Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour restrictions due to their numbers. The proposal to continue to restrict recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The request for the change to the regulations is based on increasing area highway congestion and lengthy delays at the Dominion Boulevard Bridge. The Dominion Boulevard Bridge is one of the vital links to those who live and work in the Great Bridge area of Chesapeake. Bridge openings during rush hours severely disrupt vehicular traffic. The need to extend bridge

closure periods during peak traffic hours far exceeds the need to maintain the Dominion Boulevard Bridge at its present regulated schedule.

The City's request to extend the morning and evening closure periods Monday through Friday, except Federal holidays, is based on the need to reduce traffic congestion. The current schedule was updated December 26, 1995 in a Final Rule (61 FR 1714) and worked for a while, but as a result of urban development, Dominion Boulevard has become a heavily traveled thoroughfare and the current closure periods are no longer sufficient to accommodate the increase in vehicles crossing this bridge during rush hour. The City of Chesapeake studied weekday vehicular traffic counts during the morning and evening rush hours. The average vehicle traffic count during a weekday morning rush hour for this bridge is approximately 2500 and for the evening rush hour, the vehicle count is approximately 2000.

The Coast Guard studied the City of Chesapeake's drawlogs for the Dominion Boulevard Bridge for the year 2001, Monday through Friday, except Federal holidays between the hours of 6:30 a.m. to 7 a.m., 8:30 a.m. to 9 a.m., 4 p.m. to 5 p.m. and 6 p.m. to 7 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested morning and evening rush hour extensions, the draw opened a total of 252 times during the morning and 350 times during the evening. The highest number of openings occurred May through November. The highest number of recreational vessels passing through this bridge during the extended hours of closure periods requested by the City was 275 in May 2001 and 245 in October of 2001. The lowest number of openings occurred in February, March and December due to the cold weather when boating is at its lowest. Based on the number of vehicles that cross this bridge during the morning and evening rush hours and the frequency of bridge openings during the same time, the City of Chesapeake's request to extend the morning and evening rush hours appears reasonable.

Centerville Turnpike

Current regulations that govern the operation of the Centerville Turnpike Bridge across the Albemarle and Chesapeake Canal, AICW mile 15.2, require the bridge to open on signal except from 7 a.m. to 7 p.m. the draw need only be opened on the hour and half-hour, seven days a week year-round, for the passage of recreational vessels. Public vessels of the United States, commercial vessels and vessels in an emergency condition which present danger to life or property shall be passed at any time.

The City of Chesapeake, through a Resolution submitted by the Chesapeake City Council, has requested changes in the regulations governing the Centerville Turnpike Bridge. Provisions would be added to close the drawspan between the hours of 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, allow commercial cargo vessels, tugs, and tugs with tows access through the bridge at any time provided a 2-hour advance notification is made, and would subject certain recreational vessels and commercial vessels to the morning and evening rush hour closure periods. The City also requested that the draw open only on the hour and half hour between 8:30 a.m. and 4 p.m. seven days a week. Since the rush hour closure periods are only for the weekday, the hour and half hour openings would apply between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays and not seven days a week. The rest of the time the draw would open on signal. The Coast Guard is adding to the City's request that the draw shall open on signal for the passage of vessels carrying liquefied flammable gas or other hazardous materials. Coast Guard Marine Safety Office, Hampton Roads, confirmed that there is a commercial facility located past the Centerville Turnpike bridge that receives deliveries of fuel that is transported by barges.

The proposal to allow vessels carrying liquefied flammable gas or hazardous materials unimpeded access through the bridge at any time with no restrictions was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Albemarle and Chesapeake Canal. The Coast Guard Marine Safety Office, Hampton Roads, issues safety zones each time a liquefied flammable gas carrier is transiting the Port of Hampton Roads. Also, since tugs, and tugs with tows have no place to tie up in the vicinity of the bridge to wait for a bridge opening, it is proposed to include them in the 2-hour advance notice requirement provision, as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners referred to as ''snowbirds''. Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour closure periods due to their numbers. The proposal to continue to restrict recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The City's request to provide morning and evening closure periods for bridge openings Monday through Friday, except Federal holidays, is based on the large volume of highway traffic that occurs at this location. Centerville Turnpike is a small two-lane road that accommodates large volumes of highway traffic. The highway traffic is a result of the population growth in Chesapeake and is causing lengthy delays to motorists who use this bridge daily going to and from home to work. The current schedule was updated as a Final Rule September 30, 1991 (56 FR 49410). A Notice of Proposed Rulemaking (NPRM) was published (63 FR 26792, June 2, 1998) for the Centerville Turnpike Bridge proposing a change to the current operating schedule. The request was made by the City of Chesapeake to provide rush hour closure periods in the morning and evening, Monday through Friday including Federal holidays from April 1 to November 30. The remainder of the time, the bridge would open on signal. Comments received as a result of the NPRM were from marina owners located on the AICW. They expressed concern that the closure periods would have a negative impact on their business. The City of Chesapeake was informed of these comments and decided based on their conversations with these business owners to provide a new proposal for the Centerville Turnpike Bridge. The new proposal took the place of the NPRM and provided a comprehensive sequencing of all of the AICW bridges in Chesapeake that the City felt would minimize inconvenience to the maritime industry. The Coast Guard tested the City's new proposal by transiting the AICW in a Coast Guard 41-foot Search and Rescue vessel traveling 10 knots. The Coast Guard determined the speed of travel was the average speed the majority of boaters traveled along this waterway. It was determined after the test was completed that the City's request did not meet the reasonable needs of navigation.

Data received from the City of Chesapeake revealed highway traffic counts at the Centerville Turnpike Bridge has increased from 13,700 per day to over 16,000 per day. Weekday traffic counts submitted by the City revealed over 4500 vehicles cross over the Centerville Turnpike Bridge during

the morning rush hours and over 3300 cross over this bridge during the evening rush hours.

The Coast Guard studied the City of Chesapeake's drawlogs for the Centerville Turnpike Bridge for the year of 2001, Monday through Friday, except Federal holidays, between the hours of 6:30 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested morning and evening rush hours, the draw opened a total of 395 times in the morning and 414 times in the evening. Vessel traffic through this bridge was at it's highest from April to November 2001. In May vessels totaled 255 and in October vessels totaled 305. Since this bridge currently does not have a morning or evening rush hour schedule and based on the number of vehicles crossing this bridge and the high number of openings occurring during the requested morning and evening rush hours, the City of Chesapeake's request appears reasonable.

Discussion of Proposed Rule

Jordan Bridge

The Coast Guard proposes to amend the substance of § 117.997(b) that governs the Jordan Bridge, across the Southern Branch of the Elizabeth River, AICW mile 2.8, in Chesapeake, Virginia. The proposed change to paragraph (b)(1) would require the bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. Paragraph (b)(2) would expand the closure periods during rush hour from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Paragraph (b)(2)(i) would change the wording of pleasure craft to recreational vessel.

Gilmerton Bridge

The Coast Guard proposes to amend the substance of § 117.997 (d) that governs the Gilmerton Bridge, across the Southern Branch of the Elizabeth River, AICW mile 5.8, in Chesapeake, Virginia. The proposed change to paragraph (d)(1) would require the bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. Paragraph (d)(2) would expand the closure period during rush hour from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Paragraph (d)(2)(i) would change the wording of pleasure craft to recreational vessel.

Dominion Boulevard Bridge

The Coast Guard proposes to amend both the form and substance of § 117.997 (f) which governs the Dominion Boulevard Bridge, across the Southern Branch of the Elizabeth River, AICW mile 8.8, in Chesapeake, Virginia. The proposed change to paragraph (f)(1) would require the bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or hazardous materials. Paragraph (f)(2) would establish closure periods for the bridge during rush hours from 6:30 a.m. to 8:30 a.m. and from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays. Paragraph (f)(2)(i) would establish that the bridge need not open for the passage of recreational or commercial vessels during those closure periods that do no qualify under paragraph (f)(2)(ii) of this section. Paragraph (f)(2)(ii) would establish that the bridge need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice is given to the Dominion Boulevard Bridge at (757) 547–0521. Paragraph (f)(3) would establish scheduled opening for the bridge on the hour and half hour from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Paragraph (f)(4) would establish discretion for the drawtender to delay the opening up to 10 minutes pass the hour and half hour for the passage of approaching vessels and any other vessels that are waiting to pass. Paragraph (f)(5) would establish that the bridge would open on signal at all other times.

Centerville Turnpike Bridge

The Coast Guard proposes to amend both the form and substance of § 117.997(i) that governs the Centerville Turnpike Bridge, across the Albemarle and Chesapeake Canal, AICW mile 15.2, in Chesapeake, Virginia. Paragraph (i)(1) would require the bridge to open at any time for commercial vessels carrying liquefied flammable gas or hazardous materials. Paragraph (i)(2) would establish closure periods for rush hour 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. Paragraph (i)(2)(i) would establish that the bridge need not open for the passage of recreational or commercial vessels that do not qualify under (i)(2)(ii) of this section. Paragraph (i)(2)(ii) would establish that the bridge need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Centerville Turnpike Bridge at (757) 547–3632. Paragraph (i)(3) would establish a schedule for bridge openings on the hour and half hour from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays. Paragraph (i)(4) would give discretion to the drawtender to delay the opening 10 minutes pass the hour/half hour for the passage of the approaching vessel and any other vessels that are waiting to pass. Paragraph (i)(5) would establish that the bridge would open on signal at all other times.

Regulatory Evaluation

This proposed 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridges. Mariners can plan their transits in accordance with the scheduled bridge openings, to further minimize delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the schedule bridge openings and minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity

and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3502.).

Federalism

A rule has implications for federalism under Executive Order 12132, 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 proposed 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 proposed 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 proposed 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 proposed rule meets applicable standards in section 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 proposed 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 proposed 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comment on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a State of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.997 paragraphs (b)(1), (b)(2) introductory text, (b)(2)(i), (d)(1), (d)(2) introductory text, (d)(2)(i), (f) and (i) are revised to read as follows:

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

* * * * *

(b) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (b)(2)(ii) of this section.

* * * * *

(d) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (d)(2)(ii) of this section.

* * * * *

(f) The draw of the Dominion Boulevard (US 17) bridge, mile 8.8, in Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (f)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Dominion Boulevard Bridge at (757) 547–0521.

(3) From 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays, the draw need be opened only on the hour and half hour.

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

(5) Shall open on signal at all other times.

* * * * *

(i) The draw of the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) 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:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under (i)(1)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Centerville Turnpike Bridge at (757) 547–3632.

(3) From 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need only be opened on the hour and half hour.

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

(5) Shall open on signal at all other times.

Dated: January 15, 2003.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–3458 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 02–053]

RIN 2115–AA97

Security Zones; Tampa, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones in Tampa, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida. These zones, which are similar to the existing temporary security zones for vessels, waterfront facilities and bridges, are needed to ensure public safety and security in the greater Tampa Bay area. Entry into these zones would be prohibited unless authorized by the Captain of the Port, or their designated representative.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Tampa [COTP Tampa 02–053], 155 Columbia Drive Tampa, Florida 33606. The Waterways Management Branch of Marine Safety Office Tampa 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 this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Tampa between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR David McClellan, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 102.

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 [COTP Tampa 02–053], 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 8.5 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Marine Safety Office Tampa at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 11, 2001, killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and are of interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

These proposed security zones are similar to the existing temporary security zones established for vessels, waterfront facilities and bridges that will soon expire. The following seven, existing temporary final rules, which are similar to the ones we propose to make permanent, were published in the **Federal Register:**

Security Zone for Crystal River, FL (66 FR 62940, December 4, 2001). This temporary rule created temporary fixed security zones around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel and the Demory Gap Channel, Crystal River, Florida.

Security Zone Sunshine Skyway Bridge, Tampa, FL (66 FR 65838, December 21, 2001). This temporary rule created temporary fixed security zones 100 feet around all bridge supports and rocky outcroppings at the base of the supports for the Sunshine Skyway Bridge in Tampa Bay.

Security Zone Tampa, FL (67 FR 8186, February 22, 2002). This temporary rule created temporary security zones 100 yards around moored

vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' flammable liquid cargo. Additionally, any vessel transiting within 200 yards of moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' cargo must proceed through the area at the minimum speed necessary to maintain safe navigation.

Security Zone Cruise Ships Tampa, FL (67 FR 10618, March 8, 2002). This temporary rule created temporary security zones 100 yards around cruise ships moored in the Port of Tampa. Additionally, any vessel transiting within 200 yards of a moored cruise ship must proceed through the area at the minimum speed necessary to maintain safe navigation.

Security Zone St. Petersburg Harbor, FL (67 FR 36098, May 23, 2002). This temporary rule established temporary fixed security zones 100 feet around seawalls, moorings, and vessels at Coast Guard and waterfront facilities and moorings in St. Petersburg Harbor, FL.

On April 16, 2002, the Captain of the Port issued a temporary rule titled ''Security Zone facilities, Tampa, FL'' that was published in the **Federal Register** on June 14, 2002 (67 FR 40861). This temporary zone created a security zone 50 yards from the shore or seawall and encompassing all piers around facilities in the following locations: Port Sutton, East Bay, Hooker's Point, Sparkman Channel, Ybor Channel and portions of Garrison Channel. Also, the security zone closed of all of Port Sutton Channel.

On December 4, 2001, the Captain of the Port issued a temporary rule titled ''Security Zone Moving Cruise Ships, Tampa, FL'' that was published in the **Federal Register** on June 24, 2002 (67 FR 42483). This temporary zone created a security zone 100 yards around all cruise ships transiting Tampa Bay.

On June 24, 2002, we published a temporary final rule (67 FR 42483) extending many of these temporary rules until October 31, 2002.

On October 30, 2002, the Captain of the Port issued a temporary final rule extending many of these temporary rules until February 28, 2003.

Discussion of Proposed Rule

The Coast Guard proposes to make the security zones, detailed in paragraph (a) of the regulatory text below, permanent.

Regulatory Evaluation

This proposed 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because there is ample room for vessels to navigate around the security zones and the Captain of the Port may allow vessels to enter the zones, on a case-by-case basis with the express permission of the Captain of the Port of Tampa or their designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities because the majority of the zones are limited in size and leave ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and vessels may be allowed to enter the zones, on a case-by-case basis, with the express permission of the Captain of the Port of Tampa or their designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically effect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call 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 proposed 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. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed 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 proposed 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 effect children.

Indian Tribal Governments

This proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Effect 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.760 to read as follows:

§ 165.760 Security Zones; Tampa Bay, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Security Zone, Rattlesnake, Tampa, FL:* A permanent security zone commencing at position 27° 53.32′N, 082° 32.05′W north to 27° 53.36′N, 082° 32.05′W encompassing all waters east and south of this line in Rattlesnake, Tampa, Florida.

(2) *Security Zone, Old Port Tampa, Tampa, FL:* The security zone is bounded by the following points: 27° 51.62′N, 082° 33.14′W east to 27° 51.71′N, 082° 32.5′W north to 27° 51.76′N, 082° 32.5′W west to 27° 51.73′N, 082° 33.16′W and south to 27° 51.62′N, 082° 33.14′W closing off Old Port Tampa channel.

(3) *Security Zone, Sunshine Skyway Bridge, Tampa, FL.* 100-foot security zones around all bridge supports, dolphins and rocky outcroppings. The zones will be bounded on the northern side of the bridge at pier 135, (24 N), 27° 37.85′ N, 082° 39.78′ W, running south under the bridge to pier 88, (24 S) 27° 36.59′ N, 082° 38.86′ W. Visual identification of the zone can be defined as to the areas to the north and south where the bridge structure begins a distinct vertical rise.

(4) *Security Zone, Vessels Carrying Hazardous Cargo, Tampa, FL.* Fixed security zones 200 yards around moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' flammable liquid cargo. Any vessel transiting within the outer 100 yards of the zone for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' cargo may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100 yard portion of the security zone closest to the vessel.

(5) *Security Zones, Cruise Ships, Piers, Seawalls, and Facilities, Port of Tampa and Port Manatee, FL.* Fixed security zones within the Port of Tampa extending 50 yards from the shore or seawall and encompassing all piers around facilities in the following locations: Port Sutton, East Bay, Hooker's Point, Sparkman Channel, Ybor Channel, Port Manatee, and portions of Garrison Channel. The security zones will be divided into four zones.

(i) *Zone One:* The security zone is bounded by the following points: 27°54.15′N, 082° 26.11′W, east northeast to 27° 54.19′N, 082° 26.00′W, then northeast to 27° 54.37′N, 082° 25.72′W, closing off all of Port Sutton Channel, then northerly to 27° 54.48′N, 082° 25.70′W, then northeasterly and terminating at point 27° 55.27′N, 082° 25.17′W.

(ii) *Zone Two:* The security zone is bounded by the following points: 27° 56.05′N, 082° 25.95′W, southwesterly to 27° 56.00′N, 082° 26.07′W, then southerly to 27° 55.83′N, 082° 26.07′W, then southeasterly to 27° 55.55′N, 082° 25.75′W, then south to 27° 54.75′N, 082° 25.75′W, then southwesterly and terminating at point 27° 54.57′N, 082° 25.86′W.

(iii) *Zone Three:* The security zone is bounded by the following points: 27° 54.74′N, 082° 26.47′W, northwest to 27° 55.25′N, 082° 26.73′W, then north-northwest to 27° 55.60′N, 082° 26.80′W, then north-northeast to 27° 56.00′N, 082° 26.75′W, then northeast 27° 56.58′N, 082° 26.53′W, and north to 27° 57.29′N, 082° 26.51′W, west to 27° 57.29′N, 082° 26.61′W, then southerly to 27° 56.65′N, 082° 26.63′W, southwesterly to 27° 56.58′N, 082° 26.69′W, then southwesterly and terminating at 27° 56.53′N, 082° 26.90′W.

(iv) *Zone Four:* The security zone encompasses all piers and seawalls of the cruise terminal berths 9 and 10 in Port Manatee, Florida beginning at 27° 38.00′N, 082° 33.81′W continuing east to 27° 38.00′N, 082° 33.53′W.

(v) *Zone Five:* Moving security zones 200 yards around all cruise ships entering or departing the Port of Tampa, Port of Saint Petersburg, and Port Manatee, in Tampa Bay, Florida. These security zones are activated on the inbound transit when a cruise ship passes the Tampa Lighted Whistle Buoy ''T'', located at 27° 35.35′N, 083° 00.71′W and terminate when the vessel is moored at a cruise ship terminal. The security zones are activated on the

outbound transit when a cruise ship gets underway from a terminal and terminates when the cruise ship passes the Tampa Lighted Whistle Buoy ''T'', located at 27° 35.35′N, 083° 00.71′W. Any vessel transiting within the outer 100 yards of the zone for a cruise ship may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100 yard portion of the security zone closest to the vessel.

(vi) *Zone Six:* Fixed security zones are established 200 yards around moored cruise ships in Tampa, Saint Petersburg, and Port Manatee, Florida. Any vessel transiting within the outer 100 yards of the zone of moored cruise ships may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100 yard portion of the security zone closest to the vessel.

(6) *Saint Petersburg Harbor, FL.* A fixed security zone encompassing all waters of Saint Petersburg Harbor (Bayboro Harbor), commencing on the north side of the channel at dayboard ''10'' in approximate position 27° 45.56′N, 082° 37.55′W, and westward along the seawall 50 yards from the seawall and around all moorings and vessels to the end of the cruise ship terminal in approximate position 27° 45.72′N, 082° 37.97′W. The zone will also include the Coast Guard south moorings in Saint Petersburg Harbor. The zone will extend 50 yards around the piers commencing from approximate position 27° 45.51′N, 082° 37.99′W to 27° 45.52′N, 082° 37.57′W. The southern boundary of the zone is shoreward of a line between the entrance to Salt Creek easterly to Green Daybeacon 11 (LLN 2500).

(7) *Security Zone for Crystal River, FL:* A permanent security zone is established around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida, encompassing the waters within the following points: 28° 56.87′N, 082° 45.17′W (Northwest corner), 28° 57.37′N, 082° 41.92′W (Northeast corner), 28° 56.81′N, 082° 45.17′W (Southwest corner), and 28° 57.32′N, 082° 41.92′W (Southeast corner). The security zone for the Demory Gap Channel encompasses the waters within the following points: 28° 57.61′N, 082° 43.42′W (Northwest corner), 28° 57.53′N, 082° 41.88′W (Northeast corner), 28° 57.60′N, 082° 43.42′W (Southwest corner), 28° 57.51′N, 082° 41.88′W (Southeast corner).

(b) *Regulations.* (1) Entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or that officer's designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 813–228–2189/91 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) *Definition.* As used in this section, *cruise ship* means a vessel required to comply with 33 CFR part 120.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: January 10, 2003.

James M. Farley,

Captain, U.S. Coast Guard, Captain of The Port, Tampa, Florida.

[FR Doc. 03–3460 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 179, 181 and 183

[USCG–2003–14359]

Small Entities Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a review of certain regulations and invites public comment on how best to lessen the impact of these rules on small entities. The regulations under review address notification of defects in boats, manufacturer certification and identification requirements, and safety standards for boats and associated equipment.

DATES: Comments and related material must reach the Docket Management Facility on or before June 12, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2003–14359), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble 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.*

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, (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Alston Colihan, Office of Boating Safety, Coast Guard, telephone (202) 267–0981. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone (202) 366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to respond to this notice. Submit comments and related material that tell us how 33 CFR part 179, 181, or 183 affects your small entity, and how you think that impact can be lessened. *See* ''Background and Purpose,'' below, for more information on the small entities review process and the factors the Coast Guard must consider in conducting that review.

Please include your name and address, identify the docket number for this notice (USCG–2003–14359), and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit

your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Background and Purpose

Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Coast Guard and other rulemaking agencies to review existing rules for their economic impact on small entities. The Coast Guard reviews the small entities impact of its existing rules pursuant to a plan adopted by the Department of Transportation (DOT) and described in Appendix D of DOT's semiannual regulatory agenda (*see* 67 FR 74799, December 9, 2002 for the latest publication of the agenda).

Where our 610 Analysis Year shows that a rule has a ''significant economic impact on a substantial number of small entities'' (SEIOSNOSE), we begin a 610 Review Year. During the 610 Review Year, we determine whether and how the SEIOSNOSE can be lessened. In making that determination, the Regulatory Flexibility Act requires us to consider the:

- Continued need for the rule.
- Nature of public complaints or comments received concerning the rule.
- Rule's complexity.
- Extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules.
- Length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In the fall 2002 agenda, we concluded the 610 Analysis Year for several rules and determined that 33 CFR parts 179, 181, and 183 significantly affect enough small entities to warrant a 610 Review Year for the three parts. Section 610 requires us to notify you that the Review Year is underway and to solicit your input, which we will consider in conducting our review.

In the fall 2003 agenda, we will announce the results of that review. We may determine that no further action seems possible or advisable at this time, in which case we will explain the basis for that determination. Or, we may determine that a rulemaking project is needed, to delete or amend the existing rule in a way that will lessen its small-entity impact. We will indicate whether a rulemaking project will begin promptly or be scheduled at a later date.

Dated: February 4, 2003.

Harvey E. Johnson,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 03–3461 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0274; FRL–7288–7]

Methoprene, Watermelon Mosaic Virus-2 Coat Protein, and Zucchini Yellow Mosaic Virus Coat Protein; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing to amend the exemption expression for methoprene from the requirements of a tolerance when used on food commodities as an insect larvicide, and to revoke all the tolerances for methoprene because a recent EPA review finds that no harm is expected to the public from exposure to residues of methoprene. Therefore, these tolerances are no longer needed and their associated uses are proposed to be covered by tolerance exemptions. Also, EPA is proposing to revoke the exemptions for watermelon mosaic virus-2 coat protein, and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash, because these exemptions are covered in other sections of 40 CFR part 180. Because methoprene's 37 tolerances were previously reassessed, the regulatory actions proposed in this document do not contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996.

DATES: Comments, identified by docket ID number OPP–2002–0274, must be received on or before April 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7378; e-mail address: mandula.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0274. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

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 submit or 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. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0274. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0274. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0274.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0274. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I Do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to exempt methoprene from the requirement of a tolerance, and therefore to revoke the existing tolerances for methoprene. The other actions involve maintaining exemptions from the requirement of a tolerance for specific pesticides, while removing redundant portions of 40 CFR part 180 relating to those tolerance exemptions.

1. *Methoprene*. EPA is proposing to revoke the tolerances in 40 CFR 180.359 for residues in or on specific food commodities for control of hornflies because review of methoprene toxicity data indicate that these tolerances are not necessary to protect human health or the environment. An EPA Decision Document on Tolerance Reassessment for Methoprene, prepared by EPA's Inert Ingredient Focus Group (IIFG) and finalized in August 2002, finds that methoprene is of low toxicity.

More specifically, the document finds that methoprene is not acutely toxic, and is neither irritating to skin or eyes, nor is it a dermal sensitizer. Developmental toxicity was not observed in studies with rabbits and mice. Methoprene is not carcinogenic in studies in rats and mice, and is not mutagenic in the Ames assay or in the dominant lethal assay. No adverse effects were seen in rats in a 2–year study. Metabolism studies in rats, mice, guinea pigs, and cows indicate rapid biodegradation of methoprene and its metabolites in mammals and that its metabolites are incorporated into natural body constituents (primarily fatty acids). The decision document concludes:

i. *Determination of safety*. Based on its review and evaluation of the available information, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of methoprene.

ii. *IIFG inert ingredient focus group recommendation/deferral to BPPD management*. At this time, 40 CFR 180.1033 specifies that methoprene is exempt from the requirement of a tolerance in or on all raw agricultural commodities when used to control mosquito larvae. There are also numerical tolerances for specific commodities in 40 CFR 180.359.

The methoprene risk assessment in the IIFG decision document used conservative assumptions that assumed the existence of a broad-based tolerance exemption. A broad-based tolerance exemption assumes that methoprene can be used on all crop commodities and that these crop commodities can be used as feed. The safety finding supports the tolerance exemption approach.

Based on the IIFG report, EPA is proposing to revoke the tolerances in 40 CFR 180.359 by removing that section from the CFR. EPA is also proposing to exempt methoprene from the requirement of a tolerance in or on all food commodities when methoprene is used as an insect larvicide. (A copy of the IIFG report will be made available in the docket for this proposed rule.)

2. *Two virus coat proteins and the genetic material necessary to produce the coat proteins in squash*. EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1132 for watermelon mosaic virus-2 coat protein, and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash because the tolerance exemptions are duplicated in the more recent, broader 40 CFR 180.1184. The exemption in 40 CFR 180.1184 includes all food commodities, rather than being limited to squash. Therefore, 40 CFR 180.1132 is not needed to protect human health and the environment.

B. What is the Agency's Authority for Taking these Actions

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)).

C. When Do These Actions Become Effective?

The Agency is proposing that these actions become effective upon publication of a final rule in the **Federal Register**. The only effect of the rule will be to remove redundancies and inconsistencies 40 CFR part 180. No person or entity is expected to be adversely affected.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of November 20, 2002, EPA had reassessed over 6,490 tolerances. All of the tolerances and tolerance exemptions in this proposed rule have already been reassessed and counted towards the total number of tolerances that EPA must reassess by August 2006. Therefore, this rule will add zero tolerances to the required total.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision (RED) documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Revocation of the tolerance exemptions discussed in this Notice of Proposed Rulemaking would not have a significant economic impact on a substantial number of small entities, because the pesticides remain subject to existing tolerance exemptions. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 implication.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 31, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.359 [Removed]

2. Section 180.359 is removed.

3. Section 180.1033 is revised to read as follows:

§ 180.1033 Methoprene; exemption from the requirement of a tolerance.

Methoprene is exempt from the requirement of a tolerance in or on all food commodities when used to control insect larvae.

§ 180.1132 [Removed]

4. Section 180.1132 is removed.

[FR Doc. 03–3236 Filed 2–11–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–13957; Notice 01]

RIN 2127–AI97

Glare from Headlamps and Other Front-Mounted Lamps: Adaptive Frontal-lighting Systems Federal Motor Vehicle Safety Standard No. 108; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: This document requests comments on Adaptive Frontal-lighting Systems (AFS). The automotive industry is introducing Adaptive Frontal-lighting Systems that can actively change the intensity and direction of headlamp illumination in response to changes in vehicle speed or roadway geometry, such as providing more light to the left in a left-hand curve. The agency is concerned that such headlighting systems may cause additional glare to oncoming drivers, change the easily recognizable and consistent appearance of oncoming vehicles, and have failure modes that may cause glare for long periods of time. The agency is also interested in learning whether these adaptive systems can provide any demonstrated reduction in crash risk during nighttime driving. Thus, the Agency is seeking information on these systems to assess their potential for a net increase or decrease in the risk of a crash. Of special interest to us are the human factors and fleet study research that may have been completed to assure these systems do not increase the safety risk for oncoming and preceding drivers.

DATES: Comments must be received on or before April 14, 2003.

ADDRESSES: Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Comments may be submitted electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically.

FOR FURTHER INFORMATION CONTACT: For technical issues, please contact Mr. Richard L. Van Iderstine , Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Van Iderstine's telephone number is (202) 366–2720 and his facsimile number is (202) 366–4329. For legal issues please contact Mr. Taylor Vinson, Office of Chief Counsel, at the same address. Mr. Vinson's telephone number is (202) 366–5263.

SUPPLEMENTARY INFORMATION: The development of Adaptive Frontal-lighting Systems (AFS) has been ongoing for about a decade. However, there are much earlier versions of such situation-adaptive headlighting that have been sold to the public. In the United States, the Tucker automobile was equipped with one, and in Europe, Citron manufactured automobiles with them, too. These had headlamps that would swivel with the steering system. In 1993, funded by the European Union's Eureka Project EU 1403, member countries and their manufacturers (BMW, Bosch, Daimler-Benz, Fiat, Ford, Hella, Magneti-Marelli, Opel, Osram, Philips, PSA, Renault, Valeo, Volkswagen, Volvo, and ZKW) began defining requirements for AFS. Additionally, Japanese and North American manufacturers have been developing these systems. The goal of these AFS is to actively control headlamp beam pattern performance to meet the dynamic illumination needs of changing roadway geometries and visibility conditions.

Today, this goal has been partially realized by several lighting manufacturers who have developed systems incorporating various aspects of AFS functionality. An initial application, called ''bending light,'' automatically reaims the lower beam headlamps to the left or right depending on the steering angle of the vehicle, with the intent to better illuminate curves in the roadway. Also, it is likely that these initial bending light offerings will have part of the light emitted from the headlamp move within the beam to the left or right to increase the amount of light shining into the curve. There are other ideas being explored that, for example, would reduce the intensity of illumination in well-lit urban driving situations, reduce the intensity of lower beam foreground light in wet weather to lessen the light that reflects off the roadway into other drivers' eyes, and various other performance changes.

Prototype systems have been demonstrated by motor vehicle lighting companies to motor vehicle manufacturers, and recently to government lighting experts from numerous countries around the world. This was last done in Geneva, Switzerland in the Spring of 2000, during the Forty-Fourth Session of the Meeting of Experts on Lighting and Light Signalling (GRE) where ten different AFS prototypes were available on cars for driving. The GRE is a subgroup of the United Nations' (UN) World Forum for Harmonization of Vehicle Regulations (WP.29).

In order to introduce this new headlighting technology in Europe, regulations have to be modified within the UN Economic Commission for Europe, under its 1958 Agreement titled: ''Agreement concerning the Adoption of Uniform Technical Prescriptions (Rev.2).'' The first amendment to accommodate swiveling (or bending) of the low beam function

in these regulations is scheduled for final voting at the March 2003 session of WP.29. AFS installation on motor vehicles in the European market could occur sometime after approval by WP.29. The second stage is forecast to be considered for approval in 2005. This could include roadway illumination for specific situations, such as highway, suburban, urban roads, inclement weather, and additional cornering lighting whose technical descriptions may be found in the formal draft document presented to the GRE (*see* TRANS/WP.29/GRE/2002/18—Proposal for a New Draft Regulation: ''Uniform Provisions Concerning the Approval of Adaptive Frontlighting System (AFS) for Motor Vehicles'' at *http://www.unece.org/trans/main/wp29/wp29wgs/wp29gre/grenwdoc/gre0218e.pdf*).

AFS implementation by U.S. vehicle manufacturers in North America currently is in the development stage. However, foreign manufacturers could begin marketing the bending function in the United States in the near future. Under Federal Motor Vehicle Safety Standard No. 108, Lamps, reflective devices and associated equipment, the bending light performance (by automatically reaiming the lamp) is not prohibited because the Standard does not specifically address the initial or subsequent aim of a headlamp in a headlighting system. The Standard addresses only aimability requirements. See the letter from the Chief Counsel, NHTSA, to Mr. Mark Cronmiller, VDO North America, dated July 7, 1999 (*http://www.nhtsa.dot.gov/cars/rules/interps/files/20061.ztv.html*). Mr. Cronmiller had asked about future ''smart'' headlighting systems that adjust headlamp aim vertically and/or horizontally according to driving conditions (*e.g.*, vertically for oncoming traffic, horizontally around curves in the road). The Chief Counsel responded that paragraph S7.8 of Standard No. 108 prescribes headlamp aiming hardware requirements under static conditions only. Once a headlamp is installed on a vehicle, its aim is fixed, but may be adjustable by mechanical means when the vehicle is at rest. A limited ability to adjust vertical aim on some vehicles is also provided by vehicle leveling devices. Standard No. 108 does not require that headlamps be aimed at the time the vehicle is manufactured and certified as conforming to all applicable Federal motor vehicle safety standards. If there is a requirement for correct headlamp aim on new vehicles, it would be that of a State's motor vehicle authority at the time the vehicle is first registered for highway use in that State. The letter continued by saying that, if a ''smart'' headlamp system meets the static aiming hardware requirements of Standard No. 108, a dynamic aiming feature is permissible. We also said that at that time that we had no specific plans to regulate or require headlamps with dynamic aim features, but were monitoring them to form an impression as to their suitability for use under American driving conditions, and to learn if there are any problems of maintenance of aiming integrity, or durability, involved in their use. At a minimum, we would be concerned about the need for fail-safe performance to assure that aim would return to nominally correct, straight ahead in the event of a failure.

We note that S5.3.1.1 of Standard No. 108 also requires that lamps and reflective devices must be installed such that their photometric requirements are met on motor vehicles and that no other part of the vehicle shall prevent that. As such, the additional hardware added to achieve AFS must not prevent headlamps, or any other required lamps, from meeting the required performance in any manner whether AFS is operating or not. Additionally, for the bending light mechanization where some of the light in the nominal beam pattern is actively redirected, the photometric requirements of the headlamp must be met regardless of active changes in the light distribution within the beam.

The balance between roadway illumination and glare is something that has always concerned us. The public shares our concern, too, as evidenced by the unprecedented response to Docket 8885, NHTSA's docket on glare from headlamps. Besides the more than four thousand comments to date, that docket has the highest number of Internet visits of all dockets in the DOT Docket Management System: more than 64,000 hits. The public's concern is that glare is increasing at an alarming rate whether from approaching vehicles or rear view mirrors. Thus, the agency is concerned whether the implementation of AFS will produce a volume of complaints similar to those in Docket 8885 regarding the installations of high intensity discharge, high-mounted, and supplemental headlamps.

Given this concern, we have a number of questions for drivers, and the lighting and the motor vehicle industries, relative to the safety, implementation and use of AFS, especially as it may be offered to the U.S. market. These questions are:

Questions for Drivers

Question 1: Do you have problems seeing around curves because of the limitations of the headlamps on the vehicles that you drive, or because of glare from an approaching vehicle? Please describe the problems, including road, ambient lighting, and weather conditions.

Question 2: Is the glare that you described above worse than the glare from vehicles approaching on straight roads? Is it because the light is brighter or because it is longer lasting?

Question 3: Under what nighttime driving conditions have you thought you needed extra headlight illumination to help you see the road, signs, or objects: When turning at intersections, when driving on curved roads, at intersections, driving in rain, when driving in fog, when driving on interstate highways, driving in cities, etc.?

Question 4: Under what nighttime driving conditions have you thought that the oncoming headlights seemed more glaring than usual: On right-hand curves, on left-hand curves, on high-speed roads, at intersections in cities, on hilly roads?

Question 5: What types of objects are most difficult for you to see when driving at night: Pedestrians, lane markings, street signs, stop signs, overhead guide signs, debris on road, animals, etc.?

Question 6: For a ''bending light'' AFS that added more illumination to the right side on right-hand curves and to the left on left-hand curves, what aspects of lamp design concern you the most: That lamp failure might reduce visibility; that added light on left-hand curves would increase glare to oncoming drivers; that the motion of the lights would be annoying; that the added light would not be bright enough to significantly increase the visibility distance.

Question 7: If a headlighting rating were available for new vehicles in the same manner as crashworthiness and rollover star ratings, would you use these headlighting ratings in the decisions that lead to your purchase of a new vehicle? On a scale of 1 to 10 with 1 being of little value and 10 being extremely important, how might you rate the importance of the headlamp rating, if available, to your purchase decision for a new vehicle?

Questions for Industry

Question 8: Have manufacturers evaluated prototype AFS-equipped vehicles at night to determine whether changes in the intensity and direction of

illumination may cause misdirection of any driver's gaze toward the newly lighted or intensified area, or away from objects that are still important for driving safety? Please describe the evaluations and provide copies if available.

Question 9: Do moving beams (from bending light or the increase or decrease in intensity) either increase or decrease the level of driver fatigue compared to non-AFS lighting? Please provide all available research information about this issue.

Question 10: Have vehicle manufacturers evaluated prototype AFS-equipped vehicles at night as occupants of other vehicles to evaluate the potential glare from AFS? If so, please describe the evaluation and the results. Are there other assessment methods used to assess the glare from the AFS before vehicle manufacturers commit to a particular AFS design? Please provide the results of all alternative assessments conducted for AFS.

Question 11: What assessment is made of potential glare from AFS at points in the beam pattern that are currently unregulated?

Question 12: Are there any current lamp or vehicle manufacturer corporate design guidelines for AFS that deal with unregulated points in the beam pattern? If so, please indicate what those guidelines are and explain why the manufacturer believes they are appropriate.

Question 13: To what extent do lamp and vehicle manufacturers consider the reports and work by the Society of Automotive Engineers and other non-governmental bodies on the subject of glare in designing the performance of AFS on their vehicles? In answering this question, manufacturers are asked to provide a list of the reports, papers and data that they found useful in establishing design guidelines. Please provide specific examples of internal glare limits that have been adopted as a result of these references.

Question 14: While we are aware of many studies to demonstrate and promote the efficacy of AFS, we are not aware of a single study that has been done on the effects on other drivers facing AFS-equipped vehicles or on drivers using AFS-equipped vehicles. Please identify any such studies.

Question 15: Has glare been studied specifically for younger and older drivers facing or preceding the various modes of AFS operation on vehicles? If so, please list the studies.

Question 16: Has diminished recognition of presence, or the perception of distance or closure rate to an oncoming AFS vehicle ever been studied? If so, please list the studies and findings.

Question 17: What fail-safe features for each possible mode of AFS operation have been developed and studied that will prevent glare to oncoming and preceding drivers? Please describe them.

Question 18: What fail-safe features for each possible mode of AFS operation have been developed and studied that will prevent no greater risk to the driver using it than when non-AFS headlighting fails?

Question 19: What studies have been done to demonstrate whether AFS adds safety value? What value is that and how was it measured? Please identify and provide the findings of such studies.

Question 20: What are the anticipated incremental costs of adding the various designs of AFS features to halogen headlighting systems?

Question 21: What are the anticipated incremental costs of adding the various designs of AFS features to high intensity discharge headlighting systems?

Question 22: What are the anticipated incremental costs of adding the various designs of AFS features to light emitting diode headlighting systems?

Question 23: Presumably, the added illumination in curves is intended to reduce the risk of a crash. However, because most crashes are on straight roads (because of the predominance of straight roads), how does the presumed incremental benefit compare to the added cost of AFS? Does the incremental benefit outweigh the potential for additional glare to oncoming or preceding drivers in a curve or intersections or during an AFS failure? Why?

Question 24: Should AFS designs be incorporated as separate, regulated lighting systems that operate independently of the primary headlighting system?

Question 25: Given that known AFS prototype designs are intended to use more headlamp replaceable light sources than currently permitted, should AFS headlamps be limited in total luminous flux?

Question 26: Should AFS headlamps have unlimited luminous flux if automatic headlamp leveling and cleaning are incorporated, as currently mandated in Europe for headlamps that have light sources that are rated at 2000 lumen or more?

Question 27: What is the feasibility of reducing the intensity of AFS lamps during low speed, dense traffic, or high ambient illumination conditions? Please describe how this might be accomplished.

Question 28: Are there requirements in Standard No. 108 that are barriers to the implementation of AFS? If there are barriers, in accordance with the published lighting policy of the agency (*see* NHTSA docket 98–4281, at: http://dms.dot.gov/search/document.cfm?documentid=46284&docketid=4281), what data exist showing safety benefits to justify amending the Standard to permit AFS?

Question 29: Should AFS be mandatory? What data exists showing safety benefits to justify amending the Standard to require AFS? If not mandatory, why not?

Question 30: Should AFS be permitted as a replacement for non-AFS headlighting systems. If so, why, and what safeguards are necessary beyond that necessary for new OEM installations? If not, why not?

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this request for comment and determined that it is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a proposal and ultimately a final rule should result from this request for comment, new requirements would apply to the applicable vehicles and items after the specified implementation date. The request for comment seeks to determine the ramifications of the introduction of adaptive frontal headlighting systems that are intended to enhance safety under a variety of driving conditions. The systems do so by varying the performance and aim of each headlamp's beam in a manner coincident with providing, for example, more illumination in the direction of a motor vehicle's turn, and other situations where the vehicle's manufacturer deems that more or less light is desired by the driver.

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may

attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given at the beginning of this document, under **ADDRESSES.**

How can I be Sure that my Comments were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I Submit Confidential Business Information?

If you wish to submit any information that you do not want to be made public, under a claim of confidentiality, you should submit three copies of your complete submission to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT.** This submission must include the information that you are claiming to be private, that is, confidential business information. In addition, you should submit two copies from which you have deleted the private information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter that provides the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a proposed response to these glare issues, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the multi-digit docket number shown at the heading of this document. In this case, the docket number is ''NHTSA–2001–13957'', you would type ''13957''.

(4) After typing the docket number, click on ''search''.

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''.pdf'' versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50, and 501.8.

Issued on: February 6, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–3505 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 68, No. 29
Wednesday, February 12, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant Arista Biologicals, Inc. of Allentown, Pennsylvania, an exclusive license for U.S. Patent No. 5,563,040, entitled ''Method and Apparatus for Immunological Diagnosis of Fungal Decay in Wood''. Notice of availability for this invention for licensing was published in the **Federal Register** on June 21, 1994.

DATES: Comments must be received within 30 calendar days of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send comments to: Patent Advisor, USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502; fax: 608–231–9508; or e-mail: *jstockhausen@fs.fed.us.*

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

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 03–3445 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–03–1040–DP–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of meetings.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announce the schedule of meetings for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as ''National Monument''). The meetings will be held on the following dates:

- Saturday, April 5th, 2003;
- Saturday, June 7th, 2003;
- Saturday, August 2nd, 2003;
- Saturday, October 4th, 2003;
- Saturday, December 6th, 2003;

Meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260, from 9 a.m. until 4 p.m or until the agenda items are completed. There will be an hour dedicated to public input from 11 a.m.–12 p.m. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management Web Page for the National Monument (*http://www.ca.blm.gov/palmsprings/*). The April 5th, 2003 meeting will focus any Advisory Committee comments following publication of a Draft Management Plan for the National Monument. The subject matter of subsequent meetings will focus on the content and implementation of the National Monument Management Plan and other actions affecting the National Monument.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: April 5, 2003; June 7, 2003; August 2, 2003; October 4, 2003; and December 6, 2003. All meetings will take place from 9 a.m. to 4 p.m with a morning public comment period from 11 a.m. to 12 p.m. Meetings may end prior to 4 p.m. if all agenda items are completed.

ADDRESSES: The meeting will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by email at *dgeorge@ca.blm.gov.* Information can be found on our Web Page: *http://www.ca.blm.gov/palmsprings/.* Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: February 6, 2003.

Danella George,

Designated Federal Official, National Monument Manager.

[FR Doc. 03–3468 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of renewal at USDA.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix), notice is hereby given that the Secretary of Agriculture has renewed the charter for the Advisory Committee on Agriculture Statistics, hereafter referred to as Committee. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S. Department of Commerce. Responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

The Advisory Committee on Agriculture Statistics has provided input and direction to the census of agriculture program since the committee was first established on July 16, 1962. It has been particularly critical to have the committee as a valuable resource to USDA during the transfer of the census from the U.S. Department of Commerce.

The purpose of the committee is to make recommendations on census of agriculture operations including questionnaire design and content, publicity, publication plans, and data dissemination.

DATES: Comments on this notice must be received by April 18, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact R. Ronald Bosecker, Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary of Agriculture on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest and relevant to the duties of USDA. No other advisory committee or agency of USDA is performing the tasks that will be assigned to the Committee.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Representatives of the Bureau of the Census, U.S. Department of Commerce, and Economic Research Service, USDA, serve as ex-officio members of the Committee.

The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging developments and issues in the food and fiber sector that can affect agriculture statistics activities.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Signed at Washington, DC, January 31, 2003.

R. Ronald Bosecker,

Administrator.

[FR Doc. 03–3444 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020703A]

Proposed Information Collection; Comment Request; American Fisheries Act, Vessel and Processor Permit Applications

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov)*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden at 907–586–7228, or at *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA) established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). Under the AFA, only vessels and processors that meet specific qualifying criteria are eligible to fish for and process pollock in the BSAI. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives under the AFA.

All AFA vessel and processor permits have no expiration date and will remain valid indefinitely unless revoked by NMFS. Inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock Total Allowable Catch (TAC) are required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit will be in effect. The information must be collected once a year because NMFS must identify the universe of participating vessels and processors prior to the start of each fishing year in order to assign allocations of pollock TAC to eligible groups of vessels that form cooperatives.

II. Method of Collection

Paper forms are used.

III. Data

OMB Number: 0648–0393.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 2 hours for an application for an AFA catcher vessel permit; 30 minutes for application for an AFA Permit for Replacement Vessel; 2 hours for application for an AFA Inshore Catcher Vessel Cooperative Permit; 2 hours for an application for an AFA mothership permit; and 2 hours for an application for an AFA inshore processor permit.

Estimated Total Annual Burden Hours: 39.

Estimated Total Annual Cost to Public: $59.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 5, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3495 Filed 2–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020703B]

Proposed Information Collection; Comment Request; Highly Migratory Species Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov)*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, phone 978/281–9397; Highly Migratory Species Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.). NOAA must collect information from dealers to monitor the import and export of bigeye tuna and swordfish in order to comply with international obligations established through membership in the International Commission for the Conservation of Atlantic Tunas (ICCAT). ICCAT has implemented a trade monitoring program for bigeye tuna and swordfish to discourage illegal, unregulated and unreported fishing activities as well as further understanding of catches and international trade for these species.

In order to implement the binding recommendations of ICCAT, the Atlantic Tunas Dealer Permit (currently approved under 0648-0202) will be modified to address all import, export, and re-export of bigeye tuna for Atlantic coast dealers. The Pacific Tuna Dealer Permit (currently approved under 0648-0202) will be modified to address Pacific dealers involved in the import, export, and re-export of bigeye tuna. Finally, the Swordfish Dealer Permit (currently approved under 0648–0205) will be modified to include export and re-export of swordfish. All existing tuna and swordfish dealer permit requirements will be merged with the highly migratory species vessel permits under this collection.

II. Method of Collection

Relevant dealers must apply for or renew permits annually by mail. Renewal forms for all dealer permits are provided annually.

III. Data

OMB Number: 0648–0327.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 960.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 80.

Estimated Total Annual Cost to Public: $500.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 5, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3496 Filed 2–11–03; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 5,525,800 entitled ''Selective Multi-Chemical Fiber Optic Sensor'', Navy Case No. 76,085; U.S. Patent 5,735,927 entitled ''Method of Producing Core/Cladding Glass Optical Fiber Preforms Using Hot Isostatic Pressing'', Navy Case No. 76,989; U.S. Patent No. 5,739,536 entitled ''Fiber Optic Infrared Cone Penetrometer System'', Navy Case No. 77,412; U.S. Patent No. 5,778,125 entitled ''Optical Fiber Terminations'', Navy Case No. 77,790; U.S. Patent No. 5,779,757 entitled ''Process for Removing Hydrogen and Carbon Impurities from Glasses by Adding a Tellurium Halide'', Navy Case No. 77,216; U.S. Patent No. 5,846,889 entitled ''Infrared Transparent Selenide Glasses'', Navy Case No. 77,674; U.S. Patent No. 5,879,426 entitled ''Process for Making Optical Fibers from Core and Cladding Glass Rods'', Navy Case No. 77,577; U.S. Patent No. 5,900,036 entitled ''Multi-Cylinder Apparatus for Making Optical Fibers, Process and Product'', Navy Case No. 76,981; U.S. Patent No. 5,949,935 entitled ''Infrared Fiber Optic Coupler'', Navy Case No. 78,344; U.S. Patent No. 5,953,478 entitled ''Metal-Coated IR–Transmitting Chalcogenide Glass Fibers'', Navy Case No. 77,806; U.S. Patent No. 5,973,824 entitled ''Amplification by Means of Dysprosium Doped Low Phonon Energy Glass Waveguides'', Navy Case No. 78,395; U.S. Patent No. 6,015,765 entitled ''Rare Earth Soluble Telluride Glasses'', Navy Case No. 78,347; U.S. Patent No. 6,021,649 entitled ''Apparatus for Making Optical Fibers from Core and Cladding Glass Rods with Two Coaxial Molten Glass Flows'', Navy Case No. 79,632; U.S. Patent No. 6,128,429 entitled ''Low Phonon Energy Glass and Fiber Doped with a Rare Earth'', Navy Case No. 78,394; U.S. Patent No. 6,145,342 entitled ''Catalyzed Preparation of Amorphous Chalcogenides'', Navy Case No. 78,533; U.S. Patent No. 6,157,856 entitled ''Tissue Diagnostics Using Evanescent Spectroscopy'', Navy Case No. 79,047; U.S. Patent No. 6,175,678 entitled ''Infrared Fiber Imager'', Navy Case No. 79,823; U.S. Patent No. 6,195,483 entitled ''Fiber Bragg Gratings in Chalcogenide or Chalcohalide Based Infrared Optical Fibers'', Navy Case No. 77,161; U.S. Patent No. 6,285,811 entitled ''Near-Field Optical Microscope with Infrared Fiber Probe'', Navy Case No. 78,932; U.S. Patent Application Serial No. 09/906,010 entitled ''Chalcogenide Glass Fiber Raman Laser and Amplifier'', Navy Case No. 82,848; U.S. Patent Application Serial No. 09/964,548 entitled ''Multi Heating Zone Process for Fabrication of Infrared Optical Fibers'', Navy Case No. 82,941; and Navy Case No. 83,486 entitled ''All Fiber FTIR'', invention disclosure filed October 2, 2001.

ADDRESSES: Requests for copies of the patents or inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: February 6, 2003.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–3471 Filed 2–11–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Shook-Argosy Joint Venture

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Shook-Argosy Joint Venture, a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-Owned invention described in Navy Case No. 84,339 filed October 24, 2002, entitled ''Infrastructure Linkage and Augmentation System''.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 27, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D. Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response. (Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: February 4, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–3472 Filed 2–11–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 14, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

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

Dated: February 6, 2003.

Joe Schubart,

Acting Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Consolidated State Performance Report.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52. Burden Hours: 134,768.

Abstract: This information collection package contains the Consolidated State Performance Report (CSPR). The Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (*see* section 14301 of the ESEA), emphasize the importance of cross-program coordination and integration of federal programs into educational activities carried out with State and local funds. States would use the instrument for reporting on activities that occur during the 2001–2002 school year. The proposed CSPR requests some of the same information as in 2000–2001, with a few modifications to eliminate certain sections. The Department is working actively to revise the content of these documents and develop an integrated information collection system that responds to No Child Left Behind (NCLB), uses new technologies, and better reflects how federal programs help to promote State and local reform efforts.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at ;1–800–877–8339.

Office of the Chief Financial Officer

Type of Review: New collection.

Title: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package (1890–0001) (KA).

Frequency: Annually.

Affected Public: Businesses or other for-profit (primary).

Reporting and Recordkeeping Hour Burden: Responses: 50. Burden Hours: 3750.

Abstract: This application package invites small business concerns to submit a Phase I research application for the Small Business Innovation Research (SBIR) program. This is in response to Pub. L. 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5667'' (the ''Act'') enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED), to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive, three-phase process each fiscal year. This collection falls under the Streamlined Discretionary Process, 1890–0011.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–3448 Filed 2–11–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Revised Scope for the Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, WA

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) has decided to revise the scope of the Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington. DOE issued a Draft Environmental Impact Statement (EIS) for the Hanford Site Solid Waste Program in May 2002. Subsequently, DOE issued a Notice of Intent to prepare a separate EIS, the Tank Waste Remediation System Supplemental EIS for the Disposal of Immobilized Low-Activity Wastes from Hanford Tank Waste Processing. DOE now intends to incorporate the scope of the Supplemental EIS into the scope of the EIS for the Solid Waste Program. DOE will not issue a separate Supplemental EIS for immobilized tank waste.

FOR FURTHER INFORMATION CONTACT: To request information about the revised draft EIS or to be placed on the EIS distribution list, contact:

Mr. Michael S. Collins, HSW EIS Document Manager, Richland Operations Office, U.S. Department of Energy, A6–38, Post Office Box 550, Richland, Washington, 99352–0550, Telephone and voice mail: (509) 376–6536, Fax: (509) 372–1926, Electronic mail: *solid_waste_eis_-_doe@rl.gov.*

For general information about the DOE NEPA process, contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585–0119, Fax: (202) 586–7031, Telephone: (202) 586–4600, Voice mail: (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE has decided to revise the scope of the Hanford Site Solid Waste (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington. DOE issued a Draft EIS for the Hanford Site Solid Waste Program in May 2002 (67 FR 36592, May 24, 2002). Subsequently, DOE issued a Notice of Intent (67 FR 45104, July 8, 2002) to prepare a separate EIS, the Tank Waste Remediation System Supplemental EIS for Disposal of Immobilized Low-Activity Wastes from Hanford Tank Waste Processing. DOE now intends to incorporate the scope of the Supplemental EIS into the scope of the EIS for the Solid Waste Program. In making this decision, DOE considered comments received on the original Draft EIS for the Solid Waste Program, and scoping comments for the Supplemental EIS, including the recommendations of the Environmental Protection Agency, the Washington State Department of Ecology, and the Hanford Advisory Board. Accordingly, DOE intends to issue a revised Draft EIS for the Solid Waste Program that reflects this expanded scope and responds to other comments on the Draft EIS, in accordance with Council on Environmental Quality and DOE procedures for implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508 and 10 CFR part 1021).

The revised Draft EIS will evaluate the potential environmental impacts associated with ongoing activities of the Hanford Site Solid Waste Program, disposal of immobilized low-activity wastes from Hanford tank waste processing, and reasonably foreseeable treatment, storage and disposal facilities and activities. The revised Draft EIS also will contain additional analyses of alternatives for managing both waste generated at the Hanford Site and waste received from offsite DOE generators, consistent with decisions resulting from the Department's Final Waste management Programmatic EIS (DOE/EIS–0200–F, May 1997) for low-level waste and mixed low-level waste (65 FR 10061, February 25, 2000).

Anticipated changes for the revised draft EIS include:

—The addition of alternatives for the disposal of immobilized low-activity waste from the tank farms and evaluation of the impacts of those alternatives.
—The addition of more alternatives for the disposal of low-level waste and mixed low-level waste and evaluation of the impacts of those alternatives.
—The addition of alternatives for disposal of different waste types (immobilized low-activity waste, low-level waste, mixed low-level waste) together and evaluation of the impacts of those alternatives.
—The addition of information on the impacts of transporting waste especially as it pertains to the States of Washington and Oregon.
—The addition of DOE responses to major issues from the first draft EIS.

In addition, DOE recently issued a Notice of Intent to prepare a separate EIS, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, Washington (DOE/EIS–0356), (68 FR 1052, January 8, 2003). In this new tank waste treatment and closure EIS, DOE intends to evaluate alternative tank waste treatment processes for low activity waste. DOE will coordinate this EIS with the EIS on Hanford's Solid Waste Program, as appropriate.

Issued in Richland, Washington, on this 5th day of February, 2003.

Keith A. Klein,

Manager, Richland Operations Office.

[FR Doc. 03–3482 Filed 2–11–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41635 entitled ''Energy Efficient Building Equipment and Envelope Technologies IV''. The Department of Energy announces that it intends to conduct a competitive Program Solicitation, DE–PS26–03NT41635, and award financial assistance (Cooperative Agreements) for the program entitled ''Energy Efficient Building Equipment and Envelope Technologies IV.'' Through this

solicitation, the DOE/NETL seeks applications on behalf of the Office of Building Technology Programs in DOE's Office of Energy Efficiency and Renewable Energy (EERE) for innovative technologies that have the potential for significant energy savings in residential and commercial buildings. DOE is seeking to support projects that are advancing energy efficient equipment, envelope and whole building technologies. Specifically, the objective of the solicitation is to accelerate high-payoff technologies that, because of their risk, are unlikely to be developed in a timely manner without a partnership between industry and the Federal Government.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) Web Page located at *http://e-center.doe.gov* on or about February 28, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Bonnie Dowdell, Contract Specialist, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, E-mail Address: *Bonnie.Dowdell@netl.doe.gov,* Telephone Number: 412–386–5879.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select a group of projects programmatically balanced with respect to: (1) Technology category (equipment end uses, envelopes and whole buildings); (2) building type (residential and/or commercial); and (3) time of commercialization (short-term or long-term market potential of the technology). The solicitation will cover research and development on materials, components and systems applicable to both residential and commercial buildings. The solicitation will not support demonstration projects to deploy the technology on a large scale but will support proof of concept projects. The research and development areas of interest are as follows: *Whole Buildings*—Building Performance and Zero Energy; *Lighting*—Light Sources and Ballasts, Lighting Controls, Luminaries and Distribution Systems, and Lighting Impacts; *Space Conditioning Equipment*—Energy Conversion Efficiency, and Distribution, Storage, Control and System Integration; *Building Envelope*—Building Materials and Envelope Systems, and Windows; and Appliances.

The solicitation covers research in four technology maturation stages: Technology Maturation Stage 2 involves applied research; Technology Maturation Stage 3 involves exploratory development (non-specific applications and bench-scale testing); Technology Maturation Stage 4 involves advanced development (specific applications and bench-scale testing); and Maturation Stage 5 involves engineering development (pilot-scale and/or field testing). For projects spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Multiple awards (8—12) are expected regardless of the technology maturation stage(s) proposed. It is DOE's desire to encourage the widest participation, including the involvement of small business concerns and small disadvantaged business concerns. In order to gain the necessary expertise to review applications, non-Federal personnel may be used as evaluators or advisors in the evaluation of applications, but will not serve as members of the technical evaluation team. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost share commitment of at least 20 percent from non-Federal sources for research and development projects. It is anticipated that $16,000,000 in federal funding will be available however, not all of the necessary funds are currently available for this solicitation; the Government's obligation under any cooperative agreement awarded is contingent upon the availability of appropriated FY 2003 funds.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on January 29, 2003.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 03–3481 Filed 2–11–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement: Energy Information Administration Policy for Release of the Weekly Petroleum Status Report

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy Statement. Energy Information Administration Policy for Release of the Weekly Petroleum Status Report.

SUMMARY: The comments received represent a cross section of key interested parties that use the Weekly Petroleum Status Report (WPSR). There was strong support and opinions both for leaving the release time as it currently is and for moving the time to coincide with New York Mercantile Exchange (NYMEX) trading hours. Reasonable arguments were made on both sides of the issue. After careful review of the comments, the Energy Information Administration (EIA) has concluded that it is in the overall best interest of WPSR users to change the release time to 10:30 a.m. Eastern Standard Time (EST) on Wednesday.

EIA found the arguments for moving the release time compelling enough to shift its current policy. The leading arguments supporting this decision are summarized as follows: (1) It supports fairness, transparency, and market oversight functions by releasing the WPSR at a time when both European and United States markets are open, (2) it is expected to contribute to reduced market volatility by releasing the data when more traders are operating.

DATES: This policy becomes effective on Wednesday, February 26, 2003.

ADDRESSES: Requests should be directed to Ronald W. O'Neill. Mr. O'Neill may be contacted by telephone (202–586–2991), FAX (202–586–5846), or e-mail (*ron.oneill@eia.doe.gov*). These methods are recommended to expedite contact. His mailing address is Ronald W. O'Neill, M.S. EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0640.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or questions about the policy should be

directed to Ronald W. O'Neill at the address above. The WPSR is available on EIA's Internet site at *http://www.eia.doe.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Comments
III. Current Actions

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) requires that EIA carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and long term domestic demands.

EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to EIA's dissemination of energy information. Comments received help EIA when preparing information collections and information products necessary to EIA's mission.

EIA's Weekly Petroleum Status Report (WPSR) provides timely information on supply and selected prices of crude oil and principal petroleum products. It serves the industry, the press, planners, policymakers, consumers, analysts, and State and local governments with a ready, reliable source of current information.

The WPSR data are based primarily on weekly company submissions of information as of 7 am Eastern Standard Time (EST) Friday. Weekly data are filed with EIA by 5 pm EST on the following Monday. In the past, the WPSR data were publicly released electronically at 9 am EST each Wednesday, and the printed version was available on Friday. For weeks that included holidays, release of the WPSR was typically delayed by one day.

On December 3, 2002, EIA issued a Federal Register notice (67 FR 71959) requesting public comments on a proposed policy for changes in the release time of the WPSR. In that notice, EIA discussed the reasons for the proposed change and proposed moving the release time to 10:10 am EST on Wednesday to coincide with normal New York Mercantile Exchange (NYMEX) and International Petroleum Exchange (IPE) trading hours. EIA also solicited suggestions for alternative release times.

II. Summary of Comments

In response to the Federal Register notice requesting comments on the proposed WPSR release time policy, EIA received 26 comments. The comments were from members of Congress, investment companies, state governments, and traders.

Comments fell into one of two categories: Either they were in favor of moving the release time or they favored keeping it at 9 am EST. Below is a brief summary of the major reasons given for supporting each category.

Comments in favor of the current release time included:

- Having the petroleum data available before the NYMEX opens allows the trading community to make qualified evaluations of the oil market before trading begins.
- For some in the non-commodities trading community receiving the data earlier gives them more timely information for their use.

Comments in favor of changing the release time included:

- Releasing the data when both the European and United States markets are open enhances fairness, efficiency, and competition by allowing a greater number of market participants equal trading access. It essentially levels the playing field.
- Releasing the EIA petroleum data while both markets are open will contribute to reduced market volatility and greater transparency. Releasing the data while more trading opportunities exist and more traders are operating reduces the likelihood that a small number of traders could create volatile price swings. Markets with greater liquidity are less likely to be manipulated.
- With current market turbulence, never has the need for market competition and transparency been greater. Important functions of market oversight by the Commodity Futures Trading Commission (CFTC) would be diminished if much of the business was shifted to overseas markets or the less regulated Over-the-Counter (OTC) markets.
- Maintaining the current release time could have the unintended effect of shifting important price discovery and risk management functions to an overseas market. The domestic market is made less relevant, and its benefits to consumers and the economy reduced, because businesses will be forced to utilize markets open at the time, thus depriving them of an important competitive choice.

III. Current Actions

EIA WPSR Release Time Policy. EIA has established a policy for the release time of the WPSR. Under this policy, the WPSR will be publicly released electronically at 10:30 am EST each Wednesday. For weeks that include holidays, release of the WPSR will typically be delayed by one day.

EIA reserves the right to revisit or amend this policy. However, EIA shall not modify the WPSR release time policy without prior notification in the WPSR or the **Federal Register**.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, February 6, 2003.

Guy F. Caruso,

Administrator, Energy Information Administration.

[FR Doc. 03–3480 Filed 2–11–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0041; FRL–7292–7]

Tribal Pesticide Program Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a 2–day meeting, on March 13 and 14, 2003. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Thursday, March 13, 2003, from 9 a.m. to 5 p.m., including a closed session from 4:30 to 5 p.m. and Friday March 14, 2003, from 9 a.m. to 5 p.m., including two closed sessions from 10:30 a.m. to 10:45 a.m. and 4 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel - 300 Army Navy Drive, Arlington, Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

Lillian Wilmore, TPPC Facilitator, P.O. Box 470829, Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax (617) 277–1656; e-mail address: naecology@aol.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in TPPC's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decisionmaking process. All parties are invited and encouraged to attend the meetings and participate as appropriate.

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. TPPC state of the council report.
2. Presentation questions and answers by EPA Office of Pesticide Programs and by EPA Office of Pesticide Programs, Field and External Affairs Division.
3. Reports from Working Groups and TPPC participation in other meetings: Tribal Strategy and Forum on State and Tribal Toxic Actions (FOSTTA), Pesticide Program Dialogue Committee, Western Regional Pesticide Conference, Certification and Training Advisory Group, and Worker Protection.
4. Tribal caucus.
5. Reports from other organizations: State FIFRA Issues Research and Evaluation Group, American Indian Environmental Office, Tribal Operations Committee, Regional Tribal Operations Committee, Intertribal Agricultural Council, and National Tribal Environmental Council, Intertribal Agricultural Council, and Tribal Air Group.
6. Videos; EPA and Indian Country; Building Pesticide and Toxic Programs in Indian Country and Native American Grave Protection Repatriation Act (NAGPRA) issues; tainted legacy.
7. Report on Tribal Medicine Project.
8. EPA Office of Enforcement and Compliance Assurance (OECA) related issues and continuing issues reference data collections issues—Form 5700–33H; inspector credentials.
9. EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS) Tribal strategy—update.
10. Update—FIFRA section 18s and section 24c issues (including Shoalwater Bay Tribe issues).
11. Tribal issues raised; Quality Assurance Project Plan (QAPP) issues.
12. Updates from the sub-regional lead officer.
13. Report from the Working Group—Tribal Traditional Lifeways (subsistence issues).
14. Update on the lifeline project.
15. Update on the West Nile Virus.
16. Announcement of requests for proposal—National Environmental Exchange Network Grant; other funding announcements.
17. Water Quality and Pesticides Management; United States Geological Survey (USGS) projects on future training efforts.
18. FIFRA and the Clean Water Act; the talent decision.
19. Update and overview—Biopesticides (*Bt* issues).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 4, 2003.

Jay S. Ellenberger,

Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 03–3412 Filed 2–11–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, February 13, 2003

February 6, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 13, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—*Title:* Revisions of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98–153). *Summary:* The Commission will consider a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking addressing the fourteen petitions for reconsideration filed in response to the First Report and Order in this proceeding. The First Report and Order established the standards that permit the unlicensed operation of ultra-wideband devices.

2—Consumer and Governmental Affairs—*Title:* Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities. *Summary:* The Commission will consider an Order to update and enhance its rules regarding access for persons with disabilities to Commission programs and activities, as found in Subpart N of Part 1 of the Commission's rules.

3—Wireline Competition—*Title:* Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338), Implementation of the

Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147), and Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No. 02–33). *Summary:* The Commission will consider a Report and Order concerning incumbent local exchange carriers' obligations to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web Page at www.fcc.gov/realaudio. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3609 Filed 2–10–03; 2:53 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2594]

Petitions for Reconsideration of Action in Rulemaking Proceedings

February 7, 2003.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in the Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by February 27, 2003. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Station (Saint Joseph, Clayton, Ruston, and Wisner, Louisiana) (MM Docket No. 01–19, RM–10048, RM–10027); Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Wisner, Ruston, Clayton, and Saint Joseph, Louisiana) (MM Docket No. 01–27, RM–10056, RM–10118).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida) (MM Docket No. 00–138, RM–9896).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.622(b), Table of Allotments, Digital Broadcast Stations (Fort Myers, Florida) (MM Docket No. 00–180, RM–9956).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3486 Filed 2–11–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011692–002.

Title: Indamex Agreement.

Parties: CMA CGM, S.A., Contship Containerlines, The Shipping Corporation of India Ltd.

Synopsis: The amendment deletes all vessel-sharing and space chartering authority from the agreement.

Dated: February 7, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3499 Filed 2–11–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING:

Federal Maritime Commission.

TIME AND DATE: 10 a.m.—February 11, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: The meeting previously announced (68 FR 6455 (February 7, 2003)) for February 11, 2003 has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3596 Filed 2–10–03; 2:17 pm]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

S.F. Systems Inc., 12335 Denholm Drive, #C, El Monte, CA 91732, Officers: Mei-Ling Chan, Vice President (Qualifying Individual), David Sun, President.

Gunter Shipping, 1072 E. 39th Street, Brooklyn, NY 11210, Joseph A. Gunter, Sole Proprietor.

Comis Int'l Inc., 690 Knox Street, #220, Torrance, CA 90502, Officers: Frank S. Noah, President (Qualifying Individual), M.H. Ahn, Treasury.

Carga Tica Int'l, Inc., 4408 N.W. 74th Avenue, Miami, FL 33166, Officers: Dannia Roa, Vice President (Qualifying Individual), Patricia Ann Fonseca, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

MC Logix, Inc., 1535 W. 139th Street, Gardena, CA 90249, Officer: Se Hwan Park, President (Qualifying Individual).

RCP Logistics, Inc., 300 Elmwood Avenue, Sharon Hill, PA 19079, Officer: Richard C. Powley, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

W. P. Mulry & Co., Inc., 348 Jervis Avenue, Copiaque, NY 11726, Officer: William P. Mulry, President (Qualifying Individual).

International Trade Brokers and Forwarders Co., 7252 NW 25th Street, Miami, FL 33122, Officers: Alvaro G. Munoz, President (Qualifying Individual), Isabel Munoz, Vice President.

Amtrade International, Inc., 1700 N. Dixie Hwy., Suite 142, Boca Raton, FL 33432, Officer: Ana Adriazola-Rodriguez, President (Qualifying Individual).

Arimar International SPA, Via VIII Marzo, 35/c, 50010 Scandicci (FI) Italy, Officers: Jennifer M. Carter, Director (Qualifying Individual).

Dated: February 7, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3500 Filed 2–11–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Meetings

TIME AND DATE: 9 a.m. (E.S.T.), February 20, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the January 21, 2003, Board member meeting.
2. Executive Director's report, including the following items:
   (a) Legislative report,
   (b) Investment report,
   (c) Participation information; and
   (d) Future meeting topics.
3. Status of new record keeping system.
4. Participant service presentation.

Parts Closed to the Public

5. Discussion of litigation matters.
6. Discussion of personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 10, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–3586 Filed 2–10–03; 12:54 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03041]

World Trade Center Registry; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the intent to award fiscal year (FY) 2003 funds for a cooperative agreement program to develop a World Trade Center (WTC) Registry which will be a central, unified database to assess short and long term health effects among persons exposed to the WTC disaster.

B. Eligible Applicant

Assistance will be provided only to the New York City Department of Health and Mental Hygiene (NYCDOHMH). NYCDOHMH has designed and implemented the protocol for the initial data collection for this program. They are the point of entry into the public health system for the residents of New York City, and they have strong linkages to all levels of the community required to gain enrollment of identified registry populations.

C. Funding

Approximately $1,500,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or about February 28, 2003 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 Rd, Room 3000, Atlanta, GA 30341–4146, *Telephone:* (770) 488–2700.

For technical questions about this program, contact: Sharon Campolucci, Public Health Advisor, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Building 4, Suite 1300, MS E–31, Atlanta, GA 30305, Telephone (404) 498–0105, e-mail address: *ssc1@cdc.gov.*

Dated: February 6, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3476 Filed 2–11–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–26–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Testing Stigma Reducing Effects of an HIV Storyline—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention,(CDC). CDC proposes to re-interview a subsample of adults initially interviewed about HIV stigma in the summer of 2000. The original study relied on a new technology, the Web-enabled television, to collect data from individuals in their homes. This same technique will be used to gather data in the proposed study. The information obtained will contribute to an understanding of stigmatizing attitudes, investigate the effectiveness of a stigma-reduction strategy with the potential to reach broadly into a target audience, and guide future research and intervention efforts in this area.

HIV stigma inhibits HIV testing and positive sero-status disclosure, and thus increases the risk of HIV infection. Although there is evidence that in the general population HIV stigmatizing

attitudes and beliefs may have decreased somewhat over the last 15 years, there is no information about the stability of HIV stigmatizing attitudes and beliefs over time within the same individuals. Understanding patterns of stigma will make it possible to identify effective strategies for stigma reduction, and these could carry a significant public health benefit.

HIV stigma is a pervasive societal problem, and a meaningful decrease in stigma will require interventions that reach large numbers of people. The electronic mass media reach millions of people and nationally televised broadcasts have been shown to increase knowledge of health issues, promote attitudes and norms that support prevention, and model prevention behaviors. Serialized daytime television dramas may offer some particular advantages for effective dissemination of anti-stigma messages. A large proportion of their audiences, compared with other demographic groups, report getting their health information from television. In addition, the dramatic presentation of health-relevant messages may make them more noticeable and memorable. CDC collaborates with writers of television shows to ensure that the health-related information they present is accurate and timely. After collaboration with CDC officials, a long-running, televised, daytime soap opera introduced a subplot about HIV. The subplot presented information that has the potential to reduce HIV stigmatizing attitudes in viewers. The proposed study will screen all respondents for exposure to this soap opera broadcast and a similar one without an HIV storyline so that the effects of storyline exposure on HIV stigma can be assessed. The annual burden for this data collection is 334 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden response (in hours)
Adult non-viewers	3200	1	5/60
Adult viewers	400	1	10/60

Dated: February 6, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3475 Filed 2–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 78474, dated 12/24/2002) as amended to reorganize the National Center for HIV, STD & TB Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the *Surveillance Section (CK463),* insert the following:

Global AIDS Program (CK6). (1) Provides financial and technical assistance to nations heavily affected by the HIV/AIDS epidemic; (2) provides U.S.-based (headquarters) and onsite (in-country) technical assistance and oversight for CDC financial assistance which is designed to (a) develops and implements programs on HIV/AIDS prevention and surveillance as well as medical care, support, and treatment for people living with HIV/AIDS and (b) strengths infrastructure to support prevention and care program through training, informatics, laboratory support, program evaluation, operational research, and other relevant activities; (3) serves as liaison to other divisions/offices within NCHSTP and other CIOs, USAID and other Federal agencies, UNAIDS, the World Health Organization (WHO), and other agencies of the United Nations involved in HIV/AIDS-related activities and programs; non-governmental agencies working at the international level, and health agencies of other countries; (4) serves as the primary disseminator of information from CDC about the global HIV/AIDS epidemic through health communications materials, scientific publications, and presentations.

Office of the Director (CK61). (1) Directs the activities of the Global AIDS Program (GAP); (2) provides leadership and guidance on policy development and interpretation, budget formulation, and program planning, development, management, operations, and evaluations; (3) provides GAP-wide administrative and management services including personnel, budgets, contracts, grants and cooperative agreements, interagency/reimbursable agreements, travel, facility management, and equipment in inventory and coordinates or ensures coordination with the appropriate NCHSTP or CDC staff offices; (4) develops and implements strategies and increases host government capacity to monitor and evaluate the process, impact, and outcome of GAP and other HIV prevention and care programs; (5) provides scientific and editorial review and clearance of manuscripts for publication, abstracts for presentation, protocols for Institutional Review Board (IRB) and human subjects review, and other scientific, programmatic, and informational materials; (6) responds to congressional and other official inquiries related to the GAP budget and financial assistance programs.

HIV/AIDS Care and Treatment Branch (CK62). (1) Provides technical assistance in developing comprehensive programs for the prevention, diagnosis, and treatment of HIV/AIDS, tuberculosis, and other opportunistic infections; (2) provides assistance in the development of policy and programs for appropriate use of antiretroviral drugs; (3) designs and assists in implementing home- and community-based models for HIV/AIDS care; (4) develops and assesses operational research protocols to improve the effectiveness and implementation of GAP treatment and care technical strategies; (5) reviews and analyzes findings of GAP-sponsored and other operational research to guide GAP programs and policies; (6) provides technical support to GAP headquarters and country programs in developing laboratory, clinical, and administrative capacities to prevent and treat HIV and AIDS-related conditions; (7) monitors the quality and impact of care programs for persons living with HIV/AIDS and their families; (8) assists in monitoring the training of health care workers to provide care, support, and treatment; (9) assists in monitoring the impact of HIV/AIDS of health care systems in GAP countries, including monitoring the clinical spectrum of disease, response to treatment, and emerging antiretroviral

and antimicrobial resistance; (10) provides technical support in increasing access to an availability of home- and community-based care and access to antiretroviral, tuberculosis, and other drug programs that will extend life and enhance the quality of life for persons living with HIV/AIDS; (11) provides technical assistance to GAP country programs in recruiting safe blood (products) donors, quality testing blood bank management, appropriate use of blood and blood products, and prevention of severe anemia; (12) fosters the improvement of HIV prevention and counseling services through blood donor education, mobilization, and retention of safe blood donors.

Country Program Support Branch (CK63). (1) Serves as the focal point for communications and program and administrative support for all country HIV prevention programs; (2) provides a link between GAP country programs and GAP headquarters in Atlanta and supports and assists GAP country program staff in communications with other GAP programs around the world; (3) provides logistical and administrative support to GAP country programs for implementing at least 17 technical strategies under HIV/STD/TB prevention, AIDS treatment and care, and infrastructure development relevant to specific country programs and plans; (4) assists in the development, disbursement, and oversight of country budgets; (5) arranges for international travel and all policy and administrative issues relevant to the overseas assignment of CDC staff and their families; (6) develops operational research protocols to evaluate novel approaches to implementing GAP technical strategies within each program; (7) procures and inventories materials and equipment needed to support country plans; (8) develops plans and provides financial, technical, and administrative assistance for developing, implementing, and evaluating in-country HIV programs.

Surveillance and Infrastructure Development Branch (CK64). Develops, implements, and evaluates comprehensive systems for collecting, disseminating, and applying epidemiologic and hebavioral surveillance data to monitor trends in HIV, other sexually transmitted infections, and tuberculosis; (2) develops policies, systems, and programs and provides technical assistance to increase host government capacity to conduct quality laboratory testing for HIV, other sexually transmitted infections, and tuberculosis; (3) provides technical and other assistance to develop, maintain, and evaluate GAP and host government informatics systems; (4) develops, provides, and evaluates training activities in support of GAP technical strategies and assesses and improves the training capacity of host governments to support HIV prevention and care programs.

HIV Prevention Branch (CK65). (1) Supports GAP field sites in their collaborations with national and international partners to implement, improve, expand, sustain, and maximize effectiveness of HIV prevention programs; (2) provides technical assistance to GAP country programs in the development, implementation, and evaluation of model behavior changes interventions and programs to reduce risk-behaviors and enhance health-seeking behaviors; (3) provides technical assistance to GAP country programs to strengthen, expand, and make accessible programs to prevent, diagnose, and treat sexually transmitted infections and to prevent HIV infection among persons seeking treatment of sexually transmitted infections; (4) provides technical assistance to GAP country programs to implement, expand, monitor, and evaluate programs to provide antenatal services, decrease mother-to-child HIV transmission, and improve care and support of infected mothers and children; (5) provides technical assistance to GAP country programs on tailoring HIV prevention programs to meet the special needs of youth and drug-using populations; (6) provides technical assistance to GAP country programs to develop, expand, and evaluate voluntary HIV counseling and testing programs; (7) provides technical assistance for the development of strategies to maximize the impact of HIV prevention programs in GAP countries through public-private partnerships, national program expansion, and community mobilization.

Dated: February 2, 2003.

William H. Gimson,

Acting Director.

[FR Doc. 03–3440 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 78000–78001, dated December 20, 2002) is amended to reorganize the National Center for Injury Prevention and Control.

Section C–B, Organization and Functions, is hereby amended as follows:

After the Office of the Director (CE1), insert the following: *Office of Policy, Planning and Evaluation (CE12).* (1) Within the policies and guidelines of HHS, PHS, and CDC, conducts NCIPC planning and evaluation activities including tracking program objectives and performing evaluation studies; (2) provides information for the development of NCIPC's annual budget submission and supporting documents; (3) reviews, prepares, and coordinates policy and briefing documents; analyzes and implements policies related to the center; and (4) provides liaison with staff offices and other officials of CDC.

Delete in its entirety the functional statement for the *Office of Research Grants (CE3).*

After the *Division of Unintentional Injury Prevention (CE5),* insert the following:

Division of Injury and Disability Outcomes (CE6). (1) Plans, establishes, and evaluates national and state based surveillance systems to monitor the incidence, causes, risk factors, and treatments of outcomes of injuries; (2) coordinates a nationwide program to develop and enhance core injury capacity in public health agencies; (3) evaluates programs to prevent adverse outcomes of injuries or reduce the impact of such injuries on individuals and society; (4) conducts research on the medical aspects of injury, disability and health services for such conditions; (5) supports epidemiological and applied research and demonstration efforts to improve the effectiveness of health care and rehabilitation services and systems; (6) supports surveillance efforts directed at TBI and other national, state and local priorities; (7) collaborates with the Disabilities Prevention Program, National Center for Environmental Health, CDC, in providing technical assistance and consultation to states, communities, and research and academic institutions in the prevention of disabilities due to injuries; (8) ensures integration of research and findings into NCIPC intramural programmatic activities; (9) represents the scientific agendas of the NCIPC extramural research program; (10) serves as the focal point for

traumatic head and spinal cord injury activities within CDC; and (11) supports training programs and disseminates research findings to strengthen the competence of practioners and researchers in acute care and rehabilitation.

Dated: February 2, 2003.

William H. Gimson,

Acting Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 70088–70089, dated November 20, 2002) is amended to reorganize the Office of Vital and Health Statistics Systems, NCHS.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Office of Vital and Health Statistics Systems* and insert the following:

The Division of Vital Statistics (CS5). Plans and administers complex data collection systems and conducts a program of methodologic and substantive public health research activities based on the nationwide collection of data from vital records, follow back surveys, and demographic surveys of people in the childbearing ages. (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) directs, plans, and coordinates the vital statistics program of the United States; (3) administers the vital statistics cooperative program, including the National Death Index; (4) develops standards for vital statistics data collection including electronic systems, data reduction, and tabulation; (5) interprets, classifies, and compiles complex demographic, economic, health, and medical data; (6) serves as the United States representative to the World Health Organization (WHO), regarding the International Classification of Diseases (ICD) for mortality data and the classification and coding of cause of death; (7) conducts research to determine cross-national comparability of causes of death to further enhance the ICD and make appropriate recommendations to WHO; (8) conducts research on data collection methodology, survey methodology, data quality and reliability, and statistical computation as related to vital and survey statistics; (9) conducts multidisciplinary research directed toward development of new scientific knowledge on the demographics of reproduction, natality, and mortality; (10) performs theoretical and experimental investigations into the content of the vital statistics data collection effort; (11) develops sophisticated approaches to making vital statistics data available to users, including techniques to avoid disclosure of confidential data; (12) conducts descriptive analyses and sophisticated multivariate analyses that integrate vital statistics data across multiple surveys or data sets; (13) provides technical assistance and consultation to international, State, and local offices with vital registration responsibilities on vital registration, vital statistics, and data processing; (14) researches, designs, develops, and implements state-of-the-art computing systems for collecting, storing, and retrieving vital records and for subsequent analysis and dissemination; (15) conducts methodological research on the tools for evaluation, utilization, and presentation of vital statistics and related survey data and medical classification; (16) produces and publishes a wide variety of vital statistics analytic reports and tabulations in multiple formats; (17) develops and sustains collaborative partnerships within NCHS, CDC, DHHS, and externally with public, private, domestic and international entities on vital statistics programs.

Office of the Director (CS51). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) provides leadership for the monitoring and statistical evaluation of national vital statistics; (3) directs, plans, and coordinates the statistical and research activities of the Division; (4) develops and administers a research and analytic program in registration and vital statistics; (5) develops policy, practices, and management for the Nation Death Index program; (6) plans and conducts a program to improve the vital registration and statistics program of the U.S.; (7) conducts studies of new vital registration techniques; (8) recommends content and format of model legislation, regulations, standard certificates, and other aids to registration systems; (9) provides international leadership and consultation on vital registration and statistics issues to other countries; and (10) establishes collaborative partnerships within NCHS, CDC, DHHS, and externally with public, private, domestic and international entities on vital statistics programs.

Systems, Programming, and Statistical Resources Branch (CS55). (1) Conducts research into the design, development, and administration of vital statistics information technology systems; (2) performs systems analysis and computer programming of vital registration data; (3) develops technologies, data architectures, security infrastructure, and database management related to vital records, record linkage, and sample surveys consistent with Center and Agency information technology requirements; (4) develops, maintains, and employs state-of-the-art information technologies (*e.g.,* relational data bases, Web-enabled applications, applications development and dissemination activities) associated with vital statistics; (5) develops and maintains systems and databases to support the National Death Index program; (6) provides consultation and expert technical assistance to the Division concerning mainframe, client-server, and networking applications; (7) prepares and maintains population databases as well as conducts studies on statistical computation and data quality; (8) designs and implements information technology applications to produce final edited and imputed vital statistics and survey data; (9) produces and distributes wide variety of vital statistics reports and tabulations in multiple formats; (10) provides consultation, policy guidance and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, federal, local and international governments, researchers, and individuals, in regard to vital statistics systems design, administration, and usage; and (11) manages national vital statistics data files and databases and the DVS vital statistics data request program.

Mortality Medical Classification Branch (CS56). (1) Develops medical classification software and procedures for collecting and processing of mortality medical data in states and at NCHS; (2) provides leadership to the international community in the use and adoption of automated mortality medical classification systems; (3) directs a comprehensive program of technical assistance and consultation

related to medical mortality data classification to states, local areas, other countries, and private organizations; (4) tests, refines, and updates automated coding systems that assist in production of mortality data; (5) conducts methodological research in data preparation and medical classification of mortality data; (6) provides nosological assistance and training, both nationally and internationally, in regard in International Classification of Diseases (ICD) information for mortality and new revisions of the ICD; (7) interprets, classifies, codes, keys, and verifies medical and demographic information of value to researchers and public policy officials; (8) develops and implements training programs for cause-of-death coding and provides technical assistance to international, federal, state, and local government and non-government agencies.

Mortality Statistics Branch (CS53). (1) Establishes the research agenda for mortality statistics in response to public health priorities; (2) converts identified data needs into statistical and research programs to obtain, evaluate, analyze, and disseminate mortality statistics data; (3) conducts research to improve data collection of vital records, record linkage, and sample survey methodologies related to mortality statistics; (4) performs theoretical and experimental research that improves the content of the mortality statistics data collection effort and the timeliness, availability, and quality of mortality statistics data; (5) conducts research into life tables methodology and produces annual and decennial U.S. and State life tables; (6) recommends content of U.S. Standard Certificates; (7) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (9) conducts research rated to the International Classification of Diseases (ICD) and cause of death classification; (10) conducts national and state-specific comparability studies of cause of death classification to facilitate the study of mortality trends across ICD revisions; (11) designs and conducts methodological research to improve the collection, production, use, and interpretation of mortality-related data; (12) collaborates with other agencies and organizations in the design, implementation, and analysis of vital records surveys; and (13) develops and promotes training activities related to the collection, production, use and interpretation of mortality statistics.

Reproductive Statistics Branch (CS54). (1) Establishes the research agenda for reproductive statistics in response to public health priorities; (2) assesses information data needs in the fields of reproduction, maternal and child health, family formation, growth, and dissolution; (3) plans and develops statistical and research programs to obtain, evaluate, analyze, and disseminate reproductive statistics data to meet these needs; (4) conducts research to improve data collections on vital records, record linkage, and sample survey methodologies related to reproductive statistics; (5) performs theoretical and experimental research that improves the content of the reproductive statistics data collection effort and the timeliness, availability, and quality of reproductive statistics data; (6) assesses disclosure risk and develops optimal data strategies that improve policy analysis and decision-making; (7) prepares and publishes descriptive analyses of individual data systems as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (8) conducts methodological research to improve statistics on reproduction, maternal and child health, family formation, growth, and dissolution; (9) recommends content of U.S. Standard Certificates; and (10) provides consultation and advice to members of Congress, the press, and a broad range of researchers and institutions at the international, national, State, and local levels on reproductive statistics data.

Data Acquisition and Evaluation Branch (CS52). (1) Provides policy direction to states regarding vital statistics data acquisition and quality control; (2) promotes state participation in the vital statistics cooperative program and the national death index (NDI) program; (3) develops specifications for coding, editing and processing of vital registration and statistics data; (4) develops and administers funding formulas that determine the level of reimbursement to states and the procurement mechanisms to effect this reimbursement; (5) develops and directs a comprehensive statistical quality assurance program to assure that the data received from each registration area are acceptable for national use; (6) provides technical assistance to states, local areas, other countries, and private organizations on data files, software, training, processing and coding of vital statistics data; (7) in consultation with health departments across the U.S., leads and conducts evaluation studies and other research on issues related to the collection of vital statistics; (8) prepares and publishes information obtained from special projects related to vital registration and statistics data; (9) promotes the development and implementation of ''best statistical practices'' throughout the U.S. vital statistics system to maximize the utility of vital statistics data; and (10) manages the acquisition of vital statistics data from the 57 registration areas to assure a national file of timely and complete data.

Division of Health Care Statistics (CS6). Plans and administers complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities on the health care system and the use of health care services. (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, directs and coordinates the health care statistics program of the Center; (3) develop standards for health care statistics data collection, data reduction, and tabulation; (4) conducts research on data collection methodology, survey methodology, data quality and reliability, statistical computation, and utilization of health care statistics data; (5) conducts multidisciplinary research directed towards development of new scientific knowledge on the provision, use, quality, and appropriateness of ambulatory, hospital, and long-term care; interactions within the health care delivery system; and the effects of the system and its financing on services provided; (6) performs theoretical, experimental, and evaluation investigations into the content of the health care statistics data collection effort; (7) develops sophisticated approaches for making health care statistics data available to users, including techniques to avoid disclosure of confidential data; (8) conducts descriptive analyses and sophisticated multivariate analyses that integrate health care statistics across multiple surveys or data sets; (9) designs, develops, and implements state of the art computing systems for collection, storing, and retrieving health care statistics data for subsequent analysis and dissemination; (10) provides technical assistance, consultation, and liaison to international, federal, states, and local government agencies, as well as the private sector, on statistics describing health care resources and utilization and future data needs of particular relevance for public health, health services research, and health policy; (11) fosters the integration of health care

data systems as well as greater linkages of data for analytic purposes; (12) analyzes and produces and publishes a wide variety of health care statistics reports and tabulations in multiple formats; and (13) develops and sustains collaborative partnerships with NCHS, CDC, and DHHS, and externally with public, private, domestic, and international entities on health care statistics programs.

Office of the Director (CS61). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) provides leadership for the development, conduct, and evaluation of national health care surveys and statistics; (3) directs, plans, and coordinates the statistical and research activities of the Division; (4) develops and administers a research and analytic program to characterize the health care delivery system and patients and providers interacting within it; (5) coordinates activities within the division and with other Center components aimed at obtaining and using health care data from other Federal, state, and local government agencies, as well as from non-government sources; and (6) provides advice and leads development of collaborative partnerships with NCHS, CDC, and DHHS, and externally with public, private, domestic and international entities on health care statistics and the manner in which statistics may impact policy issues.

Ambulatory Care Statistics Branch (CS62). (1) Develops and maintains a national register of ambulatory health care providers and inventories; (2) assesses information and data needs in the field of ambulatory care statistics and translates data needs into plans for ambulatory health care surveys, inventories and research activities; (3) prepares specifications for the collection, coding, editing, and imputation of ambulatory health care statistics data; (4) conducts complex research studies relating to ambulatory health care providers and their utilization; (5) converts identified data needs into research, development, and evaluation activities; (6) performs theoretical and experimental research that improves the content of the ambulatory care data collection efforts and the timeliness, availability, and quality of ambulatory care data; (7) assesses disclosures risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (9) develops and publishes a wide variety of reports and tabulations in multiple formats and arranges for distribution/dissemination through appropriate media; and (10) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of ambulatory health data to other health professional personnel and researchers.

Hospital Care Statistics Branch (CS63). (1) Develops and maintains a national register of hospital care providers; (2) translates data needs into plans for national inpatient and ambulatory surgery health care surveys, inventories and research activities; (3) prepares specifications for collection, coding, data entry, editing, and imputation of hospital care statistics data; (4) conducts complex research studies relating to hospital care and ambulatory surgery facilities and their utilization; (5) converts identified data needs into research, development, and evaluation activities; (6) performs theoretical and experimental research that improves the content of the hospital care data collection effort and the timeliness, availability, and quality of hospital care statistics and ambulatory surgery data; (7) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that may integrate data across multiple surveys or data sets; (9) develops and publishes a wide variety of reports and tabulations in multiple formats and arranges for distribution/dissemination through appropriate media; and (10) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of hospital care and ambulatory surgery statistics to other health professional personnel and researchers.

Long-Term Care Statistics Branch (CS64). (1) Develops and maintains a national register of long-term care providers and plans for national long-term care surveys and inventories; (2) translates data needs into plans for surveys, inventories and research activities across the spectrum of long-term care; (3) prepares specifications for collection, coding, data entry, editing, and imputation of long-term care data; (4) conducts complex research studies relating to long-term care providers and their utilization; (5) converts identified data needs into research, development, and evaluation activities; (6) performs theoretical and experimental research to improve the content of the data collection effort and improves the timeliness, availability, and quality of long-term care statistics; (7) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that may integrate data across multiple surveys or data sets; (9) develops and publishes a wide variety of reports and tabulations in multiple formats and arranges for distribution/dissemination through appropriate media; and (10) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of long-term care statistics to other health professional personnel and researcher.

Technical Services Branch (CS65). (1) Conducts research into the design, development, and administration of health care statistics information technology systems; (2) performs systems analysis and computer programming of health care statistics data; (3) develops and implements computer technologies, data architectures, security infrastructure, and database management for division programs consistent with Center and Agency information technology requirements; (4) develops, maintains, and employs state-of-the-art information technologies (*e.g.,* relational data bases, Web-enabled applications, applications development tools) in support of data collection, processing, maintenance, analysis, and dissemination activities associated with national health care surveys; (5) advises division staff regarding resources for mainframe, client-server, network, and emerging applications; (6) prepares and maintains databases and file libraries, as well as conducts studies of statistical computation and data quality; (7) produces and disseminates a wide variety of reports and tabulations in multiple formats; (8) develops quality control measures; and (9) provides consultation, policy guidance, and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, federal, local, and international governments, researchers, and individuals, in regard to health care survey and computer systems design and usage.

Division of Health Interview Statistics (CS7). Plans and administers complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities based on the collection of data from nationwide and special health interview surveys. (1) participates in the development of policy, long-range plans, and programs of NCHS; (2) plans, directs and coordinates the health interview

statistics program of NCHS; (3) administers Division programs comprised of national health interview surveys, longitudinal surveys, population-based telephone surveys, targeted follow-up studies, and national and subnational surveys on selected health topics; (4) conducts research on data collection and estimation methodology, survey methodology, questionnaire design, data quality and reliability, and statistical computation related to health interview statistics; (5) analyzes data and publishes reports on the prevalence and incidence of disease and associated disabilities, health status, health-related behaviors, utilization of health care resources, health insurance status, and other health and well-being related topics; (6) conducts multidisciplinary research directed toward development of new scientific knowledge in areas related to health and health care, population demographics, economics, epidemiology, statistics, and disability, *e.g.,* determining associations between risks and outcomes; (7) performs theoretical and experimental investigations of the content of health interview surveys; (8) develop sophisticated approaches to making data available to users, including techniques to avoid disclosure of confidential data; (9) conducts and publishes descriptive analyses and sophisticated multivariate analyses that may integrate data across multiple surveys or data sets; (10) designs, develops, and implements state-of-the art computing systems for collecting, storing, and retrieving health interview statistics and for subsequent analysis and dissemination; (11) applies computer systems and software in its programs, consistent with NCHS information technology requirements; (12) conducts methodological research on the utilization, evaluation, and presentation of health interview statistics; (13) produces and publishes a wide variety of health interview statistics reports, papers, and tabulations in multiple formats as well as makes presentations on analyses of such data; and (14) develops and sustains collaborative partnerships with, and provides expert advice and technical assistance to, NCHS, CDC, DHHS, and externally with public, private, domestic and international entities on issues regarding health interview survey data.

Office of the Director (CS71). (1) Participates in the development of policy, long-range plans, and programs of NCHS; (2) provides leadership for the design, development, conduct, and statistical evaluation of the Division's data systems, and the analysis and dissemination of national and subnational health interview statistics; (3) directs, plans, and monitors the scientific integrity and relevance to public health of the Division's data, publications, and other products; (4) directs and coordinates the planning and production activities of the Division, including data collection, information technology, and data dissemination; (5) develops and administers a research and analytic program in health interview statistics; (6) plans and conducts a program to improve methods for obtaining information on subpopulations defined by age, gender, geography, race, ethnicity, socioeconomic status, etc.; and (7) provides advice and leads development of collaborative partnerships within NCHS, CDC, and DHHS, and externally with public, private, domestic and international entities on issues regarding health interview statistics and the manner in which statistics may impact policy issues.

Systems and Programming Branch (CS72). (1) Conducts research into the design, development, deployment, and administration of information technology systems to collect, process, and disseminate national health interview survey data; (2) performs systems analysis and computer programming, employing state-of-the-art information technologies (*e.g.,* relational databases, Web-enabled applications, applications development tools) in support of data collection, processing, maintenance, analysis, and dissemination activities associated with national health interview surveys; (3) develops and implements computer technologies, data architectures, and security infrastructure and information technology management for the national health interview survey information technology systems ensuring consistency with the Center and Agency information technology requirements (4) designs, implements, and administers health interview survey information technologies; (5) conducts studies on statistical computation and data quality; (6) directs and coordinates the Division's procurement of computer hardware and software; (7) conducts studies and analyses to endure data confidentiality; (8) designs and implements computer applications to produce final edited and imputed health interview survey data and statistics; (9) produces health statistics reports and tabulations of data from health interview surveys in multiple formats; (10) designs and conducts evaluative studies of health interview survey data collection, processing, and dissemination systems to incorporate new concepts, methods and technologies; (11) provides consultation, policy guidance, and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, federal, local, and international governments, researchers, and individuals, in regard to the design, administration, and usage of health interview statistics technology systems.

Survey Planning and Development Branch (CS73). (1) Establishes the design and content of the national health interview surveys in response to public health priorities; (2) converts identified data needs into research, development, and evaluation activities and related public health information in the areas of prevalence and incidence of disease and associated disabilities, health status, health-related behaviors, health insurance status, and other health and well-being related topics; (3) coordinates survey instrument development and data collection activities by outside contractors; (4) designs and conducts methodological, analytical, developmental, and evaluation studies of health interview survey processes, questions, and data; (5) performs theoretical and experimental research on the content of and data collection efforts for health interview surveys in order to improve timeliness, quality, and availability of health interview survey data; (6) collaborates with other NCHS programs and through contracts and interagency agreements with outside sponsors of survey supplements in the development, implementation, and analysis of survey questions and data; and (7) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of health interview statistics data to a broad range of institutions, governments, and researchers.

Data Analysis Branch (CS74). (1) Conducts research and analysis on topics relevant to public health suing national health interview survey data; (2) integrates, analyzes, and disseminates data from the national health interview survey; (3) facilities linkages across the national health interview survey components and with other databases; (4) prepares and presents scientific papers on health issues using data from the national health interview survey; (5) collaborates in the development and application of analytical and methodological techniques and guides for the Division's data collection programs; ((6) identifies substantive methodological and

technological research needs pertaining to health interview survey data; (7) serves as the NCHS resource on health interview survey data and their use in assessing the prevalence and incidence of disease and associated disabilities, health status, health related behaviors, health insurance status, and other health and well-being related topics; (8) collaborates in the questionnaire development process for health interview surveys; and (9) provides consolation, technical assistance, and liaison to academia, other research groups, and state, federal, and international entities concerning data needs and the definitions and uses of health interview survey data.

Special Population Surveys Branch (CS75). (1) Plans and directs special customized population surveys, such as the State and Local Area Integrated Telephone Survey (SLAITS), in order to obtain timely state and smaller-area data as well as national data relevant to public health; (2) plans and directs the methodological and development aspects of data systems for producing health, welfare, and well-being statistics for populations defined by geography, race and ethnicity, and for other special populations; (3) collaborates through contracts, grants, and interagency agreements with outside sponsors of special population surveys in the development, implementation, and analysis of survey questions and data; (4) coordinates special population survey instrument development and data collection and processing activities by outside contractors; (5) designs and implements computer applications to produce final edited and imputed special population survey data and statistics; (6) conducts methodological research and analysis to improve the quality of health, welfare, and well-being statistics for special populations; (7) conducts innovative research and analysis activities that will establish baseline health and health-related data at national and subnational levels; (8) converts identified data needs into research, development, and evaluation activities; (9) conducts theoretical and experimental research to improve the content of the data collection effort for special population surveys by linkage with other surveys and by conducting record validation; (10) designs, conducts, publishes, and presents results of methodological, analytical, developmental, and evaluation studies of special population survey processes, questions, and data; (11) serves as the NCHS resource on special population surveys data and their use in evaluating programs and activities related to the NCHS mission; and (12) provides consultation and technical assistance to academia, other research groups, and state, federal, and international entities addressing the definitions, needs, and uses of special population survey data.

Division of Health and Nutrition Examination Surveys (CS8). Plans and administers complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities based on the nationwide collection of data from health and nutrition examination surveys. (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, directs and coordinates the health and nutrition examination statistics program of the Center; (3) administers national cross-sectional, longitudinal and special health and nutrition examination studies responsive to the needs for complex health, nutritional, and related public health information; (4) manages and coordinates activities of the World Health Organization (WHO) Collaborating Centre for Health and Nutrition Examination Surveys; (5) conducts research on data collection methodology, survey methodology, data quality, and statistical computation related to health and nutritional status assessment; (6) conducts multidisciplinary research directed toward development of new scientific knowledge in the areas related to health and nutrition status, e.g. determining the causal relationships between risks and outcomes; (7) performs innovative theoretical and experimental investigations into the content of the health and nutrition examination statistics data collection effort; (8) develops sophisticated approaches to making health and nutrition examination statistics data available to users, including techniques, to avoid disclosure of confidential data; (9) prepares adn publishes descriptive analyses and sophisticated multivariate analyses that integrate health and nutrition examination statistics data across multiple surveys or data sets; (10) consults and provides technical assistance on the assessment of health and nutritional status for application in setting medical standards, evaluation of national programs, and regulatory processes; (11) provides leadership for the National Nutrition Monitoring and Related Research Program; (12) designs, develops, and implements state-of-the-art computing systems and technologies for collecting, storing, and retrieving health and nutrition examination data for subsequent analysis and dissemination; (13) applies computer systems and software for its programs consistent with Center information technology requirements; (14) produces a wide variety of health and nutrition examination statistics analytic reports and tabulations in multiple formats; and (15) develops and sustains collaborative partnerships within NCHS, CDC, and DHHS, and externally with public, private, domestic and international entities on health and nutrition examination statistics programs.

Office of the Director (CS81). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) provides leadership for the monitoring and statistical evaluation of national health and nutrition examination statistics; (3) plans, directs and coordinates the statistical activities of the Division; (4) develops and administers a research and analytic program in health and nutrition examination statistics; (5) provides advice and leads development of collaborative partnerships within NCHS, CDC, and DHHS and externally with public, private, domestic and international entities on health and nutrition examination statistics; (6) provides support and focus for DHHS activities in the National Nutrition Monitoring and Related Research Program, coordinating these activities in CDC, DHHS, and other Federal agencies; and (7) manages and coordinates activities of the World Health Organization (WHO) Collaborating Center for Health and Nutrition Examination Surveys.

Analysis Branch (CS82). (1) Analyzes data and prepares scientific papers on the prevalence of disease or health-related characteristics and the interrelationships of these variables; (2) collaborates in the development and application of analytic techniques and guidelines for the Division's data collection programs; (3) performs innovative health and nutrition examination statistics data needs into research, development, and evaluation activities; (5) conducts theoretical and experimental research to improve the content of the health examination statistics data collection effort; (6) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (7) develops a wide variety of health and nutrition examination statistics reports and tabulations in multiple formats and arranges for dissemination through appropriate media; and (8) administers analysis and scientific peer review of manuscripts for data collected in the Division's data collection programs; and

(9) provides technical advice and consultation to academic, international, federal, and state entities regarding nutritional and health examination statistics data.

Informatics Branch (CS83). (1) Conducts applied computer and informatics research on the development of new and novel approaches in integrated survey information systems, database technology, imaging and telemedicine, data transmission, geographical information systems, and metadata registries; (2) conducts research on the design, development, and administration of computer systems for more timely and accurate health and nutrition examination statistics data; (3) develops, implements, and supports technologies, data architectures, networks, security infrastructure, and database management for the Division's data collection and analytic programs consistent with state of the art trends in computer and informatics research; (4) implements appropriate technologies to prevent unauthorized access to internal and field data resources including authentication, data encryption, data security, system scanning/probing, and implementation and development of systems security and policies consistent with Presidential Decision Directives and other Government wide initiatives; (5) performs systems analysis, computer programming, and quality assurance/quality control of health and nutrition examination data; (6) develops and implements standards for the Division's data collection programs and provides support for telecommunications, data access, and high-speed network technologies (*e.g.,* data dissemination, telemedicine applications); (7)performs special projects related to data on health and nutrition and produces a wide variety of reports and tabulations in multiple formats; and (8) provides advice, policy guidance, and expert technical consultation NCHS-wide and to academic, federal, state, local and international governments, and researchers regarding health and nutrition examination survey information technologies and informatics research.

Operations Branch (CS84). (1) Develops and administers contracts for data collection, engineering, acquisition and maintenance of mobile examination centers (MEC) and medical and computer equipment and receipt and cont4rol systems; (2) develops and implements systems for reporting of medical findings, professional readings, and laboratory processing for health and nutrition examination and special studies; (3) develops and conducts engineering and logistical support for survey data collection; (4) designs and conducts research studies on response rates, quality control and quality assurance of health and nutrition examination statistics data; (5) designs and develops comprehensive outreach programs and survey participant recruitment materials; and (6) prepares and publishes reports and analyses of field operations and performs special projects related to health and nutrition examination statistics survey implementation.

Planning Branch (CS85). (1) Establishes the research agenda for health and nutrition statistics data in response to public health priorities; (2) converts identified data needs into research, development, and evaluation activities and related public health information; (93) directs the planning phase of contractual activities, including pilot testing and workshop development, in support of the Division's data collection programs; (4) plans and develops a statistical program to obtain, evaluate, analyze and disseminate health and a nutrition examination statistics to meet these needs; (5) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (6) performs theoretical and experimental research to improve the content of the health and nutrition examination statistics data collection effort and improve the timeliness, availability, and quality of the nutritional and health examination statistics data; (7) participates in the design and development of integrated, automated data collection systems and data file release programs as well as conducts statistical methods research; (8) provides technical oversight of all laboratory aspects of health and nutrition examination studies; and (9) provides consultation and technical assistance to a wide range of researchers and institutions at the state, national, and international levels addressing the definitions, needs, and uses of nutrition and health nutrition examination statistics.

Dated: February 2, 2003.

William H. Gimson,

Acting Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10084]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, 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.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. We cannot reasonably comply with the normal clearance procedures because public harm is likely to result if the normal clearance process followed. Waiting for the normal clearance process to be completed might mean that vulnerable, elderly or disabled Medicare beneficiaries in affected areas would have limited or no access to physician services for prolonged periods.

CMS is requesting OMB review and approval of this collection by March 1, 2003, with a 180-day approval period. Written comments and

recommendations will be accepted from the public if received by the individuals designated below by February 19, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection; *Title of Information Collection:* Targeted Beneficiary Survey on Access to Physician Services Among Medicare Beneficiaries; *Form No.:* CMS–10084 (OMB# 0938–NEW); *Use:* Recent anecdotal reports have suggested that Medicare beneficiaries in certain parts of the country are having difficulty finding physicians who will accept new Medicare patients. In response to these anecdotes, CMS implemented a multi-faceted monitoring system that incorporated multiple data sources to address beneficiaries' reported access problems. As part of this monitoring strategy, CMS has designed a Targeted Survey on Access to Physician Services Among Medicare Beneficiaries. The survey is designed to interview 300 Medicare beneficiaries in each of 11 geographic areas where there is some evidence to suggest a potential physician access problem. The geographic areas include the state of Alaska; the Phoenix, Arizona area; the San Diego, California and San Francisco, California areas; the Denver, Colorado area; the Tampa, Florida area; the Springfield, Missouri area; the Las Vegas, Nevada area; the Brooklyn, New York area; the Fort Worth, Texas area; and the Seattle, Washington area. Survey respondents will be Medicare beneficiaries in the traditional Medicare program who are covered by part B where Medicare is the primary payer. The survey will over sample beneficiaries who are most likely to be seeking new physicians. The goal of the survey is to confirm or refute anecdotal reports that the Medicare payment restrictions are contributing to physician access problems. The survey will inform CMS about the characteristics of Medicare beneficiaries most likely to be experiencing physician access problems. It will enhance CMS's ability to consider the potential effects of payment changes on beneficiary access. *Frequency:* One-time; *Affected Public:* Individuals or households; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000; *Total Annual Hours:* 958.

We have submitted a copy of this notice to OMB for its review of these information collections.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* 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.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by February 19, 2003:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, CMS–10084, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Brenda Agular, CMS Desk Officer.

Dated: February 4, 2003.

Anthony Mazzarella,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–3447 Filed 2–11–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0017]

Agency Information Collection Activities; Proposed Collection; Comment Request; Impact of Risk Management Programs on the Practice of Pharmacy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's burden estimates to conduct a descriptive survey of pharmacists to evaluate pharmacists' knowledge of risk management programs, identify barriers to compliance, and assess the impact of these programs on the practice of pharmacy.

DATES: Submit written or electronic comments on the collection of information by April 14, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility;

(2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Risk management programs are reviewed by divisions in the Center for Drug Evaluation and Research as part of the new drug application (NDA) review process as well as during the postmarketing period. In an effort to address safety risks associated with drug therapy, several risk management programs have been implemented (e.g., for clozapine, thalidomide, and bosentan). Many risk management programs require pharmacists to actively intervene and implement actions that deviate from their normal work procedures. Currently, the impact of risk management programs on the practice of pharmacy in terms of pharmacists' compliance, knowledge, burden, and barriers is not known.

The goal of this descriptive survey is to obtain information that will help FDA understand how risk management programs affect the practice of pharmacy and gain insight on practical interventions for future risk management programs. Findings from the survey will offer new insight and knowledge in risk management programs, and will enable FDA to make better decisions when reviewing new or existing risk management programs. Expected outcomes from the survey include a collection of data to evaluate pharmacists' knowledge of risk management programs, identify barriers of compliance, and assess the impact of these programs on the practice of pharmacy.

The descriptive survey will be sent to a representative sampling of pharmacists in the United States. Approximately 5,000 pharmacists will be chosen at random from listings of licensed pharmacists obtained from participating U.S. State Boards of Pharmacy. Because the number of licensed pharmacists in each State varies and the number of respondents from each State cannot be predicted, either a simple random or a stratified sample design will be used, depending on whether there is sufficient number of participating pharmacists to evaluate regional differences. The geographic regions would be classified by location in one of the four geographic regions of the United States corresponding to those used by the U.S. Bureau of Census (northeast, midwest, south, west).

The survey will be conducted via first-class mail. The survey will be mailed with a cover letter to randomly chosen pharmacists along with a preaddressed, stamped return envelope. To ensure anonymity and confidentiality, no premarkings or numbering systems will be recorded on the survey or return envelope.

From the sample size of approximately 5,000 pharmacists, the desirable response rate is approximately 75 to 85 percent. If needed, actions will be taken to increase the response rate, such as resending the survey approximately 2 weeks after the initial mailing.

FDA estimates that it will take each pharmacist approximately 20 minutes to respond to the survey and return it to FDA. The burden of this collection of information is estimated as follows:

TABLE 1.—ESTIMATED ONE-TIME REPORTING BURDEN[1]

Number of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours per Response	Total Hours
5,000	1	5,000	.33	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 5, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3433 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0296]

Agency Information Collection Activities; Announcement of OMB Approval; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Investigational New Drug Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 18, 2002 (67 FR 64393, the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0014. The approval expires on January 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 5, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3435 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0645]

Medical Device Warning Letter Pilot Termination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the termination of the Medical Device Warning Letter Pilot (MDWLP). This pilot concerns the issuance of warning letters for quality system, premarket notification (510(k)), and labeling violations. The intent is to inform the

medical device industry of FDA's decision to discontinue this pilot program.

DATES: The effective date for ending the MDWLP is March 14, 2003 for inspections or investigations initiated on or after that date.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Governale, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411, FAX 301–827–0482.

SUPPLEMENTARY INFORMATION:

I. Background

During the FDA and medical device industry grassroots forums, several issues were discussed concerning the agency's interaction with the device industry. After considering these issues, the agency initiated the MDWLP on March 29, 1999. (See the **Federal Register** of March 8, 1999 (64 FR 11018), for a copy of the pilot.) The purpose of this pilot was to optimize resource utilization, enhance communication between the medical device industry and FDA, and provide firms with incentives to promptly correct violations or deficiencies. The MDWLP included procedures for the issuance of warning letters for quality system (21 CFR part 820), 510(k) (21 CFR part 807, subpart E), and labeling (e.g., 21 CFR part 800, subpart B; part 801; and part 809, subparts B and C) violations. This pilot was restricted to the medical device industry and was one of several medical device industry initiatives. FDA continued this pilot after the scheduled termination date of September 8, 2000, while evaluating its effectiveness.

After evaluating its effectiveness, FDA has decided to discontinue the pilot. The pilot was intended to optimize resource utilization, enhance communication between the medical device industry and FDA, and provide firms with incentives to promptly correct violations or deficiencies. However, FDA has determined that the pilot has not provided incentives to promptly correct violations because firms that would have received warning letters if not for the pilot, did not have measurably better rates of compliance in followup inspections than did firms that received warning letters. Also, FDA found that the pilot did not optimize resource utilization in that while the quantity of timely responses to inspectional observations increased, the quality of those responses generally decreased. Thus, FDA determined that the additional burdens placed on field staff by the pilot failed to optimize resources and reduced overall field inspectional effectiveness.

Additionally, on November 29, 2001, the Department of Health and Human Services directed FDA to submit all warning letters and untitled letters to FDA's Office of the Chief Counsel prior to their issuance for review of legal sufficiency and consistency with agency policy. FDA's new procedures for review of warning and untitled letters address some of the concerns that the medical device industry originally expressed to FDA during the grassroots meetings. The procedures have the added benefit of applicability to all FDA programs. They are expected to enhance consistency with agency policy among FDA district offices and centers, improve the legal sufficiency and quality of enforcement correspondence, and provide for timely feedback to regulated entities.

For all of these reasons, the agency has decided to discontinue the MDWLP.

II. Electronic Access

A copy of the MDWLP may be downloaded to a personal computer with access to the Internet at http://www.fda.gov/ohrms/dockets/98fr/030899e.pdf.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3436 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2003, from 8 a.m. to 5 p.m., and March 5, 2003, from 9 a.m. to 5 p.m., and March 6, 2003, from 8 a.m. to 12 noon.

Location: Marriott Washingtonian Center, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 4, 2003, the committee will discuss new drug application (NDA) 21–158, Factiver (gemifloxacin mesylate) Tablets, Parexel International, U.S. Agent for LG Life Sciences, Ltd., proposed for the treatment of Community-Acquired Pneumonia (CAP) and Acute Bacterial Exacerbation of Chronic Bronchitis (ABECB). On March 5, 2003, the committee will discuss the formation of a list of pathogens of public health importance for which antimicrobial drug development would be desirable. The committee also will discuss the concept of how preclinical data and clinical data from one disease state may support approval of antimicrobial drugs in another, separate disease state.

Procedure: On March 4 and 5, 2003, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 25, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 25, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 6, 2003, from 8 a.m. to 12 noon, the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to

a disability, please contact Tara Turner at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 3, 2002.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3437 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 28, 2003, from 8 a.m. to 5 p.m.

Location: Hilton DC North—Gaithersburg, Salons A, B & C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet address of http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an injectable wrinkle treatment device. There will also be a discussion of two general issues: (1) Clinical trial issues for devices designed for ablation of pulmonary tumors, and (2) clinical trial issues for devices designed for the treatment of emphysema. Background information for each topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. The material for this meeting will be posted on February 27, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 14, 2003. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 8:45 a.m., 11:30 a.m. and 11:45 a.m., and between approximately 3:30 p.m. and 4 p.m. Time allotted for oral public presentations may be limited. Those desiring to make formal oral presentations should notify the contact person before February 14, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 5, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3430 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2003, from 8:30 a.m. to 3:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6758, or e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss pediatric labeling for oncology products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by February 24, 2003. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 24, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Thomas Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 4, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3432 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 21, 2003, from 8 a.m. to 4:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kathleen Reedy or Carolyn Jones, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: REEDYK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will: (1) Discuss the mission of the subcommittee, (2) discuss the direction of the initiative entitled ''Pharmaceutical cGMPs for the 21st Century: A Risk-Based Approach'' (see the FDA Internet site at http://www.fda.gov/oc/guidance/gmp.html), and (3) receive an update on the regulatory approaches regarding aseptic manufacturing.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 7, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 7, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carolyn Jones at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 3, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3431 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Nursing Scholarship Program (NSP) Application—NEW

The NSP will provide scholarships to eligible individuals for attendance at schools of nursing in exchange for a commitment from the individuals to serve as nurses for a period of not less than two years at a health care facility with a critical shortage of nurses. An ''eligible individual'' is defined as someone who is enrolled or accepted for enrollment as a full-time or part-time student in a school of nursing. The Secretary shall give preference to qualified applicants with the greatest financial need. Participating schools will be responsible for determining eligible students and submitting information to the Federal Government.

The estimate of burden for the form is as follows:

Form and number	Number of respondents	×	Responses per respondent	=	Total responses	×	Hours per responses	=	Total burden hours
Nursing Scholarship Program Application	1,500		1		1,500		3		4,500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 5, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–3429 Filed 2–11–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1610–PG–020H; G 3–0068]

Steens Mountain Advisory Council; Notice of Intent to Call for Nominations

AGENCY: Bureau of Land Management (BLM), Burns District.

ACTION: Notice of Intent to Call for Nominations for the Steens Mountain Advisory Council (SMAC).

SUMMARY: BLM is publishing this notice under section 9(a)(2) of the Federal Advisory Committee Act. Pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399), BLM gives notice that the Secretary of the Interior intends to call for nominations for vacating positions to the SMAC. This notice requests the public to submit nominations for membership on the SMAC.

Any individual or organization may nominate one or more persons to serve on the SMAC. Individuals may nominate themselves for SMAC membership. Nomination forms may be obtained from the Burns District Office, Bureau of Land Management (see address below). To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Burns District Office. Nominations may be made for the following categories of interest:

- One person who is a recognized environmental representative for the State as a whole (appointed from nominees submitted by the Governor of Oregon);
- A person interested in fish and recreational fishing (appointed from nominees submitted by the Governor of Oregon);
- A person who is a recreational permit holder or is a representative of a commercial recreation operation (appointed jointly by the Oregon State Director of the BLM and the County Court for Harney County, Oregon); and
- A private landowner in the Steens Mountain Cooperative Management and Protection Area (CMPA) (appointed by the County Court for Harney County, Oregon).

The specific category the nominee will represent should be identified in the letter of nomination. The Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, and BLM). BLM will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

DATES: Nominations should be submitted to the address listed below no later than 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4433, or <*Rhonda_Karges@or.blm.gov*> or from the following Web sites <*http://www.or.blm.gov/Burns*> or <*http://www.or.blm.gov/steens*> (P.L. 106–399 in its entirety can be found on the Steens Web site as previously cited.)

SUPPLEMENTARY INFORMATION: The purpose of the SMAC is to advise BLM on the management of the CMPA as described in Title 1 of Public Law 106–399. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories or interest listed above.

Members of the SMAC are appointed for terms of 3 years, except that, of the members first appointment, four members were appointed for a term of 1 year and four members were appointed for a term of 2 years. The State environmental representative, recreational permit holder, private landowner, and fish and recreational fishing positions were all 2-year terms and will expire August 2003. These four positions will all be replaced with 3-year terms, and will begin no earlier than August 2003.

Members will serve without monetary compensation, but will reimbursed for travel and per diem expenses at current rates for Government employees. The SMAC shall meet only at the call of the Designated Federal Official, but not less than once per year.

Dated: January 31, 2003.

Thomas H. Dyer,

Designated Federal Official, Bureau of Land Management.

[FR Doc. 03–3477 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XM–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meetings will be held on March 19 and May 21, 2003. The March 19 meeting will be at the Holiday Inn, 333 Sante Fe in Alamosa, Colorado beginning at 9 a.m. The public comment period will begin at 9:15 a.m. and the meeting will adjourn at approximately 4 p.m.

The May 21, 2003 meeting will be at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado.

Planned agenda topics for the March 19 meeting include:

Manager reports.
Effects of drought on grazing.
Updates on current public land issues.

Planned agenda topics for the May 21 meeting include:

Briefing on the Fuels Management Program.
Tour of a Fuels Management project.

All meetings are open to the public. The public can make oral statements to the Council at 9:15 a.m. on March 19 and 9:30 a.m. on May 21 or written statements may be submitted for the Councils consideration. Depending on

the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: February 5, 2003.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 03–3469 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–PG: GP03–0075]

Notice of Public Meeting, John Day/Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held February 27, 2003 at the Oxford Inn Suites in Pendleton, OR beginning at 8 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

Meeting Topics

The Upcoming National Resource Advisory Council Meeting with BLM Director Kathleen Clarke
RAC Progress Reports
Agency Updates
Blue Mountain Land Exchange/New Planning Rule
Wallowa County Watershed Analysis-Upper Joseph Subcommitte Updates
Roundtable
Meeting Calendar

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR 97754.

Dated: February 6, 2003.

Ronald Halvorson,

Acting District Manager.

[FR Doc. 03–3474 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–319 and 322, and 731–TA–573 and 578 (Review) (Remand)]

Certain Carbon Steel Products (Cut to Length Plate) From Belgium and Germany; Notice of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its antidumping and countervailing duty review investigations nos. 701–TA–319 and 322 (Review), and 731–TA–573 and 578 (Review).

EFFECTIVE DATE: February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Rhonda Hughes, Office of General Counsel, telephone 202–205–3083; Bonnie Noreen, Office of Investigations, telephone 202–205–3167; or Elizabeth Haines, Office of Investigations, telephone 202–205–3200. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record in these reviews for the limited purpose of obtaining certain data that exclude floor plate from Belgian producers. This action is taken pursuant to the decision of the U.S. Court of International Trade in *Usinor, Industeel, S.A.* v. *United States,* Slip Op. 02–152 (Dec. 20, 2002), holding that the Commission must review certain data without consideration of Belgian floor plate data as a result of the ruling of the U.S. Court of Appeals for the Federal Circuit in *Duferco Steel, Inc.* v. *United States,* No. 01–1443 (July 12, 2002). The Commission will provide the parties in Consol. Court No. 01–00006 an opportunity to file comments on any new information received pertaining to that subject.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings and are also parties to the ongoing litigation (*i.e.*, persons listed on the Commission Secretary's service list and parties to Consol. Court No. 01–00006) may participate in these remand proceedings.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigations will be released to parties under the administrative protective order (''APO'') in effect in the original reviews. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the reviews and in these remand investigations available to additional authorized applicants that are not covered under the original APO, provided that the application is made not later than seven days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand investigations.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: February 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–3506 Filed 2–11–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Final)]

Certain Frozen Fish Fillets from Vietnam

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1012 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain frozen fish fillets from Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 28, 2002, by the Catfish Farmers of America—a trade association of U.S. catfish farmers and processors—and by individual catfish processors.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 4, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on June 17, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 10, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. If unable to allocate hearing time among themselves, all parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference scheduled for 9:30 a.m. on June 13, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 11, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 24, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 24, 2003. On July 11, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 15, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species Pangasius Bocourti, Pangasius Hypophthalmus (also known as Pangasius Pangasius), and Pangasius Micronemus. The subject merchandise will be hereinafter referred to as frozen 'basa' and 'tra' fillets, which are the Vietnamese common names for these species of fish.''

Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 7, 2003.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3507 Filed 2–11–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Village Voice Media, LLC, & NT Media, LLC*; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed final judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District court for the Northern District of Ohio in *United States of America* v. *Village Voice Media, LLC, and NT Media, LLC,* Civil Action No. 1:03CV0164. On January 27, 2003, the United States filed a Complaint alleging that the market allocation agreement between New Times and Village Voice Media was *per se* illegal under section 1 of the Sherman Act, 15 U.S.C. 1. The proposed final judgment, filed the same time as the complaint, (i) enjoins Village Voice Media and New Times from taking any actions in furtherance of, or required under, their *per se* illegal market allocation agreement; (ii) requires defendants to divest all the assets used in connection with the publication of the *New Times LA*, New Times's alternative newsweekly in Los Angeles, and the *Cleveland Free Times,* Village Voice Media's alternative newsweekly in Cleveland, for the purpose of establishing a viable competitive alternative newsweekly in both geographic markets; (iii) permits any advertiser that entered into an advertising or promotion contract after October 1, 2002, with Village Voice Media's *LA Weekly,* or New Times's *Cleveland Scene,* for a specified time and solely at the advertiser's option, to terminate such contract without penalty or threat of retaliatory action; (iv) requires Village Voice Media and New Times to notify the United States for the next five years of any future acquisitions, or sales of, alternative newsweeklies; (v) prevents both defendants from enforcing any non-compete contractual provisions against any current or former employees involved in their Cleveland or Los Angeles alternative newsweeklies; and (vi) prevents each defendant and its officers, directors, agents, and employees, from entering into, continuing, maintaining, or renewing any market or customer allocation agreement. Copies of the complaint, proposed final judgment, and competitive impact statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., on the Department of Justice's web site at *http://www.usdoj.gov/atr/,* and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, in Cleveland, Ohio.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616–5935).

Constance K. Robinson,

Director of Operations.

Hold Separate Stipulation and Order

It is hereby stipulated and Agreed by and between the undersigned parties, subject to approval and entry by this court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

(A) ''Acquirer'' or ''acquirers'' means the entity or entities to which defendants divest the Divestiture assets.

(B) ''Alternative newsweekly'' means a publication (such as the Cleveland Scene or LA Weekly) that posses more than one of the following attributes: (i) It is published in a geographic area served by one or more daily newspaper to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing company; and (v) it is a general interest publication that does not focus exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) ''Cleveland Free Times assets'' means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the Cleveland Free Times alternative newsweekly in the Greater Cleveland area by Village Voice Media before October 1, 2002, including, but not limited to:

(1) All rights to the Cleveland Free Times name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the Cleveland Free Times, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal right from, the third party controls such rights);

(2) Except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the Cleveland Free Times stored on the computer hardware, including all design templates and databates;

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the Cleveland Free Times;

(4) All rights to the Cleveland Free Times website and URL (*www.freetimes.com*);

(5) All rights to the print and electronic archives of the Cleveland Free Times publications and articles on a non-exclusive basis;

(6) All assets used in the publication of the Cleveland Free Times, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which Village Voice Media published the Cleveland Free Times; and

(7) All other tangible and intangible assets used in the publication of the Cleveland Free Times, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, terming arrangements, agreements, commitments, certifications, and understanding, including supply agreements, all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating to the Cleveland Free Times; all other records stored in the office of, or generated by or fore, the Cleveland Free Times; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the Cleveland Free Times; all research, packaging, sales, marketing, advertising and distribution know-how, information, data, and documentation, including marketing and sales data, and layout designs, and manuals and technical information Village Voice Media provided to any of its Cleveland Free Times employees, customers, suppliers, agents or licensees; and all specifications for materials.

(D) ''Divestiture assets'' means the *Cleveland Free Times* Assets and the *New Times LA* Assets.

(E) ''Greater Cleveland area'' means the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio.

(F) ''Greater Loss Angeles area'' means the counties of Los Angeles, Orange, San Bernardino, Riverside and Ventura in the state of California.

(G) ''New Times'' means defendant NT Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in Phoenix, Arizona, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation Cleveland Scene, LLC, and New Times Los Angeles, LP, and their directors, officers, managers, agents, and employees.

(H) *''New Times LA* Assets'' means all assets within the possession, custody or control of New Times and Village Voice Media that were formerly employed in the publication of the *New Times LA* alternative newsweekly in the Greater Los Angeles area by New Times before October 1, 2002, including, but not limited to:

(1) Subject to the provisions of section V(K) of the proposed final judgment, all rights to the *New Tiems LA, LA Reader* and *LA View* names (including any derivations thereof), logos, layout and design, including all legal rights, including intellectual property rights associated with the *New Times LA, LA Reader* and *LA View,* including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) All computer hardware, software, and licensing agreements connected with that software to the fullest extent sublicensable, which are associated primarily with the publication of the *New Times LA,* including all rights to the *New Times LA* website and URL (*www.newtimesla.com*); all information relating to the *New Times LA* stored on the computer hardware, including all design templates and databases; New Times shall provide in the original format to the Acquirer (if such format is not readable or usable by commercially available software, then New Times shall provide such data in such format the Acquirer may reasonably specify) all other information relating to the publication of *New Times LA* stored on New Times's computer hardware (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the *New Times LA;*

(4) All rights to the print and electronic archives of *New Times LA* publications and articles on a non-exclusive basis;

(5) All graphics and artworks used in the publication of the New Times LA and New Times's other alternative newsweeklies as of October 1, 2002, on a non-exclusive basis;

(6) All assets used in the publication of the New Times LA, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which New Times published the New Times LA; and

(7) All other tangible and intangible assets used in the publication of the New Times LA; including, but not limited to: all other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating exclusively to the New Times LA; all other records stored in the offices of, or generated by or for, the New Times LA; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the New Times LA; all research, packaging, sales, marketing, advertising, and distribution know-how, information, data and documentation, including marketing and sales data, and layout designs used exclusively in, or which relate exclusively to, the publication of the New Times LA (and copies of such know-how, information, data and documentation which relates to the publication of the New Times LA); all manuals and technical information New Times provided to any of its New Times LA employees, customers, suppliers, agents or licensees; and all specifications for materials.

(I) ''Publication'' means all activities associated with the business of offering an alternative newsweekly to the public as a commercial endeavor, including, but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such alternative newsweeklies, and selling advertisements and promotions therein.

(J) ''State Attorneys General'' means the Office of the Attorney General of the State of Ohio and the Office of the

Attorney General of the State of California, who may share information and consult with the Office of the Los Angeles County District Attorney on any matters arising under this hold separate stipulation and order.

(K) ''Village Voice Media'' means defendant Village Voice Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation LA Weekly Media, Inc. and Cleveland Free Times Media, Inc., and their directors, officers, managers, agents, and employees.

(L) The terms ''and'' and ''or'' have both conjunctive and disjunctive meanings.

II. Objectives

The final judgment filed in this civil action is meant to ensure prompt divestitures for the purpose of establishing viable competitors in the alternative newsweekly industry in order to remedy the effects that the United States alleges have resulted, and would otherwise continue to result, from the defendants' agreement that the United States alleges to have violated section one of the Sherman Act. The hold separate stipulation and order ensure, prior to such divestitures, that the Cleveland Free Times Assets and New Times LA Assets remain economically viable, and that the divestiture assets be maintained and not be diminished during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

This court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Ohio.

IV. Compliance With and Entry of Final Judgment

(A) The parties stipulate that a final judgment in the form attached hereto as Exhibit A may be filed with and entered by this court, upon the motion of any party or upon this court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any part or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed final judgment by serving notice thereof on defendants and by filing that notice with this Court.

(B) Defendants shall abide by and comply with the provisions of the proposed final judgment, pending the judgment's entry by this court, or until expiration of time for all appeals of any court ruling declining entry of the proposed final judgment. Defendants, from the date of the signing of this hold separate stipulation and order by the parties, shall comply with all the terms and provisions of the proposed final judgment as though the same were in full force and effect as an order of this court.

(C) This hold separate stipulation and order shall apply with equal force and effect to any amended proposed final judgment agreed upon in writing by the parties and submitted to this Court.

(D) In the event that (1) the proposed final judgment is not entered pursuant to this hold separate stipulation and order, the time has expired for all appeals of any court ruling declining entry of the proposed final judgment, and this court has not otherwise ordered continued compliance with the terms and provisions of the proposed final judgment, or (2) the United States has withdrawn its consent, as provided in section IV(A) above, then the parties are released from all further obligations under this hold separate stipulation and order, and the making of this hold separate stipulation and order shall be without evidentiary prejudice to any party in this or any other proceeding.

(E) Defendants represent that the divestitures ordered in the proposed final judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking this court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the final judgment have been accomplished:

(A) Defendants shall preserve and maintain the value and goodwill of the divestiture assets. Defendants shall not, except as part of a divestiture approved by the United States, after consultation with the State Attorneys General, in accordance with the terms of the proposed final judgment, remove, sell, lease or sublease, assign, transfer, pledge or otherwise dispose of any of the divestiture assets.

(B) Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income, if any, of the Divestiture Assets.

Cleveland Free Times Assets

(C) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the Cleveland Free Times Assets in its possession, custody or control, New Times shall hold them entirely separate, distinct and apart from those of New Times's other operations. Until such time that the Cleveland Free Times Assets are divested, the Cleveland Free Times Assets in New Time's possession, custody, or control shall be managed by a person, not employed by New Time's alternative newsweekly, the Cleveland Scene (the ''New Times designated person'').

(D) The New Times Designated Person shall have complete managerial responsibility for the Cleveland Free Times Assets in the possession, custody, and control of New Times, subject to the provisions of this order, and will be responsible for overseeing New Times's compliance with this section.

(E) In the event that the New Times designated person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, New Times shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five calendar days. Should defendant New Times fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(F) Defendant New Times shall take no action that would interfere with the ability of the New Times designated person or any later appointed persons to oversee the Cleveland Free Times assets in New Times's possession, custody or control. The New Times Designated person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the final judgment and this hold separate stipulation and order.

(G) Within 10 calendar days after either the filing of the complaint or the entry of the hold separate stipulation and order, whichever is earlier, New Times shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) Each Cleveland Free Times asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the New Times designated person, and (iii)

all actions New Times has taken and all steps New Times has implemented on an ongoing basis to comply with this hold separate stipulation and order.

New Times LA Assets

(H) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the New Times LA Assets in its possession, custody or control, Village Voice Media shall hold them entirely separate, distinct and apart from those of Village Voice Media's other operations. Until such time that the New Times LA assets are divested, the New Times LA assets shall be managed by a person, not employed by Village Voice Media's Alternative Newsweekly, the LA Weekly (the ''VVM designated person'').

(I) The VVM designated person shall have complete managerial responsibility for the New Times LA assets in the possession, custody, and control of Village Voice Media, subject to the provisions of this order, and will be responsible for overseeing Village Voice Media's compliance with this section.

(J) In the event that the VVM designated person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, Village Voice Media shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five calendar days. Should Village Voice Media fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(K) Defendant Village Voice Media shall take no action that would interfere with the ability of the VVM designated person or any later appointed persons to oversee the New Times LA Assets in Village Voice Media's possession, custody or control. The VVM designated person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the final judgment and this hold separate stipulation and order.

(L) Within 10 calendar days after either the filing of the complaint or the entry of the hold separate stipulation and order, whichever is earlier, Village Voice Media shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) Each New Times LA asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the VVM designated person, and (iii) all actions Village Voice Media has taken and all steps Village Voice Media has implemented on an ongoing basis to comply with this hold separate stipulation and order.

(M) Defendants shall take all steps necessary to ensure that preservation of the assets will be conducted by the designated persons and not be influenced by New Times or Village Voice Media. Defendants shall take all steps necessary to ensure that the divestiture assets are fully maintained in operable condition, and shall maintain and adhere to normal repair, product improvement and upgrade, and maintenance schedules for the divestiture assets.

(N) Defendants shall use their best efforts to assist, and shall take no action to interfere with or to impede, the trustee (if applicable) in accomplishing the required divestiture pursuant to the final judgment.

(O) This hold separate stipulation and order shall remain in effect until consummation of the divestiture required by the proposed final judgment or until further order of this court.

Dated: January 25, 2003, Washington, DC

Respectfully submitted,

For defendant Village Voice Media, LLC:

Melanie Sabo,

(Florida Bar No. 0875287), *Preston Gates Ellis & Rouvelas Meeds, LLP 1735 New York Avenue, NW., Suite 500, Washington, DC 20006–5209, (202) 628–1700 (telephone). (202) 331–1024 (facsimile). melanies@prestongates.com.*

For defendant NT Media, LLC:

Joseph Kattan, P.C.,

(DC Bar No. 33542), Gibson Dunn & Crutcher, LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, (202) 955–8500 (telephone), (202) 530–9558 (facsimile), *Jkattan@gibsondunn.com.*

For plaintiff United States of America:

Maurice E. Stucke,

(New York—no bar number assigned), U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington DC 20530, (202) 305–1489 (telephone), (202) 514–7308 (facsimile). Maurice.Stucke@usdoj.gov.

Order

It is so ordered by this court, this ____ day of __/__/__/__, 2003.

United States District Judge.

Final Judgment

Whereas, the United States of America filed its compliant on January 27, 2003, alleging that defendants Village Voice Media and New Times entered into agreements in violation of section one of the Sherman Act, and the plaintiff and defendants, by their respective attorneys, have consented to the entry of this final judgment without trial or adjudication of any issue of fact or law, and without this final judgment constituting any evidence against, or any admission by, any party regarding any such issue of fact or law;

And whereas, Village Voice Media and New Times agree to be bound by the provisions of this Final Judgment pending its approval by this court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Village Voice Media and New Times to restore the loss of competition alleged in the complaint;

And whereas, the United States requires Village Voice Media and New Times to agree to certain procedures and prohibitions for the purpose of restoring the loss of competition alleged in the complaint;

And whereas, the United States requires Village Voice Media and New Times to make certain divestitures for the purpose of remedying the loss of competition alleged in the complaint;

And whereas, Village Voice Media and New Times have represented to the United States that the divestitures required below can and will be made and that they will later raise no claim of hardship or difficulty as grounds for asking the court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trail or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This court has jurisdiction over the subject matter of and each of the parties to this action. The compliant states a claim upon which relief may be granted against Village Voice Media and New Times under section 1 of the Sherman Act, as amended (15 U.S.C. 1).

II. Definitions

As used in this final judgment:

(A) ''Acquirer'' or ''acquirers'' means the entity or entities to which defendants divest the divestiture assets.

(B) ''Alternative newsweekly'' means a publication (such as the Cleveland Scene or LA Weekly) that possesses more than one of the following attributes: (i) It is published in a geographic area served by one or more daily newspapers to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing company; and (v) it is a general interest publication that does not focus

exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) ''California Attorney General'' means the Office of the Attorney General of the State of California, who may share information and consult with the Office of the Los Angeles County District Attorney on any matters arising under this final judgment.

(D) ''Cleveland Asset Purchase Agreement'' means the Asset Purchase Agreement by and among Cleveland Free Times Media, Inc., Cleveland Scene, LLC, Village Voice Media, LLC, and NT Media, LLC, dated October 1, 2002, and any agreements ancillary thereto.

(E) ''Cleveland Free Times Assets'' means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the Cleveland Free Times alternative newsweekly in the Greater Cleveland Area by Village Voice Media before October 1, 2002, including, but not limited to:

(1) All rights to the Cleveland Free Times name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the Cleveland Free Times, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) Except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the Cleveland Free Times stored on the computer hardware, including all design templates and databases;

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the Cleveland Free Times;

(4) All rights to the Cleveland Free Times website and URL (*www.freetimes.com*);

(5) All rights to the print and electronic archives of the Cleveland Free Times publications and articles on a non-exclusive basis;

(6) All assets used in the publication of the Cleveland Free Times, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which Village Voice Media published the Cleveland Free Times; and

(7) All other tangible and intangible assets used in the publication of the Cleveland Free Times, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating to the Cleveland Free Times; all other records stored in the offices of, or generated by or for, the Cleveland Free Times; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the Cleveland Free Times; all research, packaging, sales, marketing, advertising and distribution know-how, information, data, and documentation, including marketing and sales data, and layout designs; all manuals and technical information Village Voice Media provided to any of its Cleveland Free Times employees, customers, suppliers, agents or licensees; and all specifications for materials.

(F) ''Cleveland Scene termination period'' means the period of time beginning October 1, 2002, and ending 30 calendar days after consummation of the divestiture of the Cleveland Free Times assets.

(G) ''Divestiture assets'' means the Cleveland Free Times Assets and the New Times LA assets.

(H) ''Greater Cleveland area'' means the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio.

(I) ''Greater Los Angeles area'' means the counties of Los Angeles, Orange, San Bernardino, Riverside and Ventura in the state of California.

(J) ''Los Angeles asset purchase agreement'' means the asset purchase agreement among LA Weekly Media, Inc., New Times Los Angeles, LP, Village Voice Media, LLC, and NT Media, LLC, dated October 1, 2002, and any agreements ancillary thereto.

(K) ''LA Weekly termination period'' means the period of time beginning October 1, 2002, and ending 30 calendar days after consummation of the divestiture of the New Times LA assets.

(L) ''New Times'' means Defendant NT Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in Phoenix, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation Cleveland Scene, LLC, and New Times Los Angeles, LP, and their directors, officers, managers, agents, and employees.

(M) ''New Times LA Assets'' means all assets within the possession, custody or control of New Times and Village Voice Media that were formerly employed in the publication of the New Times LA alternative newsweekly in the Greater Los Angeles area by New Times before October 1, 2002, including, but not limited to:

(1) Subject to the provisions of section V(K), all rights to the New Times LA, LA Reader and LA View names (including any derivations thereof), logos, layout and design, including all legal rights, including intellectual property rights associated with the New Times LA, LA Reader and LA View, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) All computer hardware, software, and licensing agreements connected with that software to the fullest extent sublicensable, which are associated primarily with the publication of the New Times LA, including all rights to the New Times LA website and URL (*www.newtimesla.com*); all information relating to the New Times LA stored on the computer hardware, including all design templates and databases; New Times shall provide in the original

format to the acquirer (if such format is not readable or usable by commercially available software, then New Times shall provide such data in such format the acquirer may reasonably specify) all other information relating to the publication of New Times LA stored on New Times's computer hardware (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the New Times LA;

(4) All rights to the print and electronic archives of New Times LA publications and articles on a non-exclusive basis;

(5) All graphics and artworks used in the publication of the New Times LA and New Times's other alternative newsweeklies as of October 1, 2002, on a non-exclusive basis;

(6) All assets used in the publication of the New Times LA, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which New Times published the New Times LA; and

(7) All other tangible and intangible assets used in the publication of the New Times LA, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating exclusively to the New Times LA; all other records stored in the offices of, or generated by or for, the New Times LA; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the New Times LA; all research, packaging, sales, marketing, advertising, and distribution know-how, information, data and documentation, including marketing and sales data, and layout designs used exclusively in, or which relate exclusively to, the publication of the New Times LA (and copies of such know-how, information, data and documentation which relates to the publication of the New Times LA); all manuals and technical information New Times provided to any of its New Times LA employees, customers, suppliers, agents or licensees; and all specifications for materials.

(N) ''Ohio Attorney General'' means the Office of the Attorney General of the State of Ohio.

(O) ''Publication'' means all activities associated with the business of offering an alternative newsweekly to the public as a commercial endeavor, including, but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such alternative newsweeklies, and selling advertisements and promotions therein.

(P) ''State Attorneys General'' means the California Attorney General and the Ohio Attorney General.

(Q) ''Village Voice Media'' means defendant Village Voice Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation LA Weekly Media, Inc. and Cleveland Free Times Media, Inc., and their directors, officers, managers, agents, and employees.

(R) The terms ''and'' and ''or'' have both conjunctive and disjunctive meanings.

III. Applicability

(A) This final judgment applies to Village Voice Media and New Times, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

(B) Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include any of the divestiture assets that the purchaser agrees to be bound by the provisions of this final judgment, provided, however, that Village Voice Media and New Times need not obtain such an agreement from the acquirer(s).

IV. Prohibited and Required Conduct

(A) Village Voice Media and New Times are enjoined as of the filing of the Complaint in this matter from taking any actions in furtherance of, or required under, either the Cleveland asset purchase agreement or the Los Angeles asset purchase agreement. Village Voice Media's and New Times's obligation under this final judgment supercede their obligations under either of these agreements, and Village Voice Media and New Times shall not object to the performance of their obligations under this final judgment on the grounds that those obligations would cause them to breach either agreement.

(B) For a period of two years commencing upon the filing date of the complaint in this matter, Village Voice Media shall permit any advertiser that entered during the LA Weekly termination period into a written or oral contract to advertise in, or engage in a promotion with, the LA Weekly, solely at the advertiser's option, to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. Village Voice Media shall provide all affected advertisers a copy of this final judgment within 15 calendar days after the filing of the complaint in this matter, and inform in writing all affected advertisers within: (i) Fifteen calendar days after the filing of the complaint in this matter; and (ii) thirty calendar days after consummation of the divestiture of the New Times LA assets, of their rights to terminate at their option their advertising or promotion contracts with the LA Weekly.

(C) For a period of two years commencing upon the filing date of the complaint in this matter, New Times shall permit any advertiser that entered during the Cleveland Scene termination period into a written or oral contract to advertise in, or engage in a promotion with, the Cleveland Scene, solely at the advertiser's option, to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. New Times shall provide all affected advertisers a copy of this final judgment within 15 calendar days after the filing of the complaint in this matter, and inform in writing all affected advertisers within: (i) Fifteen calendar days after the filing of the complaint in this matter; and (ii) 30 calendar days after consummation of the divestiture of the Cleveland Free Times assets, of their right to terminate at their option their advertising or promotion contracts with the Cleveland Scene.

(D) Each defendant, its officers, directors, agents, and employees, acting or claiming to act on its behalf, and successors and all other persons action or claiming to act on its behalf, are enjoined and restrained from, in any matter, directly or indirectly, entering into, continuing, maintaining, or renewing any market or customer allocation agreement, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or

following any practice, plan, program, or device having a similar purpose or effect.

(E) Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), defendants for a period of five years commencing upon the filing of the complaint in this matter, and without providing advance notification to the Antitrust Division of the United States Department of Justice, shall not directly or indirectly enter into any merger or joint venture involving, or sale of, any of its alternative newsweeklies or national advertising networks or acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any publication that possesses more than two of the five attributes specified in the definition of ''alternative newsweekly'' in section II(B) and this final judgment, one of which must be the attribute specified in section II(B)(v). Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to, the notification and report form set forth in the Appendix to part 803 of title 16 of the Code of Federal Regulations as amended, except that the information requested in items 5 through 8 of the instructions must be provided only about alternative newsweeklies. Notification shall be provided at least 30 calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until 20 calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this section shall be resolved in favor of filing notice.

(F) For any employee involved in the publication of the Cleveland Free Times as of October 1, 2002, any non-compete provision imposed by Village Voice Media shall be null and void. For a period from the filing of the complaint to one year from the divestiture of the Cleveland Free Times assets, defendants shall not enforce any other non-compete contractual provisions against any of their former or current employees of the Cleveland Free Times or the Cleveland Scene in the Greater Cleveland area. Defendants shall notify in writing all affected former and current employees that such non-compete contractual provisions will not be enforced.

(G) For any employee involved in the publication of the New Times LA as of October 1, 2002, any non-compete provision imposed by New Times shall be null and void. For a period from the fling of the complaint to one year from the divestiture of the New Times LA assets, defendants shall not enforce any other non-compete contractual provisions against any of their former or current employees of the New Times LA or LA Weekly in the Greater Los Angles area. Defendants shall notify in writing all affected former and current employees that such non-compete contractual provisions will not be enforced.

V. Divestitures

(A) Defendants are ordered and directed, within 30 calendar days after the filing of the complaint in this matter, to divest the divestiture assets in a manner consistent with this final judgment to an acquirer or acquirers acceptable to the United States in its sole discretion, after consultation with the State Attorneys General. The United States, in its sole discretion, after consultation with the State Attorneys General, may agree to an extension of this time period for any divestiture of up to 30 additional calendar days, and shall notify this court in such circumstances.

(B) Defendants agree to use their best efforts to divest the divestiture assets in a manner consistent with this final judgment to an acquirer or acquirers acceptable to the United States in its sole discretion, after consultation with the State Attorneys General, and to effect such divestitures as expeditiously as possible.

(C) In accomplishing the divestitures ordered by this final judgment, each defendant promptly shall make known, by usual and customary means, the availability of the divestiture assets under it possession, custody or control. Defendants shall inform any person making inquiry regarding a possible purchase of the divestiture assets that such assets are being divested pursuant to this final judgment and provide that person with a copy of this final judgment. Defendants shall offer to furnish to all prospective acquirers, subject to customary confidentiality assurances, all information and documents relating to the divestiture assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. Defendants shall make available such information to the United States and the State Attorneys General at the same time that such information is made available to any other person.

(D) Village Voice Media shall provide the acquirers, the United States, and the State Attorneys General information relating to the personnel that were involved in any way in the publication of the Cleveland Free Times to enable the acquirer to make offers of employment. Defendants will not interfere with any negotiations by the acquirer(s) to employ any current or former Village Voice Media employee that was involved in the publication of the Cleveland Free Times.

(E) New Times shall provide the acquirers, the United States, and the State Attorneys General information relating to the personnel that were involved in any way in the publication of the New Times LA to enable the acquirer to make offers of employment. Defendants will not interfere with any negotiations by the acquirer(s) to employ any current or former New Times employee that was involved in the publication of the New Times LA.

(F) Defendants shall permit prospective acquirers of the divestiture assets to have reasonable access to personnel and to make inspections of the physical facilities of the divestiture assets. To the extent that defendants continue to maintain any environmental, zoning or other permits pertaining to the publication of the Cleveland Free Times or the New Times LA, defendants shall permit prospective acquirers access to any and all documents and information associated with those permits. Defendants shall permit prospective acquirers of the divestiture assets to have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(G) Defendants shall warrant to the acquirer(s) of the divestiture assets that each asset will be operational on the date of sale.

(H) Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of

the Cleveland Free Times assets or the New Times LA assets.

(I) To the extent that Defendants continue to maintain any environmental, zoning or other permits pertaining to the publication of the Cleveland Free Times or the New Times LA Defendants shall warrant to the Acquirer(s) that there are no material defects in those permits. Following the sale of the Cleveland Free Times and/or the New Times LA Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the publication of the Cleveland Free Times and/or the New Times LA.

(J) Unless the United States, in its sole discretion, after consultation with the State Attorneys General, otherwise consents in writing, the divestiture pursuant to section V, or by trustee appointed pursuant to section VI, or this final judgment, shall include the Divestiture assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State Attorneys General, that the Cleveland Free Times or the New Times LA can and will be published by the acquirer(s) as viable, ongoing alternative newsweeklies. Divestiture of the divestiture assets may be made to one acquirer or to two acquirers, provided that (1) all the Cleveland Free Times assets are sold to one acquirer, (2) all the New Times LA assets are sold to one acquirer, and (3) in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with the State Attorneys General, that the Cleveland Free Times assets and the New Times LA assets will remain viable and that the divestiture of the divestiture assets will remedy the competitive harm alleged in the complaint. The divestitures, whether pursuant to section V or section VI of this final judgment,

(1) Shall be made to an acquirer (or acquirers) that, in the United States's sole judgment, after consultation with the State Attorneys General, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the publication of alternative newsweeklies; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State Attorneys General, that none of the terms of any agreement between an acquirer (or acquirers) and defendants give defendants the ability unreasonably to raise the acquirer's costs, to lower the acquirer's efficiency, or otherwise to interfere in the ability of the acquirer to compete effectively.

(K) With respect to copyrights or trademarks associated specifically with the New Times LA that New Times employs in the publication of other New Times Alternative Newsweeklies, the divestiture pursuant to section V, or by a trustee appointed pursuant to section VI, of this Final Judgment shall be accomplished by means of an exclusive, perpetual, royalty-free, assignable license to those copyrights or trademarks for use by the acquirer and its successors in connection with publishing an alternative newsweekly in the Greater Los Angeles area. New Times is enjoined from using, or granting rights to persons other than the acquirer or its successors to use, such copyrights or trademarks in the publication of an alternative newsweekly in the Greater Los Angeles area. New Times, consistent with the purpose and intent of this final judgment, may include, as part of the license for any valid registered trademark used specifically with New Times's other alternative newsweeklies and New Times LA, the requirement on the acquirer and its successors to take the minimum reasonable measures necessary to prevent New Times from being deemed to have abandoned such shared registered trademarks under the Lanham Act.

VI. Appointment of Trustee

(A) If defendants have not divested the Cleveland Free Times assets within the time period specified in section V(A), they shall notify the United States and the State Attorneys General of that fact in writing. Upon application of the United States, the court shall appoint a trustee selected by the United States in its sole discretion and approved by this court to effect the divestiture of the Cleveland Free Times assets.

(B) If defendants have not divested the New Times LA assets within the time period specified in section V(A), they shall notify the United States and the State Attorneys General of that fact in writing. Upon application of the United States, the court shall appoint a trustee selected by the United States in its sole discretion and approved by this court to effect the divestiture of the New Times LA assets.

(C) After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the divestiture assets. The trustee shall have the power and authority to accomplish the divestiture to an acquirer(s) acceptable to the United States, after consultation with the State Attorneys General, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections V, VI, and VII of this final judgment, and shall have such other powers as this court deems appropriate. Subject to section VI(E) of this final judgment, the trustee may hire at the cost and expense of the defendant whose divestiture assets the trustee is to divest any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

(D) Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States, the State Attorneys General and the trustee within five calendar days after the trustee has provided the notice required under section VII of this final judgment.

(E) The trustee shall serve at the cost and expense of the defendant whose divestiture assets the trustee is to divest, on such terms and conditions as the United States approves, after consultation with the State Attorneys General, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by this court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the defendant whose divestiture assets the trustee divested and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(F) Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the defendants' personnel, books, records, and facilities, and defendants shall develop financial and other information relevant to such businesses as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(G) After its appointment, the trustee shall file monthly reports with the United States, the State Attorneys General and the court setting forth the trustee's efforts to accomplish the divestiture ordered under this final judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the divestiture assets the trustee is to divest, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the divestiture assets.

(H) If the trustee has not accomplished such divestiture within three months after its appointment, the trustee shall promptly file with this court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this court. The trustee shall at the same time furnish such report to the United States and the State Attorneys General who shall have the right to make additional recommendations consistent with the purpose of the final judgment. The court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the final judgment, which may, if necessary, include extending the trust and the terms of the trustee's appointment by a period request by the United States.

VII. Noticke of Proposed Divestiture

(A) Within two business days following execution of a definitive divestiture agreement. Village Voice Media, New Times, or the trustee, whichever effected the divestiture, shall notify the United States and the State Attorneys General of any proposed divestiture required by section V or VI of this final judgment. If the trustee is responsible, it shall similarly notify the defendant whose divestiture assets the trustee divested. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the divestiture assets, together with full details of the same.

(B) Within five calendar days of receipt by the United States and the State Attorneys General of such notice, the United States, after consultation with the State Attorneys General, may request from defendants, the proposed acquirer or acquirers, any other third party, or the trustee (if applicable) additional information concerning the proposed divestiture, the proposed acquirer or acquirers, and any other potential acquirer. Defendants and the trustee shall furnish any additional information requested within five calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within fifteen calendar days after receipt of the notice or within five calendar days after the United States and the State Attorneys General have been provided the additional information requested from defendants, the proposed acquirer or acquirers, any third party, and the trustee (if applicable), whichever is later, the United States, after consultation with the State Attorneys General, shall provide written notice to the defendant whose divestiture assets are at issue, and the trustee (if applicable), stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section VI(D) of this final judgment. Absent written notice that the United States does not object to the proposed acquirer or upon objection by the United States, a divestiture proposed under section V or section VI shall not be consummated. Upon objection by either defendant under section VI(D), a divestiture proposed under section VI shall not be consummated unless approved by this court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to section V or VI of this final judgment.

IX. Affidavits

(A) Within fifteen calendar days of the filing of the complaint in this matter, and every thirty calendar days thereafter until the divestiture(s) has been completed under section V or VI, defendants each shall deliver to the United States and the State Attorneys General an affidavit as to the fact and manner of its compliance with section V or VI of this final judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the divestiture assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objective by the United States, after consultation with the State Attorneys General, to information provided by defendants, including limitation on information, shall be made within five calendar days of receipt of such affidavit.

(B) Defendants shall keep all records of all efforts made to preserve and divest the divestiture assets until one year after such divestiture has been completed.

X. Compliance Inspection

(A) For the purposes of determining or securing compliance with this final judgment, or of determining whether the final judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice or the State Attorneys General, including consultants and other persons retained or designated thereby, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or duly authorized representatives of the State Attorneys General, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the United States' or State Attorneys General's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in their possession, custody, or control relating to any matters contained in this final judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

(B) Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of

the Antitrust Division, or upon written request of duly authorized representatives of the State Attorneys General, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this final judgment as may be requested.

(C) No information or documents obtained by the means provided in this section shall be divulged by plaintiffs to any person other than an authorized representative of the executive branch of the United States, or of the State Attorneys General, except in the course of legal proceedings to which the United States or State Attorneys General is a party (including grand jury proceedings), or for the purpose of securing compliance with this final judgment, or as otherwise required by law.

(D) If at the time defendants furnish information or documents to the United States, they represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page fo such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the divestiture assets during the term of this final judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this final judgment to apply to this court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this final judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this court grants an extension, this final judgment shall expire ten years from the date of its entry.

XIV. Notice

For purposes of this final judgment, any notice or other communication shall be given to the persons at the addresses set forth below (or such other addresses as the United States or State Attorneys General may specify in writing to New Times or Village Voice Media):

For the United States: James R. Wade, Chief, Litigation III Section, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

For the Ohio Attorney General: Alan C. Witten, Antitrust Section, Ohio Attorney General's Office, 140 East Town Street, 12th Floor, Columbus, Ohio 43215.

For the California Attorney General: Winston H. Chen, Deputy Attorney General, Office of the California Attorney General, 300 South Spring Street, Los Angeles, California 90013.

XV. Public Interest Determination

Entry of this final judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b), files this competitive impact statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

On January 27, 2003, the United States filed a civil antitrust complaint pursuant to section 4 of the Sherman Act, as amended, 15 U.S.C. 4, against defendants Village Voice Media, LLC, (''Village Voice Media'') and NT Media, LLC, (''New Times''), the nation's two largest chains of alternative newsweeklies. The compliant alleges that defendants entered into and engaged in a combination and conspiracy to suppress and eliminate advertising and editorial competition by allocating the markets for advertising in, and readers of, alternative newsweeklies in Cleveland, Ohio and Los Angeles, California. Defendants' market allocation agreement, as the complaint further alleges, is an unreasonable restraint of interstate trade that is per se illegal under section 1 of the Sherman Act, 15 U.S.C. 1.

The compliant seeks an order to terminate defendants' illegal agreement, to enjoin future conduct in furtherance of any such agreement, and to obtain such other equitable relief necessary to restore competition for the benefit of advertisers and readers in Cleveland and Los Angeles.

The United States filed simultaneously with the complaint a proposed final judgment and a hold separate stipulation and order, which constitute the parties' settlement.

This proposed final judgment, as explained more fully below, (i) enjoins Village Voice Media and New Times from taking any actions in furtherance of, or required under, their per se illegal market allocation agreement; (ii) requires defendants to divest all the assets used in connection with the publication of the New Times Los Angeles (''New Times LA''), New Times's alternative newsweekly in Los Angeles, and the Cleveland Free Times, Village Voice Media's alternative newsweekly in Cleveland, for the purpose of establishing a viable competitive alternative newsweekly in both geographic markets; (iii) permits any advertiser that entered into an advertising or promotion contract after October 1, 2002, with Village Voice Media's alternative newsweekly, the LA Weekly, or New Time's alternative newsweekly, the Cleveland Scene, for a specified time and solely at the advertiser's option, to terminate such contract without penalty or threat of retaliatory action; (iv) requires Village Voice Media and New Times to notify the United States for the next five years of any future acquisitions or sales of alternative newsweeklies; (v) prevents both defendants from enforcing any non-compete contractual provisions against any current or former employees involved in their Cleveland or Los Angeles alternative newsweeklies; and (vi) prevents each defendant and its officers, directors, agents, and employees, from entering into, continuing, maintaining, or renewing any market or customer allocation agreement.

The hold separate stipulation and order, which were filed with this Court on January 27, 2003, and the proposed final judgment require New Times and Village Voice Media to maintain and preserve the assets to be divested under the proposed final judgment to ensure that the assets remain economically viable until divested.

The United States, New Times, and Village Voice Media have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed final judgment would terminate this action, except that this court would retain jurisdiction to construe, modify, and enforce the proposed final judgment and to punish violations thereof.

1. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Defendants

1. Village Voice Media

Village Voice Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. Prior to its agreement with New Times to shut down its Cleveland Free Times alternative newsweekly, Village Voice Media owned alternative newsweeklies in New York City, Minneapolis-St. Paul, Cleveland, Seattle, Nashville, Orange County, and Los Angeles. Village Voice Media's revenues in 2001 were approximately $92 million.

Village Voice Media's Cleveland Free Times, launched in 1992, grew to become Ohio's largest alternative newsweekly, with an average weekly circulation that tripled in recent years to over 80,000. With a decade of covering news, arts, and music in Northeast Ohio, the Cleveland Free Times was popular with local retailers, concert promoters, clubs, and national advertisers, who sought to reach the weekly's demographic of active, young adults. Until its sudden closing on October 2, 2002, it directly competed against New Times's alternative newsweekly, the Cleveland Scene.

Village Voice Media's LA Weekly was launched in 1978 with the mission, according to Village Voice Media, to cover political, cultural, and social issues often overlooked by the mainstream daily newspaper, and provide readers with each week's most comprehensive events listing. With a weekly circulation of approximately 215,000 and an average 200 pages per issue, Village Voice Media's LA Weekly has the highest page count of any alternative newsweekly in the United States. Until October 3, 2002, its direct competitor was New Times's alternative newsweekly, the New Times LA.

2. New Times

NT Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Phoenix, Arizona. Prior to its agreement with Village Voice Media to shut down its New Times LA alternative newsweekly, New Times published 12 award-winning alternative newsweeklies (nine of which New Times had acquired since 1991) in Phoenix, Cleveland, Los Angeles, San Francisco, Oakland-Berkeley, Broward-Palm Beach, Miami, Denver, St. Louis, Kansas City, Dallas, and Houston. New Times's revenues in 2001 were approximately $104 million.

New Times in the summer of 1996 purchased two established alternative newsweekies, the LA Reader and LA View, for approximately $4 million, and consolidated and renamed them the New Times LA. To better compete against the LA Weekly, New Times grew its newsweekly's circulation to approximately 120,000 copies, aggressively discounted its advertising rates, and offered award-winning journalism.

In August 1998, New Times acquired the Cleveland Scene, a local music publication established in 1970. New Times repositioned and reformatted the Cleveland Scene to compete directly and aggressively against Cleveland's other alternative newsweekly, Village Voice Media's Cleveland Free Times.

B. The Alternative Newsweekly Industry

As the name suggests, alternative newsweeklies provide an alternative perspective to the established news-gathering organizations. In 1955, Village Voice Media's predecessors launched the first alternative newsweekly, The Village Voice, in New York City. Since then, the popularity of alternative newsweeklies has increased dramatically, fueled by the typically ''anti-establishment'' perspective of these publications which emerged during the 1960's and 1970's. Today over 125 alternative newsweeklies are published throughout the United States. Their popularity with readers continues to be driven largely by a unique editorial mix of politics, investigative reporting, and entertainment issues, often presented with a somewhat controversial or highly opinionated slant, and all of which is focused on decidedly local issues.

The local nature of these alternative newsweeklies, with their in-depth coverage of local happenings in the arts, music, politics, and entertainment fields, makes them particularly attractive to advertisers hoping to reach a young, educated, and urban audience in a cost-effective manner. Between 1990 and 2000, the collective weekly circulation of alternative newsweeklies has more than doubled to 7.8 million. Likewise, advertising expenditures in alternative newsweeklies have jumped, exceeding $500 million in the United States in 2000.

Two major chains dominate the alternative newsweekly industry: defendants New Times and Village Voice Media. New Times, the leading chain, distributes each week over 1.1 million copies of its various alternative newsweeklies. Village Voice Media operates on a similar scale, with a weekly circulation of over 800,000 for its alternative newsweeklies.

C. The Competition Between Village Voice Media and New Times

Prior to the defendants' per se illegal market allocation agreement, the only two geographic markets in which defendants competed head-to-head for readers and advertisers were Cleveland, Ohio and Los Angeles, California. This competition between the defendants' alternative newsweeklies provided both readers and advertisers with better editorial coverage, heavily discounted advertising rates, and higher quality service.

In Cleveland, New Times's alternative newsweekly, the Cleveland Scene, fought against the newly matched Village Voice Media's newsweekly, the Cleveland Free Times. From 1998 (when New Times purchased the Cleveland Scene) until October 2, 2002, the competition between the Cleveland Scene and the Cleveland Free Times was fierce. It resulted in steep discounts off the defendants' published advertising rate cards, better customer service, increased promotions, and a host of value-added services offered at little cost to the advertiser, such as ''buy one ad get one free'' deals, larger ads for the same price, or free upgrades of ads from black and white to color.

After New Times reformatted the Cleveland Scene to compete directly and aggressively against the Cleveland Free Times, the editorial competition between the defendants' alternative newsweeklies was similarly intense. The Cleveland Scene and the Cleveland Free Times responded to the other's editorial changes and improvements by introducing new or better features or increasing investigative journalism to recapture the readers' attention to its publication, both of which were distributed each Wednesday throughout Cleveland.

Likewise, from 1996 until October 3, 2002, advertisers benefitted from the competition between New Times LA and Village Voice Media's LA Weekly with lower advertising rates, better advertisement placement and improved service. Even if they did not advertise in the New Times LA, advertisers could leverage that alternative newsweekly in their negotiations with the older, entrenched LA Weekly. Moreover, the New Times LA discounted significantly off of its published rate cards—which benefitted smaller advertisers that could not afford the LA Weekly's higher advertising rates.

Both the LA Weekly and New Times LA, which were distributed each Thursday throughout Los Angeles, aggressively competed for readers. The different, and at times opposing, views and positions of the defendants' competing alternative newsweeklies provided readers with alternative viewpoints of important local events affecting social, political, esthetic, and moral issues. Since 1997, the New Times LA garnered numerous journalism awards—including over 30 awards from the Greater Los Angeles Press Club—for its investigative and news reporting.

D. The Illegal Market Allocation Agreement

In July 2002, New Times proposed to Village Voice Media to end their competitive war by agreeing to ''swap'' markets: New Times would close its New Times LA publication, making Village Voice Media's LA Weekly, in the words of Defendants' executives, the ''only alternative weekly in LA.'' Likewise, Village Voice Media would close its Cleveland Free Times, leaving New Times's Cleveland Scene ''the only alternative weekly in Cleveland.'' By August 12, 2002, Defendants agreed in principle to swap markets. Over the next two months, New Times's and Village Voice Media's senior executives and attorneys negotiated the terms of their contracts to effectuate their proposed market swap. As part of this agreement, Village Voice Media would compensate New Times for withdrawing from the larger Los Angeles market by paying New Times $9 million in cash. The proposed deal ended all competition between defendants, and created an opportunity for the remaining alternative newsweekly in each market to raise advertising rates.

On October 1, 2002, Village Voice Media's and New Times's senior executives signed two written contracts, each expressly contingent on the other, which sealed their per se illegal market allocation arrangement. Village Voice Media paid New Times a net amount of $9 million in cash at closing ($11 million to New Times less $2 million paid to Village Voice Media). The defendants' written contracts did not involve the transfer or integration of any meaningful economic assets associated with those shuttered papers. New Times shifted the New Times LA's accounts receivable, customer lists, and advertising contracts to Village Voice Media, who, in exchange, shifted the Cleveland Free Times's accounts receivable, customer lists, advertising contracts, and street boxes to New Times. These advertisers were already well known to defendants because each defendant had attempted in the past to sign up the other's advertisers. Moreover, the net assets (primarily the accounts receivable) actually transferred in Los Angeles accounted, according to the defendants' calculations, for only seven percent of their $11 million sale price in Los Angeles, and 24 percent of their $2 million sale price in Cleveland.

The defendants' written contracts specifically excluded from the sale most of the assets associated with the actual operations and goodwill of the two shuttered newsweeklies, notably: (i) The advertising personnel, writers, editors, and other employees, (ii) leases, offices, and computer equipment, (iii) back issues and archived materials of the closed publications, including editorial articles, photos, and art work, and (iv) the logos, trade names, trademarks, and copyrights associated with the closed publications. New Times specifically retained the rights to its New Times LA logo or ''flag,'' and Village Volice Media specifically retained the rights to its Cleveland Free Times logo or ''flag,'' but both defendants were contractually prevented from using, or letting anyone else use, these logos.

As defendants acknowledged in their internal documents, the goal of their agreement was to end their competitive war and to give one another a monopoly in each market. Consequently, the defendants' written contracts were designed to ensure that neither defendant would face competition in its ''protected'' market. To further that end, the defendants' contracts contained:

- Essentially identical ''non-competition'' clauses in which each defendant agreed not to publish an alternative newsweekly in the other defendant's market for at least ten years;
- Commitments by each defendant not to solicit or attempt to induce any advertiser to advertise in a competing publication over the next decade;
- Requirements that each Defendant redirect any traffic on its closed weekly's website to the other defendant's website for a period of one year, and to prominently state on its website that its alternative newsweekly was no longer in circulation;
- Provisions to deter any new competitive entry into each defendant's protected market. For example, over the next decade, Village Voice Media agreed not to use, and to prevent anyone else from using, the name ''Cleveland Free Times'' in connection with any current or future publication in the greater Cleveland area. Similarly, over the next decade, New Times agreed not to use, and to prevent anyone else from using, the name ''New Times LA'' or any variant containing ''New Times'' in connection with any current or future publication in the greater Los Angeles area; and
- Prohibitions on selling or otherwise making available any of the fixed assets associated with each defendant's closed publication to any of its former employees, consultants, or independent contractors in the affected markets.

After defendants executed their written contracts on October 1, 2002, defendant Village Voice Media closed down its Cleveland Free Times alternative newsweekly the next day, leaving New Time's Cleveland Scene the only alternative newsweekly in Cleveland, Ohio. Likewise, on October 2, 2002, New Times informed its New Times LA staff that it was shutting down immediately, leaving Village Voice Media's LA Weekly the only alternative newsweekly distributed throughout the greater Los Angeles area.

E. Competitors' Allocation of Geographic Markets Is an Unreasonable Restraint of Trade That is Per Se Illegal

The Supreme Court has long held that territorial allocation schemes among direct competitors are naked restraints of trade with no purpose except stifling competition. *United States* v. *Topco Assoc.,* 405 U.S. 596, 608 (1972) (citations omitted); *see also Addyston Pipe & Steel Co.* v. *United States,* 175 U.S. 211 (1899), *modifying and aff'g* 85 F. 271 (6th Cir. 1898) (Taft, J.); *Citizen Publ'g Co.* v. *United States,* 394 U.S. 131, 139–40 (1969)(applying *per se* standard where defendants' ''market control'' agreement comported neither with antitrust laws nor with First Amendment). As recently as 1990, the Supreme Court repeated that such market allocation agreements are classic examples of a *per se* violation of the Sherman Act. *Palmer* v. *BRG of Georgia, Inc.,* 498 U.S. 46 (1990).

Accordingly, these market allocation agreements—whereby competitors agree to divide or allocate among themselves certain geographic areas—are condemned as *per se* violations of section one of the Sherman Act. Given their pernicious effect on competition and lack of any redeeming virtue, these market allocation agreements are conclusively presumed to be unreasonable, without the need for an elaborate inquiry into the precise harm that they caused or the potential business justification for their use. *Topco,* 405 U.S. at 607 (quoting *Northern Pacific Ry. Co.* v. *United States,* 356 U.S. 1, 5 (1958)). Consequently, competitors cannot agree to split or ''swap'' markets.

This is not a case in which the territorial restraints were ancillary to a lawful business transaction. Such ancillary restraints are not illegal when reasonably necessary to protect the purchaser of the full enjoyment of the legitimate fruits of the contract. *Addyston Pipe & Steel,* 85 F. at 283. The Antitrust Division examines the substance, rather than the form, of the parties' agreement in evaluating its potential effect. When the restraints of trade are reasonably ancillary to the agreement's central pro-competitive purposes, then the Division will analyze the restraints under the rule-of-reason standard. Where the central purpose of the parties' agreement, however, is to unreasonably restrain competition by allocating territories and terminating competition among themselves and by preventing any significant entrant from competing, then the entire agreement will be treated as *per se* illegal. As Judge (later Mr. Chief Justice) Taft noted over 100 years ago, ''[t]here is in such contracts no main lawful purpose, to subserve which partial restraint is permitted, and by which its reasonableness is measured, but the sole object is to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster.'' *Id.*

That is the case, here, where the central purpose and effect of the defendants' agreement were to unreasonably restrain competition, by allocating the only two markets in which they compete, so that after swapping these markets, defendants would face no significant direct competitor. Five factors support this conclusion.

First, this was not a case where the underlying agreement created a distinctive product, and thereby increased competition in the alternative newsweekly industry generally, or in Cleveland or Los Angeles, specifically.[1] The defendants' restraints on competition were not essential for, or even beneficial to, the products, which in this case are alternative newsweeklies, to be made available in the first place. After all, before their market allocation agreement, defendants vigorously competed through their own alternative newsweeklies. As a direct result of the defendants' agreement to withdraw from each other's market, advertisers and readers were left with fewer meaningful options and the prospect of higher advertising rates. Consequently, the defendants' agreement on its face did not promote enterprise and productivity at the time it was adopted.

Second, the clear intent and explicit design of the defendants' contractual provisions were to eliminate competition in these markets and prevent others from meaningfully entering. Village Voice Media agreed to shut down its Cleveland alternative newsweekly, solely on the condition that New Times shuts down its newsweekly in Los Angeles. The contracts' essentially identical ''non-competition'' clauses prevented each defendant from publishing an alternative newsweekly in the other defendant's market for at least 10 years. Each defendant also agreed not to solicit or attempt to induce any advertiser to advertise in a competing publication over the next decade. Defendants restrained each other from meaningfully using the closed papers' logos and prevented anyone else from using these valuable assets in connection with any current or future publication in the Los Angeles or Cleveland areas. Furthermore, each defendant agreed not to sell or otherwise make available the fixed assets associated with its closed publication to any of its former employees, consultants or independent contractors, who might seek to rejuvenate the closed alternative newsweekly, and restore competition in the marketplace.

Third, The anticompetitive restraints at issue cannot be said to be ancillary to the sale of assets, given that so few assets were actually transferred. None of the assets associated with the actual operations and goodwill of the defendants' two shuttered newsweeklies were sold or integrated into the other defendant's newsweekly. The assets defendants actually transferred (which were mainly the accounts receivable of the shuttered paper) were of little value, even by defendants' own calculations.

Fourth, the anticompetitive purpose of the defendants' agreements is evident from the defendants' documents, which confirm that they entered into this agreement to end their competitive war, and grant each another a monopoly in the respective markets. The defendants' documents are replete with evidence that shows—and the testimony of the defendants' former employees and current advertisers confirms—that the defendants' market allocation agreement will end all meaningful competition, and enable each remaining alternative newsweekly, as the ''only game in town,'' to raise advertising rates by a significant, non-cost based, amount.

Fifth, the fact that defendants planned to, and in some cases did, implement such rate hikes after allocating markets on October 2, 2002, confirms that the defendants' agreement was formed for the purpose, and with the effect, of raising advertising rates.

II. Explanation of the Proposed Final Judgment

The proposed final judgment requires divestiture that will restore the editorial and advertising competition in alternative newsweeklies published an distributed in Cleveland, Ohio and Los Angeles, California. Within 30 calendar days after January 27, 2003, the date the complaint was filed, defendants must divest the assets used in the publication of New Times's alternative newsweekly, the New Times LA, and Village Voice Media's alternative newsweekly, the Cleveland Free Times, to an acquirer or acquirers that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the alternative newsweekly business.[2] This relief has been tailored to ensure that the ordered divestitures restore the competition that has been eliminated as a result of the defendants' market allocation agreement and further prevent either defendant from exercising market power in the Cleveland of Los Angeles markets.

Given that defendants has closed the Cleveland Free Times and New Times LA in October 2002, a quick and effective remedy was necessary to reestablish competition. Consequently, defendants must use their best efforts to divest assets within 30 days. The proposed final judgment provides that the assets be divested in such a way as to satisfy the United States, in its sole discretion, that the acquirer can and will use the assets as part of a viable, ongoing business engaged in the publication of an alternative newsweekly in Cleveland, Ohio and Los Angles, California. Until the ordered divestitures take place, defendants must

[1] *See, e.g., Broadcast Music, Inc.* v. *Columbia Broad, Sys., Inc.,* 441 U.S. 1 (1979)(challenged agreement created distinctive product of access to vast musical repertoire).

[2] The assets to be divested are defined and described in section II of the proposed final judgment as the ''*New Times LA* Assets'' and ''*Cleveland Free Times* Assets.'' Defendants in essence must divest all assets that were formerly employed in the publication of the *New Times LA* and *Cleveland Free Times* alternative newsweeklies, including, but not limited to, all rights to the *New Times LA*, *LA Reader, LA View* and *Cleveland Free Times* names (including any derivations thereof); all rights to the *New Times LA* and *Cleveland Free Times* website; all rights to the print and electronic archives of *New Times LA* and *Cleveland Free Times* publications and articles on a non-exclusive basis; and all other tangible and intangible assets used in the publication of the *New Times LA* and *Cleveland Free Times.*

cooperate with any perspective purchasers.

If defendants do not accomplish the ordered divestitures within the prescribed 30-day time period, then section VII of the proposed final judgment provides that this court will appoint a trustee, selected by the United States, to complete the divestitures.

If a trustee is appointed, the proposed final judgment provides that defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which its is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States, the State Attorney General of Ohio and California, and this Court setting forth the trustee's efforts to accomplish the required divestiture. If at the end of three months after that appointment, the divestiture has not been accomplished, then the trustee, the United States, and the State Attorneys General of Ohio and California will make recommendations to this court, which shall enter such orders as appropriate to carry out the purpose of the final judgment.

In addition to ordering the divestiture of the assets used in the publication of the *Cleveland Free Times* and *New Times LA*, the proposed final judgment places several additional requirements on defendants.

First, Village Voice Media and New Times are enjoined under the proposed final judgment from taking any actions in furtherance of, or required under, both their written and oral market allocation agreements.

Second, for a period of two years commencing from January 27, 2003, Village Voice Media and New Times must allow advertisers that entered into certain written or oral contracts to advertise in, or engage in a promotion with, the LA Weekly or Cleveland Scene, solely at the advertiser's option, the right to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. The advertising or promotion contracts that may be terminated are those entered into beginning October 1, 2002, and for the Cleveland advertisers, ending 30 days after the assets of the Cleveland Free Times are sold, and for the Los Angeles advertisers, 30 days after the assets of the New Times LA are sold.

Third, for a period of five years commencing from January 27, 2003, each defendant cannot directly or indirectly enter into any merger, sale, or joint venture involving any of its alternative newsweeklies or national advertising networks or acquire any assets of any alternative newsweekly without first notifying the United States 30 days in advance. If within this 30-day period, the United States requests additional information, defendants cannot consummate the proposed transaction or agreement until 20 days after submitting all such additional information.

Fourth, for any employee who was involved in the publication of the Cleveland Free Times or the New Times LA as of October 1, 2002, any non-compete provision imposed by defendants on such employee shall be null and void. Moreover, from the date the complaint was filed, January 27, 2003, to one year from the divestiture of the Cleveland Free Times assets, neither Village Voice Media nor New times can enforce any other non-compete contractual provisions against any of their former or current employees in the greater Cleveland area. Likewise, from January 27, 2003, to one year from the divestiture of the New times LA assets, defendants cannot enforce any other non-compete contractual provisions against any of their former or current employees in the greater Los Angeles area.

Fifth, the final judgment enjoins each defendant, and its officers, directors, agents, and employees from entering into, continuing, maintaining, or renewing this, or any other, market or customer allocation agreement, or from engaging in any other conspiracy, agreement, or understanding having a similar purpose or effect, and from adopting or following any practice having a similar purpose or effect.

III. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suite in Federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed final judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed final judgment has no effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against defendants.

IV. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed final judgment may be entered by this court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this court's determination that the proposed final judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed final judgment within which any person may submit to the United States written comments regarding the proposed final judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this competitive impact statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed final judgment at any time prior to entry. the comments and the response of the United States will be filed with this court and published in the **Federal Register.**

Written comments should be submitted to: James R. Wade, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

The proposed final judgment provides that this court retains jurisdiction over this action, and the parties may apply to this court for any order necessary or appropriate for the modification, interpretation, or enforcement of the final judgment.

V. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed final judgment, a full trial on the merits against defendants. Given the inherent delays of a full trial and the appeals process, the United States is satisfied that the prompt divestiture of the Cleveland Free Times assets and New Times LA assets, coupled with the other relief contained in the proposed final judgment, will quickly establish, preserve and ensure a viable competitor in the publication of alternative newsweeklies in Cleveland, Ohio and Los Angeles, California. Thus, the United States is convinced that the proposed final judgment, once implemented by the court, will present

defendants from illegally benefitting from their market allocation agreement.

VI. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed final judgment is ''in the public interest.'' In making that determination, the court ''*may* consider''—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[3] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[4]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)); *see also Microsoft,* 56 F.3d at 1458. ''Indeed, the district court is without authority to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.' '' *United States* v. *Microsoft Corp.,* 231 F. Supp. 2d 144, 154 (D.D.C. 2002) (quoting *Microsoft,* 56 F.3d at 1459). Precedent requires that:

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed final judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest.'' [6]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''Construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Microsoft,* 56 F.3d at 1459–60.

VII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed final judgment.

Dated: February 3, 2003.

Respectfully submitted,

Maurice E. Stucke,
Carol A. Bell,
Matthew J. Bester,

Attorneys for the United States, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530. (202 305–1489 (telephone). (202) 514–1517 (facsimile). Maurice.Stucke@usdoj.gov.

Jon Smibert,

Attorney for the United States, U.S. Department of Justice, Antitrust Division, Cleveland Field Office, 55 Erieview Plaza, Suite 700, Cleveland, OH 44114–1816.

Certificate of Service

I hereby certify that I served a copy of the foregoing competitive impact statement via first class United States mail, this 3rd day of February, 2003, on:

Melanie Sabo,

Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006–5209. Counsel for Defendant Village Voice Media, LLC.

Joseph Kattan, P.C.

Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036. Counsel for Defendant NT Media, LLC.

Matthew Bester,

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[3] 119 Cong. Rec. 24,598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the competitive impact statement and response to comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

[4] *United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.,* 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.,* 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[5] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (emphasis added); *see also United States* v. *BNS, Inc.,* 858 F.2d at 462–63 (district court may not base its public interest determination on antitrust concerns in markets other than those alleged in government's complaint); *United States* v. *Gillette Co.,* 406 F. Supp. at 716 (court will not look at settlement ''hypercritically, nor with a microscope''); *United States* v. *National Broad. Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978) (same).

[6] *Microsoft,* 231 F. Supp. 2d at 153 (quoting *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citation omitted), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983)); *see also United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (standard is not whether decree is one that will best serve society, but whether it is within the reaches of the public interest); *United States* v. *Carrols Dev. Corp.,* 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978) (standard is not whether decree is the best of all possible settlements, but whether decree falls within the reaches of the public interest).

Attorney for the United States, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530. (202) 353–4391.

[FR Doc. 03–3441 Filed 2–11–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 2, 2002, Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II

The firm will manufacturer these controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 14, 2003.

Dated: February 5, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3502 Filed 2–11–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 19, 2002, and published in the **Federal Register** on March 12, 2002 (67 FR 11142), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by renewal and letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Fentanyl (9801)	II

The firm plans to bulk manufacture amphetamine, methamphetamine and fentanyl for customers and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into a non-controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C. section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation 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 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 5, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 03–3503 Filed 2–11–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 23, 2002, and published in the **Federal Register** on September 5, 2002 (67 FR 58857), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to bulk manufacture methylphenidate to produce a commercial product and manufacture the dextropropoxyphene to supply the generic market.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C., section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation 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 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the a basic classes of controlled substances listed above is granted.

Dated: February 5, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3504 Filed 2–11–03; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03–012]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Nancy Kaplan, Code AO, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: BOREAS Data User Satisfaction Survey.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: NASA will utilize the information collected to improve the data, documentation, ordering processes, and services provided to users of BOREAS data.

Affected Public: Not-for-profit institutions; business or other for-profit; Federal government; State, local or tribal government.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Hours Per Request: 30 min.

Annual Burden Hours: 25.

Frequency of Report: On occasion.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 03–3426 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03–011]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). NASA will utilize the information collected to expedite reporting of government-owned, contractor-operated vehicles as required by Executive Order 13149.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Federal Automotive Statistical Tool (FAST) Collection.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: Data gathered in this report will enable NASA transportation managers to control costs and energy use by contractors operating government-owned vehicles.

Affected Public: Business or other for-profit.

Number of Respondents: 93.

Responses Per Respondent: 1.

Annual Responses: 93.

Hours Per Request: 15 min/vehicle.

Annual Burden Hours: 425.

Frequency of Report: Annually.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 03–3427 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–014)]

NASA Advisory Council, Space Science Advisory Committee Structure and Evolution of the Universe Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Thursday, February 27, 2003, 8 a.m. to 5:30 p.m., and Friday, February 28, 2003, 8 a.m. to 1 p.m.

ADDRESSES: Jet Propulsion Laboratory, Building 167 Conference Room, 4800 Oak Grove Drive, Pasadena, California 91109.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Status of Astronomy and Physics Programs.

—Structure and Evolution of the Universe Theme Update.

—Review of Space Science Strategic Plan.

—Review of Structure and Evolution of the Universe Program at the Jet Propulsion Laboratory.

Due to increased security measures at the NASA Jet Propulsion Laboratory (JPL), interested members of the public including the news media must contact Helen Paley (818) 354–6427, Cecil Brower (818) 354–6974, or Joe Aguirre (818) 354–0890 no later than Friday, February 21, 2003, by 12 noon p.d.t. to make arrangements for badging, parking, and being escorted while at JPL. Access to JPL will be limited to those who show proper photo identification and who have made prior arrangements to attend.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3508 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–013)]

NASA Advisory Council, Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Thursday, February 27, 2003, 8 a.m. to 5:30 p.m., and Friday, February 28, 2003, 8 a.m. to 1 p.m.

ADDRESSES: Jet Propulsion Laboratory, Building 180, Room 703C, 4800 Oak Grove Drive, Pasadena, California 91109.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—OSS Strategic Plan.
—Astrobiology Roadmap.
—National Astrobiology Institute.
—Origins Technology.
—Theme Scientist Update.

Due to increased security measures at the NASA Jet Propulsion Laboratory (JPL), interested members of the public including the news media must contact Helen Paley (818) 354–6427, Cecil Brower (818) 354–6974, or Joe Aguirre (818) 354–0890 no later than Friday, February 21, 2003, by 12 noon p.d.t. to make arrangements for badging, parking, and being escorted while at JPL. Access to JPL will be limited to those who show proper photo identification and who have made prior arrangements to attend.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3509 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of three currently approved information collections. The first information collection is used for requesting permission to use privately owned equipment to microfilm archival holdings in the National Archives of the United States and Presidential libraries. The second information collection is used for requesting permission to film, photograph, or videotape at a NARA facility for news purposes. The third information collection is used for requesting permission to use NARA facilities for events. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 14, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Request to Microfilm Records.
OMB number: 3095–0017.
Agency form number: None.
Type of review: Regular.
Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.
Estimated number of respondents: 5.
Estimated time per response: 10 hours.
Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).
Estimated total annual burden hours: 50.
Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming, and to schedule use of the limited space available for filming.

2. *Title:* Request to film, photograph, or videotape at a NARA facility for news purposes.
OMB number: 3095–0040.
Agency form number: None.
Type of review: Regular.
Affected public: Business or other for-profit, not-for-profit institutions.
Estimated number of respondents: 660.
Estimated time per response: 10 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 110.
Abstract: The information collection is prescribed by 36 CFR 1280.48. The collection is prepared by organizations that wish to film, photograph, or videotape on NARA property for news purposes. NARA needs the information to determine if the request complies with NARA's regulation, to ensure protections of archival holdings, and to schedule the filming appointment.

3. *Title:* Request to use NARA facilities for events.
OMB number: 3095–0043.
Agency form number: NA 16008.
Type of review: Regular.
Affected public: Not-for-profit institutions, individuals or households, business or other for-profit, Federal government.
Estimated number of respondents: 52.
Estimated time per response: 30 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 26.
Abstract: The information collection is prescribed by 36 CFR 1280.74. The collection is prepared by organizations that wish to use NARA public areas for an event. NARA uses the information to determine whether or not we can accommodate the request and to ensure that the proposed event complies with NARA regulations.

Dated: February 6, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–3451 Filed 2–11–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

IMLS Survey of Educational and Training Opportunities Available for Library Support Staff in the U.S.: Pre-professionals, Paraprofessionals, Library Technicians; Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of requests for New Information Collection Approval.

SUMMARY: The Institute of Museum and Library Studies (IMLS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 29, 2002, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until March 14, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden for the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

ADDRESSES: For a copy of the form contact: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, DC 20506.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Survey of Education and Training Opportunities for Pre-/Paraprofessional Library (Support) Staff

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. Institute of Museum and Library Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Institutions offering education programs or providing training courses targeted to pre-/paraprofessional library (support) staff including academic institutions, state library agencies, library associations, library consortia or cooperatives, and commercial training entities.

Other: Select county library systems and individual libraries.

This collection will help to identify and describe programs (*e.g.*, associate degrees; bachelor degrees; certificates) and individual course/training offerings that are targeted toward non-MLS-degreed library workers. A major outcome of this project will be an inventory of resources for the library community to help identify specific programs/instruction. By identifying the population of organizations administering paraprofessional training and by describing the kinds of courses offered, this study will draw attention to topics (and areas of the country) where this type of education and training coursework is and is not available.

The resulting baseline inventory will be used to document the adequacy of—and analyze trends within—educational and training programs and courses throughout the United States designed to develop library staff who do not currently possess a Master's in Library Science (MLS) degree. Within the limitations of any one study, we will seek ways to identify how these institutions strive to advance the library support staff worker beyond current positions, responsibilities, or capabilities. Through this research effort, we will attempt to isolate elements that contribute to success and highlight those that have incorporated these factors into their programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 300 respondents. It is estimated that each survey will take 0.5 hours (30 minutes to complete) and, as the average respondent will have two programs or courses for which to complete a survey, the average respondent will require one hour to complete the data collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the survey is 300 annual burden hours.

Dated: February 4, 2003.

Mamie Bittner,

Department Clearance Officer, Institute of Museum and Library Services.

[FR Doc. 03–3422 Filed 2–11–03; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Safeguards and Security; Notice of Meeting

For the closed meeting of the ACRS Subcommittee on Safeguards and Security scheduled for February 21, 2003, starting time has been changed to 8:30 a.m. instead of 1 p.m. in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

Notice of this meeting was published in the **Federal Register** on Tuesday, February 4, 2003 (68 FR 5667). All other items pertaining to this meeting remain the same as previously published.

Further information contact: Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: February 5, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–3483 Filed 2–11–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Plant Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission tours.

SUMMARY: A Postal Rate Commissioner and several advisory staff members will tour postal and mailers' facilities in February and March. The purpose of the tours is to observe printing and mailing operations.

DATES: 1. February 13, 2003: Dulles, Virginia postal facility (anticipated for staff only).

2. March 3, 2003: Postal facility and Quebecor World, Inc.

3. March 4, 2003: Postal facility and R.R. Donnelley Logistics.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 200–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 03–3452 Filed 2–11–03; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 204–3—SEC File No. 270–42, OMB Control No. 3235–0047

Rule 203–2 and Form ADV–W—SEC File No. 270–40, OMB Control No. 3235–0313

Rule 203–3 and Form ADV–H—SEC File No. 270–481, OMB Control No. 3235–0538

Rule 0–2 and Form ADV–NR—SEC File No. 270–241, OMB Control No. 3235–0240

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Rule 204–3 under the Investment Advisers Act of 1940.'' Rule 204–3, the ''brochure rule,'' currently requires an investment adviser to deliver, or offer, to prospective clients a disclosure statement containing specified information as to the business practices and background of the adviser. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Rule 204–3 also currently requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. On April 5, 2000, the Commission proposed amendments to rule 204–3 in conjunction with amendments to Form ADV. The proposed amendments to rule 204–3 would require SEC-registered advisers to deliver their brochure and appropriate brochure supplements at the start of the advisory relationship, and to offer to deliver the brochure and brochure supplements annually. The proposed rule amendments also would require that advisers deliver updates to the brochure and brochure supplements to clients whenever information in the brochure becomes materially inaccurate. The updates could take the form of a reprinted brochure or a ''sticker'' containing the updated information.

The respondents to this information collection would be each investment adviser registered with the Commission. The Commission has estimated that compliance with proposed rule 204–3 would impose a burden of approximately 694 hours annually based on an average adviser having 670 clients. Based on this figure, the Commission estimates a total annual burden of 5,412,643 hours for this collection of information.

The title for the collection of information is ''Rule 203–2 and Form ADV–W under the Investment Advisers Act of 1940.'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 500 respondents annually filing for full withdrawal and approximately 500 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 500 hours ((500 respondents x .75 hours) + (500 respondents x .25 hours)).

The title for the collection of information is ''Rule 203–3 and Form ADV–H under the Investment Advisers Act of 1940.'' Rule 203–3 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to obtain a hardship exemption from the electronic filing requirements of the Investment Advisers Act. Rule 203–3 requires every person requesting a hardship exemption to file Form ADV–H with the Commission. The purpose of this collection of information is to permit advisers to obtain a hardship exemption, on a permanent or temporary basis, to not complete an electronic filing. The temporary hardship exemption permits advisers to make late filings due to unforeseen computer or software problems, while the continuing hardship exemption permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

The respondents to the collection of information are all investment advisers that are registered with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–H imposes a total burden of approximately 1 hour for an adviser. Based on our experience with hardship filings, we estimate that we will receive 10 Form ADV–H filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 10 hours for this collection of information.

The title for the collection of information is ''Rule 0–2 and Form ADV–NR under the Investment Advisers Act of 1940.'' Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and or regulatory actions against investment advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or managing agent of an SEC-registered adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR

imposes a total burden of approximately 1 hour for an adviser. Based on our experience with these filings, we estimate that we will receive 15 Form ADV–NR filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 15 hours for this collection of information.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: February 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3490 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–23C–1—SEC File No. 270–230, OMB Control No. 3235–0230;

Rule 19a–1—SEC File No. 270–240, OMB Control No. 3235–0216;

Rule 22d–1—SEC File No. 270–275, OMB Control No. 3235–0310;

Rule 30b2–1—SEC File No. 270–213, OMB Control No. 3235–0220;

Form ADV–E—SEC File No. 270–318, OMB Control No. 3235–0361;

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 23(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–23(c)] (''Investment Company Act'' or ''Act'') prohibits a registered closed-end investment company (''closed-end fund'' or ''fund'') from purchasing any security it issues except on a securities exchange, pursuant to tender offers, or under such other circumstances as the Commission may permit by rules or orders designed to ensure that purchases are made in a manner that does not unfairly discriminate against any holders of the securities to be purchased. Rule 23c–1 [17 CFR 270.23c–1] under the Act permits a closed-end fund that meets certain requirements to repurchase its securities other than on an exchange or pursuant to a tender.

A registered closed-end fund that relies on Rule 23c–1 may purchase its securities for cash if, among other conditions set forth in the rule, certain conditions are met: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the purchase is made at a price not above the market value, if any, or the asset value of the security, whichever is lower, at the time of the purchase; and (iii) if the security is stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of the class by letter or report addressed to all the stockholders of the class.

In addition, the issuer must file with the Commission, on or before the tenth day of the month following the date in which the purchase occurs, two copies of Form N–23C–1. The form requires the issuer to report all purchases it has made during the month, together with a copy of any written solicitation to purchase securities under Rule 23c–1 sent or given during the month by or on behalf of the issuer to ten or more persons.

The purpose of Rule 23c–1 is to protect shareholders of closed-end funds from fraud in connection with the repurchase by funds of their own securities. The purpose of the rule's requirement that the fund file Form N–23C–1 with the Commission is to allow the Commission to monitor funds' repurchase of securities as well as any written solicitation used by the fund to effect those repurchases, and to make that information available to the public. Investors may seek this information when determining whether to invest in certain funds.The requirement to file Form N–23C–1 applies to a closed-end fund only when the fund has repurchased its securities. If the information provided in the form were collected less frequently than a month after repurchases occur, the Commission and investing public would lack current information about closed-end funds that repurchase their own securities.

Commission staff estimates that each year approximately 30 closed-end funds use the repurchase procedures under Rule 23c–1, and that these funds file a total of 180 forms each year. The number of forms filed by each fund ranges from 1 to 12 depending on the number of months in which the fund repurchases its securities under Rule 23c–1. Commission staff estimates that each response requires 1 burden hour to prepare and file Form N–23C–1 with a copy of any written solicitation to purchase securities under the rule (if necessary).[1] The total annual burden of the rule's paperwork requirements is estimated to be 180 hours.

Section 19(a) [15 U.S.C. 80a–19(a)] of the Investment Company Act makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of the statement by rule.

Rule 19a–1 [17 CFR 270.19a–1] under the Act is entitled: ''Written Statement to Accompany Dividend Payments by Management Companies.'' Rule 19a–1 sets forth specific requirements for the information that must be included in statements made under Section 19(a) by registered investment companies. The rule requires that the statement indicate what portions of the payment are made from net income, net profits and paid-in capital.[2] When any part of the payment is made from net profits, the rule requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is

[1] The burden hour estimates are based upon consultation with lawyers and accountants familiar with the practices of fund boards and the staff of investment advisers.

[2] Rule 19a–1 requires, among other things, that every written statement made under Section 19 of the Act by or on behalf of a management company clearly indicate what portion of the payment per share is made from the following sources: net income for the current or preceding fiscal year, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties; accumulated undistributed net profits from the sale of securities or other properties; and paid-in surplus or other capital source.

subsequently determined to be significantly inaccurate, a correction must be made on a statement made under Section 19(a) or in the first report to shareholders following the discovery of the inaccuracy. The purpose of Rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which dividend payments are made.

The Commission staff estimates that approximately 8,400 portfolios of management companies may be subject to Rule 19a–1 each year.[3] The total average annual burden for Rule 19a–1 per portfolio is estimated to be approximately 30 minutes.[4] The total annual burden for all portfolios is therefore estimated to be approximately 4,200 burden hours.

Rule 22d–1 [17 CFR 270.22d–1] under the Act provides registered investment companies that issue redeemable securities an exemption from Section 22(d) of the Investment Company Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 6,100 series of funds that might rely on the rule is estimated to be 1,525 hours.

Rule 30b2–1 [17 CFR 30b2–1] under the Investment Company Act requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[5] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of registered investment companies.[6]

It is estimated that approximately 3,700 registered management investment companies are required to send reports to stockholders at least twice annually. In addition, under recently proposed amendments to Rule 30b2–1, if adopted, each registered investment company would be required to file with the Commission new form N–CSR, certifying the financial statements. The annual burden of filing the reports is included in the burden estimate of form N–CSR.

Form ADV–E [17 CFR 279.8] is the cover sheet for accountant examination certificates filed pursuant to Rule 206(4)–2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. Registrants each spend approximately three minutes, annually, complying with the requirements of the form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 5, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3491 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

[3] The Commission staff estimates that there are approximately 3,800 registered investment companies that are ''management companies'' as defined by the Act, and each may have one or more separate portfolios that report dividends to shareholders. The Commission's records indicate that those 3,800 management companies have approximately 8,400 portfolios that report paying dividends, and so may be subject to Rule 19a–1.

[4] According to respondents, no more than approximately 15 minutes is needed to make the determinations required by the rule and include the required information in the shareholders' dividend statements. The Commission staff estimates that, on average, each portfolio mails two notices per year to meet the requirements of the rule, for an average total annual burden of approximately 30 minutes.

[5] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[6] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15g–3, SEC File No. 270–346, OMB Control No. 3235–0392;
Rule 15g–4, SEC File No. 270–347, OMB Control No. 3235–0393;
Rule 15g–5, SEC File No. 270–348 OMB, Control No. 3235–0394;
Rules 17Ad–6 and 17Ad–7, SEC File No. 270–151, OMB Control No. 3235–0291.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 15g–3 Broker or Dealer Disclosure of Quotations and other Information Relating to the Penny Stock Market.

Rule 15g–3 under the Securities Exchange Act of 1934 (the ''Exchange Act'') requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

• Rule 15g–4 Disclosure of compensation to brokers or dealers.

Rule 15g–4 under the Exchange Act requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

• Rule 15g–5 Disclosure of compensation of associated persons in connection with penny stock transactions.

Rule 15g–5 under the Exchange Act requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. This rule was adopted by the Commission to increase the level of disclosure to investors concerning penny stocks generally and

specific penny stock transactions. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule. The total annual reporting and recordkeeping burden will be 27,000 burden hours.

• Rules 17Ad–6 and 17Ad–7 Recordkeeping requirements for transfer agents

Rule 17Ad–6 under the Exchange Act requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Exchange Act requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

We estimate that approximately 1,000 registered transfer agents will spend a total of 500,000 hours per year complying with Rules 17Ad–6 and 17Ad–7. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $25,000,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 4, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3492 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form U–3A–2, SEC File No. 270–83, OMB Control No. 3235–0161;

Form U–13–60, SEC File No. 270–79, OMB Control No. 3235–0153.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Part 259.402 [17 CFR 259.402] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, requires that public utility holding companies that are exempt from regulation under the Act file an annual financial statement on Form U–3A–2.

Rule 2 under the Act, which implements Section 3 of the Act requires the information collection prescribed by Form U–3A–2. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–3A–2 is 227.5 hours (91 responses × 2.5 hours = 227.5 hours).

Part 259.313 [17 CFR 259.313] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, generally mandates standardized accounting and record keeping for mutual and subsidiary service companies of registered holding companies and the filing of annual financial reports on Form U–13–60.

Rules 93 and 94 under the Act, which implement Section 13 of the Act, require the information collection prescribed by Form U–13–60. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–13–60 is 877.5 hours (65 responses × 13.5 hours = 877.5 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 5, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3493 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25928; 812–12366]

Oppenheimer Select Managers, *et al.*; Notice of Application

February 6, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them

to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Oppenheimer Select Managers (''Select Managers'') and OppenheimerFunds, Inc. (''OFI'').

Filing Dates: The application was filed on December 18, 2000 and amended on February 6, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 3, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 6803 South Tucson Way, Englewood, CO 80112.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Select Managers, a business trust organized under the laws of Massachusetts, is registered under the Act as an open-end management investment company. Select Managers is currently comprised of six series (each a ''Series''),[1] each with a different investment objective and policies. Shares of some Series may be sold as a funding option for variable life insurance policies and variable annuity contracts issued by an insurance company.

2. OFI is registered as an investment adviser under the Investment Advisers Act of 1940. OFI currently serves as investment adviser to each Series.

3. Select Managers (on behalf of each Series) has entered into separate investment management agreements with OFI (each, an ''Advisory Agreement'') that were approved by Select Manager's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and either the initial shareholder of the Series (before the Series' shares are offered to the public) or the Series' public shareholders.[2]

4. OFI may delegate day-to-day portfolio management responsibilities for a Series by entering into an investment subadvisory agreement (''Subadvisory Agreement'') with a subadviser (''Subadviser''), subject to Board approval. OFI monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by OFI are selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser's fees are paid by OFI out of the management fees received by OFI under its Advisory Agreement.

5. Applicants request relief to permit OFI, subject to Board approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of Select Managers or OFI, other than by reason of serving as a Subadviser to one or more of the Series (''Affiliated Subadviser'').

6. Applicants also request an exemption from the various disclosure provisions described below that may require each Series to disclose fees paid by OFI to the Subadvisers. An exemption is requested to permit the Series to disclose (as both a dollar amount and as a percentage of a Series' net assets): (a) Aggregate fees paid to OFI and Affiliated Subadvisers, and (b) aggregate fees paid to the Subadvisers other than Affiliated Subadvisers (''Aggregate Fee Disclosure''). If a Series employs an Affiliated Subadviser, the Series will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07.2(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate

[1] Applicants also request relief with respect to future series of Select Managers and any future registered open-end management investment companies or series thereof that (a) are advised by OFI or an entity controlling, controlled by or under common control with OFI, (b) use the multi-manager structure as described in the application, and (c) comply with the terms and conditions stated in the application (included in the term ''Series''). Select Managers is the only existing investment company that currently intends to rely on the order. If the name of any Series contains the name of a Subadviser (as defined below), it will be preceded by OFI.

[2] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which a Series serves as a funding medium.

in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. By investing in a Series, shareholders will in effect hire OFI to manage the Series' assets through monitoring and evaluation of Subadvisers rather than by hiring its own employees to directly manage assets. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose unnecessary costs and delays on the Series and may preclude OFI from acting promptly in a manner considered advisable by the Board. Applicants note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Subadvisers charge their customers for advisory services according to a ''posted'' rate schedule. Applicants state that while Subadvisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Subadvisers to negotiate lower subadvisory fees with OFI, the benefits of which are likely to be passed on to the Series' shareholders.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. OFI will provide general management and administrative services to each Series, including overall supervisory responsibility of the general management and investment of the Series' assets and, subject to review and approval of the Board, will (i) set the Series' overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a portion of a Series' assets, (iii) allocate and, when appropriate, reallocate the Series' assets among multiple Subadvisers, (iv) monitor and evaluate Subadviser performance, and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the relevant Series' investment objective, policies and restrictions.

2. Before a Series may rely on the order requested herein, the operation of the Series in the manner described in the application will be approved by a majority of each Series' outstanding voting securities as defined in the Act, or, in the case of a Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholder before such Series' shares are offered to the public.

3. The prospectus for each Series will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the ''Manager of Managers'' structure described in the application. The prospectus will prominently disclose that OFI has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination and replacement.

4. Within ninety days of the hiring of a new Subadviser, OFI will furnish shareholders of the applicable Series all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. To meet this obligation, OFI will provide shareholders of the applicable Series, within ninety days of the hiring of a new Subadviser, with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. No trustee or officer of the Series nor director or officer of OFI will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for (i) ownership of interests in OFI or any entity that controls, is controlled by or is under common control with OFI; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, in controlled by or is under common control with a Subadviser.

6. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. When a Subadviser change is proposed for a Series with an Affiliated Subadviser, the Series' Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which OFI or the Affiliated Subadviser derives an inappropriate advantage.

8. Each Series will disclose in its registration statement the Aggregate Fee Disclosure.

9. At all times, independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent each Series' Independent Trustees. The selection of such counsel will be placed within the discretion of the Independent Trustees.

10. OFI will provide the Board, no less frequently than quarterly, with information about OFI's profitability on a per-Series basis. This information will reflect the impact on profitability of the hiring or termination of any Subadvisers during the applicable quarter.

11. When a Subadviser is hired or terminated, OFI will provide the Board with information showing the expected impact on OFI's profitability.

12. OFI will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3489 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47319]

Order Exempting Options Specialists From Section 11(b) of the Securities Exchange Act of 1934 When Accepting Certain Types of Complex Orders

February 5, 2003.

I. Background

Section 11(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] prohibits a specialist[2] effecting as broker any transaction except upon a market or limited price order. Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual

[1] 15 U.S.C. 78k(b).

[2] For purposes of this order, the term ''specialist'' includes Designated Primary Market Makers on the Chicago Board Options Exchange, Lead Market Makers on the Pacific Exchange, and Primary Market Makers on the International Securities Exchange.

role as agent and principal in executing transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialists' books and their handling of discretionary agency orders.[3] Although the Securities and Exchange Commission (''Commission'') has interpreted Section 11(b) to mean that all orders, other than market or limit orders, are discretionary and therefore cannot be accepted by a specialist, it has made certain exceptions. For example, the Commission has concluded that it is appropriate to treat percentage orders [4] and stopped orders [5] as equivalent to limit orders because, although these orders permit a specialist to use his or her judgment to some extent, the exchange rules applicable to these orders impose sufficiently stringent guidelines to ensure that a specialist would handle the orders in a manner consistent with his or her market making duties and Exchange Act Section 11(b). Accordingly, the Commission approved exchanges' proposals to permit specialists to accept percentage orders under certain circumstances [6] and to engage in the practice of ''stopping'' stock.[7] Specifically, in approving the NYSE's proposal to allow specialists to convert a percentage order on a destabilizing tick and to convert a percentage order into a limit order to enter a quotation that betters the market,[8] the Commission acknowledged that the NYSE's proposal permitted specialists to employ their judgment to a greater extent than the existing percentage order rule.[9] However, the Commission concluded that the requirements imposed on a specialist when converting a percentage order for execution or quotation purposes provided sufficient limits on the specialist to ensure that the specialist would implement the conversion provisions in a manner consistent with his or her market making duties and Section 11(b) of the Exchange Act.[10] These requirements are intended to minimize a specialist's discretion and to ensure that the specialist cannot, through his or her use of the conversion process, unduly influence market trends.

In addition, in approving exchanges' rules permitting specialists to stop stock in minimum variation markets, the Commission found it appropriate to treat stopped orders as equivalent to limit orders because a stopped order would be automatically elected at the best bid or offer, or better if obtainable.[11] The Commission noted that although stopped orders permit a specialist to employ his or her judgment to some extent, the requirements imposed on a specialist for granting stops in minimum variation markets provide that the specialist will implement the stopping stock provisions in a manner consistent with his or her market making duties and Section 11(b).[12]

[3] *See* H. Rep. No. 1383, 73d Cong., 22; S. Rep. 792, 73d Cong., 2d Sess. 18 (1934).

[4] A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after the percentage order is received by a specialist. A percentage order is essentially a memorandum entry left with a specialist that becomes a ''live'' order capable of execution when either: (i) All or part of the order is elected as a limit order on the specialist's book based on trades in the market; or (ii) a specialist holding a percentage order with a conversion instruction converts all or part of the percentage order into a limit order to make a bid or offer or to participate directly in a trade. *See* New York Stock Exchange, Inc. (''NYSE'') Rules 13 and 123A and American Stock Exchange LLC (''Amex'') Rules 131 and 154. The conversion instruction authorizes the specialist to convert all or part of a percentage order into a limit order and to be on parity with the converted percentage order.

[5] An agreement by a specialist to ''stop'' securities at a specified price constitutes a guarantee by the specialist of the purchase or sale of the securities at the specified price or better. ''Stopping'' stock should not be confused with a stop order, which is an order designated as such by the customer that requires the specialist to buy (sell) a security once a certain price level has been reached.

[6] *See* Exchange Act Release Nos. 40722 (November 30, 1998), 63 FR 67966 (December 9, 1998) (permitting a NYSE specialist to elect a percentage order based on the election of a previously elected or converted percentage order on the opposite side of the market); 39837 (April 8, 1998), 63 FR 18244 (April 14, 1998) (approving the NYSE's proposal to permit ''immediate execution or cancel election'' percentage orders); 39009 (September 3, 1997), 62 FR 47715 (September 10, 1997) (approving the NYSE's proposal to allow a converted percentage order to retain its priority on the book when a higher bid (lower offer) is made) and to permit a ''last sale-cumulative volume'' instruction, which provides that if an elected portion of a percentage order placed on the book at the price of the electing sale is not executed, the elected portion of the order shall be cancelled and re-entered on the book at the price of subsequent transactions on the NYSE, if the price of the subsequent transactions is at or better than the limit specified in the order; 30265 (January 17, 1992), 57 FR 3228 (January 28, 1992) (approving an Amex proposal to permit a specialist to accept ''last sale'' and ''buy minus-sell plus'' percentage orders, permit the conversion of a percentage order into a limit order on a destabilizing tick, and allow conversions that better the market); 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (''1987 Order'') (permitting a NYSE specialist to convert a percentage order into a limit order on a destabilizing tick and to convert a percentage order into a limit order to enter a quote that betters the market); 20738 (March 8, 1984), 49 FR 9666 (March 14, 1984) (allowing an entering broker to instruct an Amex specialist to convert half of a percentage order rather than the full amount of the percentage order); 19652 (April 5, 1983), 48 FR 15756 (April 12, 1983) (approving an Amex proposal to permit percentage orders to be converted and executed on zero plus ticks (for buy orders) and zero minus ticks (for sell orders) when the order causing the conversion is at least 5,000 shares); and 19466 (January 28, 1983), 48 FR 5627 (February 7, 1983) (amending the Amex's definition of percentage order to differentiate among straight limit, last sale, and buy minus-sell plus percentage orders and adopting procedures for the handling of percentage orders).

[7] The Commission granted permanent approval to the pilot programs of several exchanges that permit specialists to stop stock in minimum variation markets. *See* Exchange Act Release Nos. 37134 (April 22, 1996), 61 FR 18634 (April 26, 1996) (''BSE 1996 Order''); 36400 (October 20, 1995), 60 FR 54886 (October 26, 1995) (''Amex 1995 Order''); 36401 (October 20, 1995), 60 FR 54893 (October 26, 1995) (''CHX 1995 Order''); and 36399 (October 20, 1995), 60 FR 54900 (October 26, 1995) (''NYSE 1995 Order''). *See also* Exchange Act Release No. 40728 (November 30, 1998), 63 FR 67972 (December 9, 1998) (approving a Philadelphia Stock Exchange, Inc. (''PHLX'') rule setting forth procedures for stopping stock where the spread in the quotation is greater than twice the minimum variation and for stopping orders in minimum variation markets). The rules of several exchanges permit specialists to stop stock when the spread is twice the minimum variation. *See* Amex Rule 109(c); Boston Stock Exchange (''BSE'') Rule Chapter II, Section 38(b); NYSE Rule 116.30; and PHLX Rule 220. In addition, Chicago Board Options Exchange, Inc. market makers may stop options orders. See CBOE Rule 8.17.

[8] A conversion that betters the market narrows the spread, adds depth to a prevailing bid or offer, or establishes a new bid or offer immediately after a transaction has cleared the floor of bids and offers.

[9] *See* 1987 Order, *supra* note 5.

[10] Specifically, the 1987 Order noted that the NYSE's proposal imposed three basic limitations on the conversion of percentage orders on a destabilizing tick: (1) An order may be converted on a destabilizing tick for the purpose of participating in a trade of 10,000 or more shares; (2) the execution effected by the conversion may occur no more than ¼ point away from the last sale, although this requirement may be waived with the approval of an NYSE Floor Official; and (3) the specialist cannot convert percentage orders for consecutive, or contemporaneous, trades on destabilizing ticks without the approval of a Floor Governor. *See also* NYSE Rule 123A.30. With regard to conversions made to better the market, the 1987 Order noted that the NYSE's proposal permitted a specialist to: (1) Convert an order on a stabilizing tick to better the market in such size as was appropriate to further the specialist's market making duties; (2) convert an order on a destabilizing tick to narrow the spread or to establish a new bid or offer immediately after a transaction had cleared the floor of bids and offers, provided that the conversion was within 1/8 point of the last sale; and (3) convert an order on a destabilizing tick, exclusive of the 1/8 point requirement, to add size to a prevailing bid or offer. The NYSE's rules provide additional restrictions on bettering the market conversions. *See* NYSE Rule 123A.30.

[11] *See* Amex 1995 Order and NYSE 1995 Order, *supra* note 6. *See also* BSE 1996 Order and CHX 1995 Order, *supra* note 6 (finding that stopped orders are equivalent to limit orders because they would be elected automatically after a transaction takes place on the primary market at the stopped price).

[12] Specifically, on the Amex and the NYSE, a specialist may stop an order in a minimum variation market only where there is a substantial imbalance on the opposite side of the market from the order being stopped. In this situation there is an increased likelihood of price improvement for the stopped order. In addition, NYSE Rule 116.30 and Amex Rule 109(c) provide that an order to which a specialist grants a stop may not exceed

Continued

II. Complex Orders

Current exchange rules permit floor brokers to represent complex options orders, including, among others, spread,[13] straddle,[14] and combination orders.[15] According to two exchanges, there are fewer floor brokers today on the exchange floors than there were in the past. As a result, there may be times when, under current rules, such orders may not be able to be represented or executed on a national securities exchange. As a result of these concerns, on July 19, 2001, the Amex filed a proposal with the Commission, pursuant to Section 19(b)(1) of the Exchange Act[16] and Rule 19b-4 thereunder,[17] to amend its rules to permit Amex options specialists to accept spread orders.[18] The Commission determined that consideration of the Amex proposal required addressing issues related to Exchange Act Section 11(b).

According to the Amex, the Amex floor brokers who focused primarily on executing spread orders (''spread brokers'') were unable to remain in business and the loss of the spread brokers has reduced spread order executions on the Amex.[19] Other exchanges have also expressed concern that the disappearance of floor brokers has meant a shift in business to the over-the-counter (''OTC'') market.[20]

As noted above, the Commission previously has permitted specialists to accept percentage orders and to stop orders in part because the exchange rules allowing specialists to accept percentage orders and to stop orders sufficiently limited a specialist's discretion and ensured that a specialist's handling of those orders was consistent with his or her market making duties and Section 11(b) of the Exchange Act. Similarly, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt, subject to certain conditions, options specialists from the provisions of Section 11(b) of the Exchange Act to allow them to accept orders in option contracts on the same underlying security where the customer specifies the number of contracts for each series and the net debit or credit at which the order will be executed (''Complex Orders''), including spread, straddle, and combination orders.[21] Such an exemption would allow market participants to continue to have the ability to purchase and sell Complex Orders on an exchange market, under conditions that would reduce the discretion the specialist has in executing these orders.

The Commission believes it is necessary for the protection of investors and appropriate in the public interest to condition a specialist's handling of Complex Orders, as indicated below. These conditions will limit a specialist's discretion in the handling of such orders. The conditions also require the exchange on which a specialist trades to have surveillance procedures in place to monitor specialists' handling of these orders for compliance with the exchange's rules and the conditions in this exception.

More specifically, the conditions set forth below should help to ensure that a specialist is not able to unduly influence market trends through his or her handling of Complex Orders. In this regard, the conditions limit a specialist's discretion by providing that an exchange's rules must require a specialist to execute a Complex Order as soon as it becomes possible to execute the order at the net debit or credit specified by the customer, consistent with its priority rules. The conditions also provide that an exchange's rules must require a specialist who accepts a Complex Order to announce the terms of the order to the trading crowd immediately after receiving the order. In addition, to address concerns regarding a potential conflict of interest that may arise if a specialist handles the orders of customers of his or her own firm, as well as the orders of other brokers' customers that are given to the specialist for execution, an exchange must have rules that prohibit a specialist from accepting orders from customers of the firm with which the specialist is associated.[22]

As noted above, the conditions set forth below are designed to reduce the specialist's discretion in handling Complex Orders. As a result, the conditions should help to provide the type of protection that the prohibition in Exchange Act Section 11(b) was enacted to provide, and at the same time permit exchange specialists, not solely floor brokers, of which there are relatively few, to accept Complex Orders.

For these reasons, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to exempt a specialist from the provision in Section 11(b) of the Exchange Act that prohibits a specialist from effecting on the exchange as broker any transaction except upon a market or limit order, provided that:

(1) The order effected by such specialist: (i) Is comprised solely of options on the same underlying security and the customer specifies the number

2,000 shares and the aggregate number of shares as to which stops are in effect may not exceed 5,000 shares. The 5,000-share limit is designed to ensure that the amount of stopped stock does not become so large that there would, in effect, cease to be an imbalance on the opposite side of the market from the order being stopped (*i.e.*, less likelihood of price improvement for the order being stopped). *See* Amex 1995 Order and NYSE Order, *supra* note 6. With regard to the rules of the Chicago Stock Exchange (''CHX'') and the BSE, the Commission concluded that because stopped orders would be elected automatically after a transaction takes place on the primary market at the stopped price, the requirements imposed on specialists under the CHX and BSE rules provided sufficient guidelines to ensure that a specialist would implement the rules for stopping stock in minimum variation markets in a manner consistent with his or her market making duties and Section 11(b). *See* BSE 1996 Order and CHX 1995 Order, *supra* note 6.

[13] A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, or contracts representing the same number of shares at option, in a different series of the same class of options.

[14] A straddle order is an order to buy (sell) a number of call option contracts and to buy (sell) the same number of put option contracts on the same underlying security, which contracts have the same exercise price and expiration date.

[15] A combination order is an order involving a number of call option contracts and the same number of put option contracts on the same underlying security and representing the same number of shares at option. In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if the contracts both represent the same number of shares at option. A adjusted option contract is a contract whose terms are changed to reflect certain fundamental changes to the underlying security. For example, after an adjustment for a 2 for 1 stock split, an investor who held an option on 100 shares of XYZ stock with an exercise price of $60 may hold two options, each on 100 shares of XYZ stock and with an exercise price of $30.

[16] 15 U.S.C. 78s(b)(1).

[17] 17 CFR 240.19b-4.

[18] *See* File No. SR-Amex-2001–48.

[19] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Sharon M. Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated October 18, 2001.

[20] For example, the Philadelphia Stock Exchange, Inc. (''PHLX'') has stated that the number of foreign currency options (''FCO'') participants and firms clearing FCOs has declined steadily since the 1980s as the market has increasingly shifted to OTC trading. *See* Exchange Act Release No. 44372 (May 31, 2001), 66 FR 30780 (June 7, 2001) (approving on a one-year pilot basis a PHLX proposal to permit FCO participants to, among other things, contact the specialist to negotiate the total debit or credit for transacting a spread, straddle, or combination FCO order). The PHLX allowed the pilot program to expire because there is at least one PHLX floor broker available to handle customer FCO orders and, accordingly, the relief provided by the pilot program currently is not necessary.

[21] For purposes of this order, the term Complex Order does not include orders that have a non-option component.

[22] The Commission has stated previously that specialists should not be permitted to have their own customers, as opposed to customers of other brokers whose orders are given to the specialist for execution. In this regard, the Commission stated that transactions for a specialist's own customers do not affirmatively assist his market making activities and are fraught with possibilities of abuse. *See* SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Part 2, 166 (1963).

of contracts and the net credit or debt at which the order is to be executed (''Complex Order'');

(2) The rules of the exchange on which a specialist trades: (a) Prohibit the specialist from accepting Complex Orders from customers of the firm with which the specialist is associated; (b) require the specialist to time stamp a Complex Order upon receipt of the order; (c) require the specialist who accepts a Complex Order to announce immediately after receipt of the order the price, terms, and size of the Complex Order to the trading crowd; (d) require the specialist to execute the Complex Order as soon as it is possible to execute, consistent with the exchange's priority rules, at the net debit or credit specified by the customer; and

(3) The exchange on which the specialist trades has surveillance procedures in place for monitoring specialists' compliance with the exchange's rules governing the handling of Complex Orders.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act,[23] that a specialist is exempt from the prohibition in Section 11(b) of the Exchange Act from effecting on the exchange as broker any transaction except upon a market or limit order, subject to the conditions set forth above.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3487 Filed 2–11–03; 8:45 am]

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[23] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47328; File No. SR–Amex–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Conforming Amendments to the Amex *Company Guide*

February 6, 2003.

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 February 3, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 102(a) of the Amex *Company Guide* to correct a reference contained therein and conform to recently approved amendments to Section 101 of the Amex *Company Guide.* Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange *Company Guide*

Section 102

(a) Distribution—Minimum public distribution* of 500,000, together with a minimum of 800 public shareholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders, except for applicants seeking to qualify for listing pursuant to Section 101([d] *e*).

The Exchange may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the Exchange will review the nature and frequency of such activity and such other factors as it may determine to be relevant in ascertaining whether such issue is suitable for auction market trading. A security which trades infrequently will not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

In addition, the Exchange may also consider the listing of the securities of a bank which has a minimum of 500,000 shares publicly held and a minimum of 400 public shareholders.

Except for banks, companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, are normally not considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

*The terms ''public distribution'' and ''public shareholders'' as used in the *Company Guide* include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (*i.e.,* 10% or greater), affiliated or family holdings.

(b)–(c)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 102(a) of the Amex *Company Guide* to change a reference therein from Section 101(d) to Section 101(e). The Exchange seeks to correct the reference in order to conform to a re-designation of the paragraph references in Section 101 pursuant to recently approved amendments to Section 101 [3] of the Amex *Company Guide.* The existing reference to Section 101(d) of the Amex *Company Guide* is meant to refer to the Alternative Listing Standards, which are now referenced in Section 101(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general and furthers the objectives of Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 47119 (January 3, 2003), 68 FR 1494 (January 10, 2003) (approving File No. SR–Amex–2002–97)

[4] 15 U.S.C. 78f(b).

6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b-4(f)(6)[7] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission 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 short time as designated by the Commission. 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.

The Amex has requested that the Commission waive the 30-day operative delay and the five-day pre-filing notice requirement. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest and therefore finds good cause to waive the five-day pre-filing notice requirement and to designate the proposal as immediately operative upon filing. The Commission notes that the proposed rule change corrects a grammatical error and does not involve a substantive change. In addition, prompt implementation of the proposed rule change should avoid any confusion as to the Exchange's listing requirements. For these reasons, the Commission finds good cause to waive the five-day pre-filing notice requirement and to designate that the proposal become operative immediately upon filing.[8]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-05 and should be submitted by March 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3488 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b-4(f)(6).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Notice of Office of Management and Budget (OMB) Approval, Proposed Request and Comment Request

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Social Security Administration (SSA) is providing notice of OMB's approval of the information collections in the 20 CFR 422.527, Private Printing and Modification of Prescribed Application and Other Forms. In accordance with the Paperwork Reduction Act, persons are not required to respond to an information collection unless it displays a valid Office of Management and Budget control number. The OMB Number is 0960-0663, which expires December 31, 2005.

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1300 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA

within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Claimant's Medications—0960–0289—20 CFR 404.1512 and 416.912.* The information on form HA–4632 is used to process title II (Old-Age and Survivors Disability Insurance) and title XVI (Supplemental Security Income (SSI)) disability claims. Claimants provide an updated list of medications using form HA–4632. This information enables the Administrative Law Judge who conducts the hearing to fully inquire into medical treatment the claimant is receiving and the effect of medications on the claimant's medical treatment. The respondents are applicants for title II and title XVI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 171,939.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 42,985 hours.

2. *Letter to Employer Requesting Wage Information—0960–0138.* Form SSA–L4201–U2 is used to collect wage data from employers to establish and/or verify wage information for SSI claimants, beneficiaries and deemors. SSA uses the data to determine if an individual is eligible for SSI and, if so, to determine the amount of the payment due. The respondents are employers of applicants for and recipients of SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Action: Comment Request

1. *State Partnership Initiative (SPI) Cooperative Agreements—0960–0610. Executive Order 13078 Dated March 13, 1998, Increasing Employment of Adults With Disabilities.* This action orders that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force ''evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities.'' To comply with the EO, SSA released cooperative agreement announcements in 1998 to approximately 650 State agencies nationwide to conduct demonstration projects that assist States in developing service delivery models that increase the rates of gainful employment of people with disabilities. Eighteen State agencies have been selected to participate in the demonstration projects. SSA has employed a monitoring and technical assistance contractor to collect information from the State awardees' databases on behalf of SSA. The Contractor will use the information to evaluate whether and to what extent the service delivery models achieve the overall goals of the demonstration projects and will report project results to SSA. SSA will use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions. Following is a table that outlines the public reporting burden of the 18 State agencies for this project:

Type of Request: Revision of an OMB-approved information collection.

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden
Demonstration Site Form	16 (electronic)	One Time	1 minute	1 hour.
	2 (manual)	One Time	1 minute	1 hour.
Participant Demographic Data Form	3,080 (electronic)	One Time	15 minutes	770 hours.
	300 (manual)	One Time	20 minutes	100 hours.
Participant Employment Data Form	3,080 (electronic)	One Time	5 minutes	257 hours.
	300 (manual)	One Time	7 minutes	35 hours.
Participant Update Form	3,080 (electronic)	Quarterly	4 minutes	821 hours.
	300 (manual)	Quarterly	5 minutes	100 hours.
Change in Employment Status	1,540 (electronic)	Completed only if employment changes.	3 minutes	77 hours.
	150 (manual)		4 minutes	10 hours.
State Quarterly and State Semiannual and Annual Reports.	72	Quarterly, semiannual and Annual.	15 minutes for Each report.	18 hours.
	36			9 hours.
	18			4 hours.
Stakeholder Interviews	50	Varies per Stakeholder.	10 minutes	8 hours.
Total	12,024			2,211 hours.

2. *Claimant's Recent Medical Treatment—20 CFR, Subpart P, 404.1512 and 20 CFR, Subpart I, 416.912—0960–0292.* The information collected on form HA–4631 is used to provide an updated medical history for disability claimants who request a hearing and to afford claimants their statutory right to a hearing and decision under the Social Security Act. This information is necessary to assure that the Social Security Administration has the most recent medical information before making a final determination on a claim. The respondents are claimants requesting hearings on entitlement to benefits based on disability under title II and/or title XVI of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 309,490.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 51,582 hours.

3. Report to U.S. SSA by Person Receiving Benefits for a Child or Adult Unable to Handle Funds; and Report to U.S. SSA–0960–0049.

SSA needs the information on forms SSA–7161–OCR–SM and SSA–7162–OCR–SM to determine continuing entitlement to Social Security benefits and correct benefit amounts for beneficiaries outside the U.S., as well as to monitor the performance of representative payees outside the U.S. The respondents are individuals outside the U.S. who are receiving benefits on their own behalf (or for someone else) under title II of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

	SSA–7161–OCR–SM	SSA–7162–OCR–SM
Number of Respondents	30,000	205,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	15	5
Estimated Annual Burden (hours)	7,500	17,083

4. *Partnership Questionnaire—0960–0025—20 CFR, Subpart K, 404.1080–.1082.* Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for Old Age, Survivors and Disability Insurance Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,175 hours.

5. *SSI-Quality Review Case Analysis—0960–0960–0133.* The form SSA–8508 is used in a personal interview with a sample of Supplemental Security Income (SSI) recipients and covers all elements of SSI eligibility. The information is used to assess the effectiveness of SSI policies and procedures and to determine payment accuracy rates. The respondents are SSI recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 12,000.

6. *Statement of Funds You Provided to Another, Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481.* SSI entitlement, and the amount of the SSI payment, is affected by any other income the applicant has. Forms SSA–2854 and SSA–2855 are used by SSA to collect information in situations where the SSI applicant alleges that money was borrowed on an informal basis from a noncommercial lender, *e.g.*, a relative or friend, etc. These statements are completed by the borrower/claimant and by the lender and are required to determine whether the proceeds from the transaction are/are not income to the borrower/claimant. If the transaction constitutes a *bona fide* loan, the proceeds are not income to the SSI borrower/claimant. The respondents are applicants for SSI payments who borrow money on an informal (noncommercial) basis and by individuals who lend money informally to SSI applicants.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,667 hours.

7. *SSI Wage Reporting Pilot—0960–NEW—Background:* SSA regulations at 20 CFR 416.701–732 require that recipients of Supplemental Security Income (SSI) report changes, such as change in income, resources and living arrangements that could affect the receipt and amount of payments. Currently, SSI recipients report changes on form SSA–8150, Reporting Events—SSI, or to an SSA teleservice representative through SSA's toll-free telephone number or they visit their local Social Security Office.

The SSI Wage Reporting Pilot: SSA is proposing to conduct a 6-month SSI wage reporting pilot to test a different method of collecting the information. During the pilot, a sample of individuals who need to report a change in earned income would call an SSA toll-free telephone number which will allow them to either speak their report (voice recognition technology) or key in the information using the telephone key pad. At the conclusion of the pilot, SSA will evaluate whether this is an effective method of reporting the information.

Number of Respondents: 4,000.

Frequency of Response: 6.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,000 hours.

Dated: February 6, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–3511 Filed 2–11–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 31, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14418.

Date Filed: January 31, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0607 dated 3 January 2003, TC3 Areawide Resolutions 002, 017c, 091w r1-r9, PTC3 0618 dated 3 January 2003, TC3 from Malaysia to Guam Resolutions r10-r14, PTC3 0619 dated 3 January 2003, TC3 between Malaysia and American Samoa, Resolutions r15-r20, PTC3 0620 dated 3 January 2003, TC3 between Korea (Rep. of) and Guam, Northern, Mariana Islands Resolutions r21-r29, PTC3 0621 dated 3 January 2003, TC3 between Korea (Rep. of) and American Samoa, Resolutions r30-r34, Minutes—PTC3 0623 dated 24 January 2003, Tables—PTC3 Fares 0197 dated 10 January 2003, PTC3 Fares 0203 dated 10 January 2003, PTC3 Fares 0204 dated 10 January 2003, PTC3 Fares 0205 dated 10 January 2003, Intended effective date: 1 April 2003.

Docket Number: OST–2003–14419.

Date Filed: January 31, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR Fares 0075 dated 31 January 2003 Resolution 015h—USA Add-ons between USA and

UK intended effective date: 1 April 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–3455 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14378]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; correction of dates.

SUMMARY: The Coast Guard published a notice in the **Federal Register** on February 4, 2003 announcing a 2-day meeting of the Towing Safety Advisory Committee's (TSAC) Working Group on Maritime Security. The notice should have been for one date, February 19, 2003. This notice removes the incorrect date.

DATES: This correction is effective February 12, 2003. The TSAC Working Group will meet on Wednesday, February 19, 2003, from 10 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, or fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** on February 4, 2003, (68 FR 5690) announcing a meeting of the Towing Safety Advisory Committee (TSAC) Working Group on Maritime Security. We listed two dates for the meeting in the notice. The TSAC Working Group will only meet on February 19, 2003. This correction removes the incorrect date.

In notice FR Doc. No. 03–2522 published on February 4, 2003, (68 FR 5690) make the following correction:

On page 5690, in the third column, starting on line 1, remove the first sentence in the **DATES** section, and add, in its place, the sentence ''The TSAC Working Group on Maritime Security will meet on Wednesday, February 19, 2003, from 10 a.m. to 4 p.m.''

Dated: February 12, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–3459 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Winchester Regional Airport, Winchester, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of approximately 13 acres of land at the Winchester Regional Airport, Winchester, Virginia to the Virginia Department of Transportation for the relocation of Virginia State Route 645. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The road is being relocated to provide more space for airport related development and the existing Route 645 right-of-way will be exchanged for the relocated road right-of-way.

DATES: Comments must be received on or before March 14, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Renny Manual, Secretary-Treasurer Luray-Page County Airport Commission, at the following address: Ms. Renny Manuel, Executive Director, Winchester Regional Airport Authority, 491 Airport Road, Winchester, Virginia 22602.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, email *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION:

On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on January 27, 2003.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 03–3457 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Park Service

Membership in the National Parks Overflights Advisory Group

AGENCIES: National Park Service and Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of a vacancy on the NPOAG for a member representing environmental interests and invites interested persons to apply to fill the vacancy.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, Email: *Barry.Brayer@faa.gov,* or Howie Thompson, Natural Sounds Program, National Park Service, 12795 W. Alameda Parkway, Denver, Colorado, 80225, telephone: (303) 969–2461.

DATES: Persons interested in serving on the advisory group should contact Mr. Brayer or Mr. Thompson on or before March 5, 2003.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as *ex officio* members

of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government service.

The current NPOAG is made up of four members representing the air tour industry, three members representing environmental interests, and two members representing Native American interests. Current members of the NPOAG are: Andy Cebula, Aircraft Owners and Pilots Association; David Kennedy, National Air Transportation Association; Alan Stephen, Twin Otter/Grand Canyon Airlines; Joe Corrao, Helicopter Association International; Chip Dennerlein, State of Alaska Fish and Game; Charles Maynard, formerly with Great Smoky Mountain National Park; Susan Gunn, The Wilderness Society; and Germaine White and Richard Deertrack, representing Native American tribes.

Public Participation in the Advisory Group

In order to retain balance within the NPOAG, the FAA and NPS invite persons interested in serving on the NPOAG to represent environmental interests to contact either of the persons listed in **FOR FURTHER INFORMATION CONTACT.** Requests to serve on the NPOAG should be made in writing and postmarked on or before March 5, 2003. The request should indicate whether or not you are a member or an official of a particular environmental interest group. The request should also state what expertise you would bring to environmental interests while serving on the NPOAG. The term of service for NPOAG members is 3 years.

Issued in Washington, DC, on February 5, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–3456 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Amber Plan Program Support Assistance; Request for Applications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for applications.

SUMMARY: This document requests applications for assistance from public agencies in supporting Amber Plan Programs in each State. The U.S. DOT Amber Plan Grant Program will provide up to seven million dollars in grants to States (including Puerto Rico and the District of Columbia) to fund the application of Intelligent Transportation Systems to facilitate the inclusion of State and local transportation agencies into existing or proposed Amber Plan Programs. The intent is to provide funds to States for the purpose of planning the systems and procedures necessary to incorporate various traveler information systems such as changeable message signs (CMS) in the issuance of Amber Alerts.

DATES: Applications for Amber Plan Program support assistance must be received prior to August 1, 2003. Decisions regarding the acceptance of specific applications for funding will be made within 60 business days of receipt.

ADDRESSES: Applications for Amber Plan Program support assistance should be submitted electronically via e-mail to *AMBERPLAN@FHWA.DOT.GOV,* or mailed directly to the Federal Highway Administration, Intelligent Transportation Systems (ITS) Joint Program Office, Amber Plan Support, HOIT–1, 400 Seventh St., SW., Room 3416, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rupert, Office of Transportation Management (HOTM–1), (202) 366–2194; Mr. Craig Allred, ITS Joint Program Office (HOIT–1), (202) 366–8034; or Ms. Gloria Hardiman-Tobin, Office of Chief Counsel (HCC–40), (202) 366–0780; Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

The document may also be viewed at the DOT's ITS Home page at *http://www.its.dot.gov.*

Background

The Amber Plan Program is a voluntary program where law enforcement agencies partner with broadcasters to issue an urgent bulletin in the most serious child abduction cases. These bulletins notify the public about abductions of children. The U.S. DOT recognizes the value of the Amber Plan Program and fully supports the State and local governments' choice to implement this program.

Alerts of recent serious child abductions may be communicated through various means including radio and television stations, highway advisory radio, changeable message signs (CMS), and other media. Under certain circumstances, using CMS to display child abduction messages as part of an Amber Plan Program has been determined to be consistent with current FHWA policy governing the use of CMS and the type of messages that are displayed. The FHWA, in fact, recently issued a policy memorandum that supports the use of changeable message signs (CMS) for Amber Alerts. This memorandum may be viewed at the following url: *http://ops.fhwa.dot.gov/Travel/reports/amber.htm.*

A key factor in the success of the Amber Plan Program is the need for public agencies to develop formal Amber Plan policies that include a sound set of procedures for calling an Amber Alert. If public agencies decide to display an Amber Alert or child abduction messages on a CMS, the FHWA has determined that this application is acceptable only if it is part of a well-established local Amber Plan Program, and public agencies have developed a formal policy that governs the operation and messages that are displayed on CMS.

Local Amber Plan Programs should include written criteria for issuing and calling off an Amber Alert, procedures on issues to coordinate with local

agencies and other interests, and should conform to the recommendations of the National Amber Plan Program. Information about the National Amber Plan Program may be found at the following url: *http://www.missingkids.com/html/amberplan.html.* The general criteria for issuing an Alert and the associated procedures may include confirmation that a child has been abducted; belief that the circumstances surrounding the abduction indicate that the child is in danger of serious bodily harm or death, and enough descriptive information about the child, abductor, and/or suspect's vehicle to believe an immediate broadcast alert will help.

Of specific interest to the U.S. DOT are that these policies and procedures provide specific guidance on displaying Amber Alert or child abduction messages on CMS. Such guidance should address items such as the criteria when CMS will be used for Amber Alerts; clear identification of the law enforcement agency responsible for issuing the alert; which agencies, interests, and persons are to be contacted to initiate or call off an Amber Alert; circumstances under which the Amber Alert message could or could not be displayed; length of time to display the message; geographic area over which the information is to be displayed; circumstances that would cause the discontinuation of use of the CMS if the Amber Alert message creates an adverse traffic impact; and format and content of the messages to be displayed.

In general, the Amber Plan Program has proven to be a very effective yet relatively simple and inexpensive program to implement. However, the inclusion of the transportation community and the use of various highway advisory systems such as CMS as part of an Amber Plan Program has exposed several issues that need to be addressed in order for such use to be effective and an appropriate use of the advanced technology may be appropriate.

One key issue that has broad implications beyond Amber Alerts is the lack of well established communication systems and protocols between the public safety community and the transportation community or the inability of such systems to be used for the purposes of conveying Amber Alert information among agencies. Currently most Amber Alerts are communicated to Transportation Operations Centers by telephone or facsimile. While there is no evidence that these relatively informal ''low-tech'' arrangements are not effective, such an informal system, dependant on simple communication methods, certainly has the potential for problems such as missed calls, data errors, and erroneous or false alerts. Furthermore, the lack of formal communication links has larger implications for highway incident response, hazmat incidents, natural disasters, and security related events. A number of jurisdictions have identified this broader need for communication and have established communication systems among the various public safety and transportation agencies to report and coordinate response to incidents but it is not clear whether any of these systems have been used for Amber Alerts.

Another obstacle that has been identified is the lack of capability for jurisdictions to issue area wide messages on CMS or other traveler information systems. These systems are generally intended to alert motorists to a localized condition (*e.g.*, an incident on a specific roadway). As a result, in some jurisdictions, the systems that control these signs are not capable of posting the same message on all signs across a region. The result in the case of an Amber Alert is a rather labor intensive and time consuming process to change the message on the signs one sign at a time. Currently several of these jurisdictions are exploring ways to upgrade their systems to provide such capability. This has implications for other area wide situations such as a major natural disaster or security related event where evacuation or other critical information may need to be conveyed to motorists over a broad region.

A third issue that can impact the appropriate use of CMS for Amber Alerts is the fact that many transportation operation centers are not staffed around the clock. In those cases, if an Amber Alert or other critical message needs to be posted on CMS, an off-duty operator has to be contacted by an appropriate authority so he or she can return to the operations center and post the message. Another option is to give a public safety agency the capability and authority to post such messages during off hours. In some jurisdictions, this problem has been resolved by linking operations centers and providing for the transfer of control to a designated back-up center. In some cases these back-up centers are continuously operated Transportation Operation Centers; in other cases, these are emergency response centers (*e.g.*, police dispatch centers). In either case, both technological and institutional issues must be resolved to provide this important functionality.

Another concern is that jurisdictions must have the basic capability to communicate such information to motorists via CMS or other traveler information systems. Currently, CMS deployment is largely limited to urban freeways, and even in some of our largest metropolitan areas, the numbers of such signs are often limited. While it is not practical to widely deploy such systems for the specific purposes of issuing Amber Alerts, there is some value to increasing our overall capability to communicate with motorists. Exploring and planning alternative methods of providing information to travelers and expanding the use of such systems for such purposes as Amber Alerts should be pursued.

Finally, there is the issue of the message to be conveyed. There is anecdotal evidence of Amber Alerts being provided by multi-panel messages containing details such as the type of vehicle, the license plate number, and the ten-digit number to call adversely impact traffic as drivers attempted to read and possibly copy all the relevant information. Clearly, it is important to ensure that these signs are properly and safely used as part of an overall effort to provide information on Amber Alerts.

Objectives of the Amber Alert Grant Program

The proposed U.S. DOT Amber Plan Grant Program will provide up to $7 million in grants to States (including Puerto Rico and the District of Columbia) to fund the application of Intelligent Transportation Systems (ITS) to facilitate the inclusion of State and local transportation agencies into existing or proposed Amber Plan Programs. The intent is to facilitate, through the use of advanced technologies, the seamless coordination between law enforcement agencies and transportation communities necessary to implement an Amber Alert using changeable message signs or other traveler information systems and to improve our overall capability of communicating Amber Alerts and other important information to motorists.

Each State (including Puerto Rico and the District of Columbia) may apply for a grant of $125,000 for planning, coordinating and designing of systems, protocols, and message sets that support the coordination and communication necessary to issue an Amber Alert and to provide the means to communicate an Amber Alert to motorists. This funding would ensure that the notification is well designed and integrated between the law enforcement and transportation communities.

Once such planning has been completed, any remaining funds from

the grant could be used to support the implementation of systems that will support the dissemination of Amber Alert messages via CMS or other traveler information systems.

Funding

The instrument to provide funding, on a cost reimbursable basis, will be a Federal-aid project agreement. Federal funding authority is derived from § 5001(a)(5) of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, 419 (1998). Actual award of funds will be subject to funding availability. Federal ITS funding for Amber Plan support assistance may be used as necessary for:

1. Developing general policies and procedures that would guide the use of CMS or other motorist information systems to issue Amber Alerts.

2. Developing guidance or policies on the content and format of alert messages being conveyed on CMS or other traveler information systems.

3. Coordinating State, regional, and local plans for use of CMS or other transportation related issues.

4. Planning secure and reliable communications systems and protocols between public safety and transportation agencies or modify existing communications systems to support Amber Alerts.

5. Planning and designing improved systems for communicating with motorists including the capability for issuing wide area alerts to motorists.

6. Planning systems and protocols to facilitate the efficient issuance of Amber Alerts and other key information to motorists during off-hours.

7. Providing training and guidance to transportation authorities to facilitate appropriate use of CMS and other traveler information systems for Amber Alerts.

Once these eligible activities are complete, any remaining funding allocated under agreements resulting from this request may be used to implement the systems that will support the dissemination of Amber Alert messages via CMS or other traveler information systems. This includes systems necessary to establish the necessary communications between appropriate public safety and transportation agencies to post Amber Alerts on CMS; systems necessary to provide for wide area alerts to motorists; and systems necessary for 24-hour operation of such systems. **Note:** The actual purchase of CMS or other on-street or in-vehicle hardware is not eligible for funding under this program.

Matching Share/Cost Sharing

There is a statutorily required minimum twenty percent matching share that must be from non-federally derived funding sources, and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the project for a substantial period, as long as such personnel are not otherwise supported with Federal funds.[1] The non-federally derived funding may come from State, local government, or private sector partners. However, funding identified to support continued operations, maintenance, and management of the system will not be considered as part of the partnership's cost-share contribution.

Offerors are encouraged to consider additional matching share above the required minimum match described above. Those offerors willing to propose additional match may include the value of federally supported projects directly associated with the proposed project.

Grantees shall maintain financial records that detail the activities provided by Federal funding, indicating appropriate total matching requirements, as described under the heading, Matching Share/Cost Sharing. The U.S. DOT and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Grantees and sub-grantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised Office of Management and Budget (OMB) Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, dated June 24, 1997, that is available at the following url: *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* The audits shall be conducted by an independent auditor in accordance with generally accepted government auditing standards covering financial audits found at 49 CFR 18.26.

Instructions to Applicants

An application for Amber Plan program assistance shall consist of two parts: (1) A proposed technical approach; and (2) a financial plan. Together these two elements must describe the proposed activities to be conducted with this funding. The complete application shall not exceed 15 pages in length, including the Amber Plan Approach, the Financial Plan, the title page, index, and tables. A page is defined as one side of an 8½ by 11-inch paper, with a type font no smaller than 12 point.

Applications shall be submitted in an electronic format compatible with Microsoft Office 2000. The cover sheet or title page of the application shall include the name, address, and phone number of an individual to whom correspondence and questions about the application may be directed. Any portion of the application or its contents that may contain proprietary information shall be clearly indicated; otherwise, the application and its contents shall be non-proprietary.

Application Content

Applicants must submit an acceptable Technical Approach and Financial Plan that together provide sound evidence that the objectives of this program can successfully be completed in a timely fashion.

Applications should be organized into the following two sections:

1. Technical Approach

The application should describe the proposed approach for establishing the systems, protocols and message sets necessary for posting of Amber Alert messages on CMS and other traveler information systems. The following paragraphs illustrate the general information that applicants should include in this section of the application.

(A) The application should identify candidate agencies or organizations that will be engaged in the proposed activities. These organizations may include, but not be limited to: highway agencies, public safety agencies, sources of traveler information, and commercial radio and television stations. It is expected that the slate of organizations, agencies, and firms involved in developing an Amber Plan Program will be adjusted as deployment plans are developed.

(B) The application should discuss institutional or organizational issues that will affect the Amber Plan Program and the involvement of the transportation community in that program, and what candidate techniques or activities will be used to address these issues. Prior activities that identified or addressed Amber Plan Program issues may be described in this section to provide a complete portrayal of the breadth of effort by the applicant to develop a plan for regional deployment.

(C) The application should describe the expected product(s) of the activities described in paragraph (B) of this

[1] *See* § 5001(b) of the Transportation Equity Act for the 21st Century, Pub. L. 105–178; 112 Stat. 107, June 1998.

section. It is expected that reports, plans, presentations, or other products would be produced by these activities for use by the applicant. The applicant should propose which of these products may serve as deliverables to the ITS–JPO under any resultant agreement from this request. The final deliverables will be determined in negotiations between the ITS–JPO and the selected locations.

(D) The application should include a proposed schedule or timeline for completion of the proposed activities and outputs for which the grant will be used. The schedule should include milestone events or targeted activities, especially indicating any activities that require ITS–JPO actions or actions by organizations typically not influenced by the applying agency. Additionally, the schedule should also indicate targets for delivery of any products or outputs from development activities.

2. Financial Plan

The Financial Plan should demonstrate that sufficient funding is available to successfully complete all aspects of the proposed development of the plans and designs described in section 1. Additionally, the Financial Plan shall provide the financial information described under the heading, Matching Share/Cost Sharing. An acceptable Financial Plan should:

(A) Provide a clear identification of the proposed funding for activities leading to the development of a comprehensive plan for issuing Amber Alerts, and a commitment that no more than 80 percent of the total cost will be supported by Federal ITS funds. As appropriate, financial commitments from other public agencies and from private firms should be documented appropriately, such as through memorandums of understanding.

(B) Describe how the proposed systems will be developed to ensure their timely implementation and the continued long-term operations of the systems.

(C) As appropriate, include corresponding public and/or private investments that minimize the relative percentage and amount of Federal ITS funds. Also include evidence of continuing fiscal capacity and commitment from anticipated public and private sources.

Authority: Sec. 5001(a)(5), Pub. L. 105–178, 112 Stat. 107, 420; 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: February 6, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–3501 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this notice to advise Federal agencies that the Norwalk Transit District (NTD) intends to transfer approximately 2.11 acres of land and improvements thereon at 100 Fairfield Avenue, Norwalk, Connecticut.

EFFECTIVE DATE: Any Federal agency interested in acquiring the parcel of land must notify the FTA Region I Office of its interest by March 14, 2003.

ADDRESSES: Interested parties should notify the Regional Office by writing to Richard H. Doyle, Regional Administrator, Federal Transit Administration, 55 Broadway, Room 921, Cambridge, MA 02142.

FOR FURTHER INFORMATION CONTACT: Richard N. Cole, Director of Operations and Program Management, at 617/494–2395; or Jackie Hathaway, FTA Headquarters Office of Program Management, at 202/366–6106.

SUPPLEMENTARY INFORMATION:

Background: 49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government.

49 U.S.C. 5334(g)(1) Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the government in liquidation and return of the financial interest of the government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the assets further described below. Any Federal agency interested in acquiring the affected land and improvements thereon should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land and improvements thereon, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property is located at 100 Fairfield Avenue in Norwalk, Connecticut, and contains approximately 2.11 acres of land and a building which is approximately 26,495 square feet. The property has two 10,000 gallon underground fuel tanks and a leak detection system.

The land is of a triangular shape and is situated along exit ramp 14 eastbound of the Connecticut Turnpike, and the building fronts on Cedar Street. The land slopes down from Fairfield Avenue and the Cedar Street properties. The building is approximately 26,495 square feet; it consists of a metal sandwich panel construction with a rubber ballasted roof; and it is fully sprinklered. Almost ⅔ of the building was used for vehicle storage; and as a result, the heating and lighting systems in that area have limited capacity. The space is clear span. The balance of the building was used for a vehicle washer, four maintenance bays, and approximately 3,000 square feet of office space, toilets and showers.

The building is in fair condition but may need painting, a new roof, substantial cleaning and considerable cosmetic work. Fumes from the maintenance and storage area seep into the office area at times; and during

extremely wet seasons, there is water seepage in the storage area.

Issued on: February 6, 2003.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 03–3454 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–03–14448; Notice 2]

Pipeline Safety: Qualification of Pipeline Personnel

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will conduct a public meeting to discuss progress in implementing the operator qualification (OQ) rule for gas and hazardous liquid pipelines. OPS will continue to develop the protocols and guidance materials, and provide an opportunity for public comment. A panel of experts will address technical issues associated with protocols and related materials. A record of the previous public meeting on Qualification of Pipeline Personnel that was held in San Antonio, TX, is available in this docket (RSPA–03–14448).

DATES: The public meeting will be held on February 25, 26, and 27, 2003, beginning at 9 a.m. and will continue until 4 p.m.

ADDRESSES: The public meeting will be held at the Hyatt Regency Houston Airport Hotel, 15747 John F. Kennedy Blvd., Houston, TX 77032 (Tel: 800–233–1234); Fax: 281–590–8461; Web: *www.houstonairport.hyatt.com.* This meeting is free and open to the public. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings.* The deadline for making a hotel reservation is February 17, 2003.

The program will address the 13 issues generated by the first public meeting held in January 2003, and will be open for technical input. This will include presentations on definitions of terms discussed at the last meeting. Persons wishing to make a presentation or statement at the meeting should notify Janice Morgan, (202) 366–2392, no later than February 19, 2003.

Although we encourage persons wishing to comment on operator qualification and inspection protocols to participate in the public meeting, written comments will be accepted. You may submit written comments on operator qualification and inspection issues by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov.* and click on ''Help'' for instructions on electronic filing of comments. All written comments should identify the docket number RSPA–03–14448; Notice 2.

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 comments (or signing the comments, if submitted on behalf of an association, business, labor union, *etc.*). You may review the U.S. Department of Transportation'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.*

FOR FURTHER INFORMATION CONTACT: You may contact Richard Sanders at (405) 954–7214 or (405) 954–7219, regarding the agenda of this public meeting. General information about OPS programs may be obtained by accessing OPS's Internet home page at *http://ops.dot.gov.*

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance, contact Janice Morgan, (202) 366–2392.

SUPPLEMENTARY INFORMATION: The operator qualification rules at 49 CFR 192.801 (for gas pipelines) and at 49 CFR 195.501 (for hazardous liquid pipelines) require every pipeline operator to have and follow a written qualification program that includes provisions to identify covered tasks and to ensure that all persons performing these tasks are qualified. By October 28, 2002, all gas and hazardous liquid pipeline operators should have completed the qualification of all individuals performing covered tasks on pipeline facilities.

On February 25, 26, and 27, 2003, OPS will conduct a public meeting to discuss progress in implementing the operator qualification rule for gas and hazardous liquid pipelines. OPS will present a detailed review of the development of the operator qualification inspection protocols. The meeting will focus on areas considered high priority and discussion on compliance issues from Federal and State pipeline safety personnel. These issues, as identified at a previous public meeting on January 22, 2003, in San Antonio, TX, are as follows:

(1) Scope of operator qualification;
(2) Evaluation of knowledge, skills, and physical ability;
(3) Re-evaluation intervals;
(4) Maintenance versus new construction;
(5) Treatment of emergency response;
(6) Additional covered tasks;
(7) Extent of documentation;
(8) Abnormal operating conditions;
(9) Treatment of training;
(10) Criteria for small operators;
(11) Direction and observation of non-qualified people;
(12) Noteworthy practices;
(13) Persons contributing to an incident or accident.

All persons attending the meeting will have an opportunity to comment on operator qualification compliance issues and to question the expert panel on the new operator qualification compliance protocols.

Issued in Washington, DC, on February 6, 2003.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 03–3453 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Narcotics Trafficker-Related Blocked Persons

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of 23 additional persons and 13 entities whose property and interests in property have been designated as specially designated narcotics traffickers pursuant to Executive Order 12978 of October 25, 1995; is supplementing information concerning two persons and one entity who have been designated as specially

designated narcotics traffickers; and is removing the entries for two persons previously listed as specially designated narcotics traffickers.

DATES: The designations by the Office of Foreign Assets Control of additional persons identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 12978 are effective on October 24, 2002. The removal of the Agudelo Galvez and Donneys Gonzalez from the list of specially designated narcotics traffickers is effective as of April 15, 2002 and August 5, 2002, respectively.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat'' readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov.* This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On October 21, 1995, the President issued Executive Order 12978 (''the Order''), where he found that the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence corruption, and harm that they cause in the United States and abroad constitute an extraordinary threat to the national security, foreign policy, and economy of the United States. The President identified four individuals whose assets are blocked pursuant to the Order. Additional persons have been blocked pursuant to the Order and Section 536.312 of the Narcotics Trafficking and Sanctions Regulations, 31 CFR part 356 (the ''Regulations''), because they have been determined to play a significant role in narcotics trafficking centered in Colombia, to materially assist in or provide financial support or technological support for, or goods or services in support of other specially designated narcotics traffickers, or to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order (collectively ''Specially Designated Narcotics Traffickers'' or ''SDNTs''). These additional blockings have been published in the **Federal Register**.

On October 24, 2002, the Office of Foreign Assets Control (''OFAC''), acting under authority delegated by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of the Treasury, designated an additional 23 individuals and 13 entities. Additionally, supplementary information is being added to existing SDNT entries for two persons and one entity and those entries are revised in their entirety. Finally, the entries for two SDNT individuals are being removed from the list of specially designated narcotics traffickers because OFAC has determined that these individuals no longer meet the criteria for designation as SDNTs.

Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control. Persons, and their known aliases, including supplemental information, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** notice, as ''specially designated narcotics traffickers'' identified by the initials ''[SDNT]''. Additionally, the two names identified for removal will be deleted from the appendix A to 31 CFR chapter V through a separate **Federal Register** notice.

Additional Designations. On October 24, 2002, the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, designated an additional 23 individuals and 13 entities whose property and interests in property are blocked. The names of these additional persons (individuals and entities) are set forth in the list below.

The designations by the Office of Foreign Assets control pursuant to Executive Order 12978 of these additional persons listed below are effective on October 24, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

The list of additional SDNT designations follow:

1. AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 12 Via Santa Ana Molina, Hacienda Doima, Cartago, Colombia; NIT # 800144713–3 (Colombia) (entity).

2. AGROPECUARIA MIRALINDO S.A., Carrera 8N No. 17A–12, Cartago, Colombia; NIT # 836000446–4 (Colombia) (entity).

3. ARIZONA S.A., Carrera 8N No. 17A–12, Cartago, Colombia, NIT # 836000489–0 (Colombia) (entity).

4. BENAVIDEZ CHAVEZ, Alvaro Higinio, Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; DOB 1 Feb 1971; Passport 94295393 (Colombia); Cedula No. 94295393 (Colombia) (individual).

5. CARDONA GARCIA, Diomiro, Carrera 1 No. 12–53, Cartago, Valle, Colombia; Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; Passport 6233272 (Colombia); Cedula No. 6233272 (Colombia) (individual).

6. DURAN RAMIREZ, Pompilio, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o

GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; Passport 2534945 (Colombia); Cedula No. 2534945 (Colombia) (individual).

7. FLOREZ GRAJALES, Yudy Lorena (a.k.a. FLOREZ GRAJALES, Yudi Lorena), Carrera 78 No. 3–46, Cali, Colombia; Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; DOB 26 Jun 1978; Passport 32180561 (Colombia); Cedula No. 32180561 (Colombia) (individual).

8. GANADERIA EL VERGEL LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Valle, Colombia; NIT # 800146295–5 (Colombia) (entity).

9. GANADERIAS BILBAO LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Valle, Colombia; NIT # 800146290–9 (Colombia) (entity).

10. GARCIA DUQUE, Gustavo, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; DOB 30 Jun 1961; Passport 16213736 (Colombia); Cedula No. 16213736 (Colombia) (individual).

11. GARCIA GARCIA, Gabriel Alfonso, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; DOB 7 Jun 1976; Passport 16230989 (Colombia); Cedula No. 16230989 (Colombia) (individual).

12. GOMEZ APONTE, Laura Victoria, Carrera 4A No. 63N–29, Cali, Colombia; c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; DOB 31 Oct 1965; POB Cali, Valle, Colombia; Passport 31937650 (Colombia); Cedula No. 31937650 (Colombia) (individual).

13. GOMEZ BUSTAMANTE, Luis Hernando, Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Colombia; Km 12 Via Santa Ana Molina, Hacienda Doima, Cartago, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 14 Mar 1958; POB El Aguila, Valle, Colombia; Passport 16209410 (Colombia); Cedula No. 16209410 (Colombia) (individual).

14. GOMEZ GOMEZ, Viviana, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/ o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 17 Oct 1982; NIT # 681946748–1 (Colombia) (individual).

15. GOMEZ JARAMILLO, Olga Cecilia, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 29 Feb 1956; Passport 31398070 (Colombia); Cedula No. 31398070 (Colombia) (individual).

16. HENAO GONZALEZ, Carlos Andres, Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 27 Nov 1980; Passport 75096405 (Colombia); Cedula No. 75096405 (Colombia) (individual).

17. HENAO GONZALEZ, Lina Marcela, Avenida 4 Oeste No. 5–97, Apt. 1001, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 10 May 1985; POB Cali, Valle, Colombia; Passports AF228090 (Colombia), TI–85051037834 (Colombia); NIT # 650000091–9 (Colombia); Cedula No. TI–85051037834 (Colombia) (individual).

18. HENAO GONZALEZ, Olga Patricia, Avenida 4 Oeste No. 5–97, Apt. 1001, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 18 Jan 1988; POB Cali, Valle, Colombia; Passports AG762459 (Colombia), RN12524986 (Colombia); NIT # 600018532–2 (Colombia); Cedula No. RN12524986 (Colombia) (individual).

19. HURTADO ROMERO, Jairo Jose, Carrera 42 No. 5B–81, Cali, Colombia; Carrera 8N No. 17A–12, Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cali, Colombia; Passport 13809079 (Colombia); Cedula No. 13809079 (Colombia) (individual).

20. INMOBILIARIA EL ESCORIAL LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle Colombia; Carrera 5 No. 18–20 Local 12, Cartago, Valle, Colombia; NIT # 800146869–2 (Colombia) (entity).

21. INMOBILIARIA LINARES LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; NIT # 800146860–7 (Colombia) (entity).

22. INMOBILIARIA PASADENA LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; NIT # 800146861–4 (Colombia) (entity).

23. INVERSIONES LA QUINTA Y CIA. LTDA., Diagonal 29 No. 36–10 of. 801, Cali, Colombia; Diagonal 27 No. 27–104, Cali, Colombia; NIT # 800160387–2 (Colombia) (entity).

24. JIMENEZ BEDOYA, Maria Adriana, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o

ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; DOB 13 Apr 1971; Passport 31417388 (Colombia); Cedula No. 31417388 (Colombia) (individual).

25. LADRILLERA LA CANDELARIA LTDA., Avenida 6 Norte No. 17N–92, of. 514, Cali, Colombia; Correg. Buchitolo, Vereda Tres Esquinas, Candelaria, Colombia; NIT # 800119741–4 (Colombia) (entity).

26. LOPRETTO DURAN, Jorge Enrique, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 8 Aug 1962; Passport 16215409 (Colombia); Cedula No. 16215409 (Colombia) (individual).

27. MENDEZ SALAZAR, John Jairo, Calle 1 No. 56–109 Casa 32, Cali, Colombia; Carrera 42 No. 5B–81, Cali, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cali, Colombia; Passport 98515360 (Colombia); Cedula No. 98515360 (Colombia) (individual).

28. MONTES OCAMPO, Jose Alberto, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; DOB 24 Feb 1965; Passport 79339330 (Colombia); Cedula No. 79339330 (Colombia) (individual).

29. MONTOYA LUNA E HIJOS Y CIA. S.C.S., Carrera 85B No. 13A–136, Cali, Colombia; NIT # 800077316–5 (Colombia) (entity).

30. MONTOYA SANCHEZ, Diego Leon, Diagonal 27 No. 27–104, Cali, Colombia; c/o INVERSIONES LA QUINTA Y CIA. LTDA., Cali, Colombia; c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; c/o MONTOYA LUNA E HIJOS Y CIA. S.C.S., Cali, Colombia; DOB 11 Jan 1958; POB Trujillo, Valle, Colombia; Passport 16348515 (Colombia); Cedula No. 16348515; (Colombia) (individual).

31. MONTOYA SANCHEZ, Eugenio, (a.k.a. CARVAJAL TAFURT, Hector Fabio), Diagonal 27 No. 27–104, Cali, Colombia; Calle 7 No. 45–25, Cali, Colombia; c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; DOB 17 Apr 1970, alt. DOB 15 Apr 1972; POB Trujillo, Valle, Colombia; Passports AC814028 (Colombia), 94307307 (Colombia) 16836750 (Colombia); Cedula No. 94307307 (Colombia), 16836750 (Colombia) (individual).

32. MONTOYA SANCHEZ, Juan Carlos, Carrera 85B No. 13A–136, Cali, Colombia; c/o MONTOYA LUNA E HIJOS Y CIA. S.C.S., Cali, Colombia; DOB 3 Sep 1962; POB Riofrio, Valle, Colombia; Passport 16357049 (Colombia); Cedula No. 16357049 (Colombia) (individual).

33. ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA S.C.S., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; NIT # 800140477–1 (Colombia) (entity).

34. RIOS LOZANO, Alexander, Carrera 42 No. 5B–81, Cali, Colombia; Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cali, Colombia; DOB 15 Jan 1974; Passport 94402123 (Colombia); Cedula No. 94402123 (Colombia) (individual).

35. RUIZ CASTANO, Maria Helena, c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; DOB 17 Nov 1970; Passport 66901635 (Colombia); Cedula No. 66901635 (Colombia) (individual).

36. VISCAYA LTDA., (a.k.a VIZCAYA LTDA.), Carrera 3 No. 11–99, Cartago, Valle, Colombia; Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Colombia; NIT # 800054357–8 (Colombia) (entity).

Supplemental Information on Existing Specially Designated Narcotics Traffickers. Supplementary information is added to existing SDNT entries for two individuals and one entity and those entries are revised in their entirety.

1. GONZALEZ BENITEZ, Olga Patricia, Hacienda Coque, Cartago, Colombia; Carrera 4 No. 16–04 apt. 303, Cartago, Colombia; Avenida 4 Oeste No. 5–97 Apt. 1001, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; DOB 4 Aug 1965; POB Cartago, Valle, Colombia; Passports AH567983 (Colombia), 29503761 (Colombia); Cedula No. 29503761 (Colombia) (individual).

2. HENAO MONTOYA, Arcangel de Jesus; Hacienda Coque, Cartago, Colombia; Carrera 4 No. 16–04 apt. 303, Cartago, Colombia; Carrera 42 No. 5B–81, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. SCS., Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Carago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA., S.C.S., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 7 Oct 1954; POB Cartago, Valle, Colombia; Passport 16215230 (Colombia); NIT# 16215230–1 (Colombia); Cedula No. 16215230 (Colombia) (individual).

3. MAQUINARIA TECNICA Y TIERRAS LTDA. (a.k.a. M.T.T. LTDA.), Carrera 4A No. 16–04, Cartago, Colombia; Carrera 42 No. 5B–81, Cali, Colombia; NIT # 800084233–1 (Colombia) (entity).

Removals. The entries for two SDNT individuals are being removed from the list of SDNTs because OFAC has determined that these individuals no longer meet the criteria for designation as SDNTs. All real and personal property of these individuals, including all accounts in which they have interests, which had been blocked solely due to their designations as SDNTs, are unblocked; and all lawful transactions involving U.S. persons and these individuals are permissible.

1. Lieride Agudelo Galvez was designated on January 21, 1997. *See* 62 FR 2903, Jan. 21, 1997.

2. Federico Donneys Gonzalez was designated on October 24, 1995. *See* 60 FR 54582, Oct. 24, 1995.

Dated: December 23, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 31, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3478 Filed 2–11–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of one additional entity whose property and interests in

property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: This designation by the Secretary of the Treasury of this one additional entity identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective on November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat'' readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the ''Order'') imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notices of these additional blockings have been published in the **Federal Register**.

Additional Designations. On November 21, 2002, the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order designated one additional entity whose property and interests in property are blocked. The name of this additional entity is set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate Federal Register document, as ''specially designated global terrorists'' identified by the initials ''[SDGT]''. Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designation by the Secretary of the Treasury pursuant to Executive Order 13224 of the additional entity listed below is effective on November 21, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subject of the determination reflected in this notice because to do so would give the subject the opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The additional designation follows: MOROCCAN ISLAMIC COMBATANT GROUP (a.k.a. GICM; a.k.a. GROUPE ISLAMIQUE COMBATTANT MAROCAIN)

Dated: December 23, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 27, 2003.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3479 Filed 2–11–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–47, Employee Plans Compliance Resolution System.

DATES: Written comments should be received on or before April 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Compliance Resolution System.

OMB Number: 1545–1673.

Revenue Procedure Number: Revenue Procedure 2002–47.

Abstract: The information requested in Revenue Procedure 2002–47 is required to enable the Internal Revenue Service to make determinations regarding the issuance of various types of closing agreements and compliance statements. The issuance of closing agreements and compliance statements

allows individual plans to continue to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 4,292.

Estimated Time Per Respondent: 13 hours, 6 minutes.

Estimated Total Annual Burden Hours: 56,272.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3497 Filed 2–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106871–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–106871–00, Reporting Requirements for Widely Held Fixed Investment Trusts (§ 1.671–5).

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Widely Held Fixed Investment Trusts.

OMB Number: 1545–1540.

Regulation Project Number: REG–106871–00.

Abstract: Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3498 Filed 2–11–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 29

Wednesday, February 12, 2003

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–200311; FRL–7444–7]

Approval and Promulgation of Air Quality Implementation Plans; Alabama Update to Materials Incorporated by Reference

Correction

In rule document 03–2172 beginning on page 5221 in the issue of Monday, February 3, 2003 make the following corrections:

§ 52.50 [Corrected]

1. On page 5228, in § 52.50, in the table, in the second column, in the second line, ''Area 1'' should read ''Area''.

2. On the same page, in the same section, in the same table, in the third column, ''2/01/00'' should read ''12/01/00''.

[FR Doc. C3–2172 Filed 2–11–03; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID–02–002; FRL–7422–3]

Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

Correction

In rule document 03–856 beginning on page 2217 in the issue of Thursday, January 16, 2003, make the following correction:

§ 81.313 [Corrected]

On page 2226, in § 83.313, in the table, in the second column, under the heading ''Designation'', under the subheading ''Date'', in the sixth entry, ''11/20/94'' should read, ''1/20/94''.

[FR Doc. C3–856 Filed 2–11–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 12, 2003

Part II

Environmental Protection Agency

40 CFR Parts 9, 122, 123, and 412
National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123 and 412

[FRL–7424–7]

RIN 2040–AD19

National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule revises and clarifies the Environmental Protection Agency's (EPA) regulatory requirements for concentrated animal feeding operations (CAFOs) under the Clean Water Act. This final rule will ensure that CAFOs take appropriate actions to manage manure effectively in order to protect the nation's water quality.

Despite substantial improvements in the nation's water quality since the inception of the Clean Water Act, nearly 40 percent of the Nation's assessed waters show impairments from a wide range of sources. Improper management of manure from CAFOs is among the many contributors to remaining water quality problems. Improperly managed manure has caused serious acute and chronic water quality problems throughout the United States.

Today's action strengthens the existing regulatory program for CAFOs. The rule revises two sections of the Code of Federal Regulations (CFR), the National Pollutant Discharge Elimination System (NPDES) permitting requirements for CAFOs (Sec. 122) and the Effluent Limitations Guidelines and Standards (ELGs) for CAFOs (Sec. 412).

The rule establishes a mandatory duty for all CAFOs to apply for an NPDES permit and to develop and implement a nutrient management plan. The effluent guidelines being finalized today establish performance expectations for existing and new sources to ensure appropriate storage of manure, as well as expectations for proper land application practices at the CAFO. The required nutrient management plan would identify the site-specific actions to be taken by the CAFO to ensure proper and effective manure and wastewater management, including compliance with the Effluent Limitation Guidelines. Both sections of the rule also contain new regulatory requirements for dry-litter chicken operations.

This improved regulatory program is also designed to support and complement the array of voluntary and other programs implemented by the United States Department of Agriculture (USDA), EPA and the States that help the vast majority of smaller animal feeding operations not addressed by this rule. This rule is an integral part of an overall federal strategy to support a vibrant agriculture economy while at the same time taking important steps to ensure that all animal feeding operations manage their manure properly and protect water quality.

EPA believes that these regulations will substantially benefit human health and the environment by assuring that an estimated 15,500 CAFOs effectively manage the 300 million tons of manure that they produce annually. The rule also acknowledges the States' flexibility and range of tools to assist small and medium-size AFOs.

DATES: These final regulations are effective on April 14, 2003.

ADDRESSES: The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC) in the basement of the EPA West Building, Room B–102, at 1301 Constitution Ave., NW., Washington, DC. The administrative record is also available via EPA Dockets (Edocket) at *http://www.epa.gov/edocket* under Edocket number OW–2002–0025. The rule and key supporting materials are also electronically available on the Internet at *http://www.epa.gov/npdes/caforule.*

FOR FURTHER INFORMATION CONTACT: Gregory Beatty, U.S. EPA, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW., Washington, DC 20460, 202–564–0724, for information pertaining to the NPDES Regulations (Part 122) or Paul Shriner, U.S. EPA, Office of Water, Office of Science and Technology (4303T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, 202–566–1076, for information pertaining to the Effluent Guideline (Part 412).

SUPPLEMENTARY INFORMATION:

A. General Information
1. What entities are potentially regulated by this final rule?
2. How Can I Get Copies of This Document and Other Related Information?
B. Under what legal authority is this final rule issued?
C. How is this preamble organized?
D. What is the Comment Response Document?
E. What other information is available to support this final rule?
I. Background Information
A. What is the context for this rule?
B. Why is EPA revising the existing effluent guidelines and NPDES regulations for CAFOs?
C. What are the environmental and human health concerns associated with improper management of manure and wastewater at CAFOs?
1. How do the amounts of animal manure compare to human waste?
2. What are ''excess manure nutrients'' and why are they an indication of environmental concern?
3. What pollutants are present in animal manure and wastewater?
4. How do these pollutants reach surface water?
5. How is water quality impaired by animal manure and wastewater?
6. What ecological and human health impacts have been caused by CAFO manure and wastewater?
D. What are the roles of the key entities involved in the final rule?
1. CAFOs.
2. States.
3. EPA.
4. USDA.
5. Other stakeholders.
6. The public.
E. What principles have guided EPA's decisions embodied in this rule?
F. What are the major elements of this final rule? Where do I find the specific requirements?
1. NPDES Regulations for CAFOs.
2. Effluent Limitations Guidelines requirements for CAFOs.
II. What Events Have Led to This Rule?
A. The Clean Water Act
1. The National Pollutant Discharge Elimination System (NPDES) permit program
2. Effluent limitations guidelines and standards
3. Effluent guidelines planning process—Section 304(m) requirements
B. Existing Clean Water Act requirements applicable to CAFOs
1. Scope and requirements of the 1976 NPDES regulations for CAFOs
2. Scope and requirements of the 1974 feedlot effluent guidelines
C. USDA–EPA Unified National Strategy for Animal Feeding Operations
III. How Was This Final Rule Developed?
A. Small Business Advocacy Review (SBAR) Panel
B. Proposed Rule
C. 2001 Notice of Data Availability
D. 2002 Notice of Data Availability
E. Public Comments
F. Public outreach
1. Pre-proposal activities
2. Post-proposal activities
IV. CAFO Roles and Responsibilities
A. Who is affected by this rule?
1. What is an AFO?
2. What is a CAFO?
3. What types of animals are covered by today's rule?
4. Is my AFO a CAFO if it discharges only during large storm events?
5. How are land application discharges of manure and process wastewaters at CAFOs covered by this rule?
6. How is EPA applying the Agricultural Storm Water Exemption with respect to Land Application of CAFO Manure and Process Wastewaters?

7. When and how is an AFO designated as a CAFO?
8. Can EPA designate an AFO as a CAFO where the State is the permitting authority?
9. How can States use non-NPDES programs to prevent medium and small operations from being defined or designated as CAFOs?
10. What CAFOs are new sources?
B. Who needs a permit and when?
1. Who needs to seek coverage under an NPDES permit?
2. How can a CAFO make a demonstration of no potential to discharge?
3. When must CAFOs seek coverage under a NPDES permit?
4. What are the different types of permits?
5. How does a CAFO apply for a permit?
6. What are the minimum required elements of an NOI or application for an individual permit?
C. What are the requirements and conditions in an NPDES permit?
1. What are the different types of effluent limitations that may be in a CAFO permit?
2. Effluent limitations guidelines for Large CAFOs
3. What technology-based limitations apply to Small and Medium CAFOs?
4. Will CAFOs be required to develop and implement a Nutrient Management Plan?
5. Does EPA require nutrient management plans to be developed or reviewed by a certified planner?
6. What are the special conditions applicable to all NPDES CAFO permits?
7. Standard conditions applicable to all NPDES CAFO permits
D. What records and reports must be kept on-site or submitted?
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A. General Information

1. What Entities Are Potentially Regulated by This Final Rule?

This final rule applies to new and existing animal feeding operations (AFOs) that meet the definition of a concentrated animal feeding operation (CAFO), or AFOs that are designated as CAFOs by the permitting authority. CAFOs are defined by the Clean Water Act as point sources for the purposes of the National Pollutant Discharge Elimination System (NPDES) program. (33 U.S.C. 1362). The rule also applies to States and Tribes with authorized NPDES Programs.

Table 1 lists the types of entities EPA is now aware could potentially be regulated by this final rule. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definitions and other provisions of 40 CFR 122.23 and the provisions of 40 CFR Part 412, including the applicability criteria at 40 CFR 412.1. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
Federal, State, and Local Government: Industry		*See* below	*See* below

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE—Continued

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
	Operators of animal production operations that meet the definition of a CAFO:		
	Beef cattle feedlots (including veal)	112112	0211
	Beef cattle ranching and farming	112111	0212
	Hogs	11221	0213
	Sheep	1241, 11242	0214
	General livestock, except dairy and poultry	11299	0219
	Dairy farms	11212	0241
	Broilers, fryers, and roaster chickens	11232	0251
	Chicken eggs	11231	0252
	Turkey and turkey eggs	11233	0253
	Poultry hatcheries	11234	0254
	Poultry and eggs	11239	0259
	Ducks	112390	0259
	Horses and other equines	11292	0272

2. How Can I Get Copies of This Document and Other Related Information?

a. Docket. EPA has established an official public docket for this action under Docket ID No. W–00–27. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water 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 Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

b. *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 section A.2.a. Once in the system, select ''search,'' then key in the appropriate docket identification number (OW–2002–0025).

B. Under What Legal Authority Is This Final Rule Issued?

Today's final rule is issued under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

C. How Is This Preamble Organized?

Below is an outline for the preamble to the final rule. It is written in a question-and-answer format that is designed to help the reader understand the information in the rule. Each question is followed by a concise answer, a brief summary of what was proposed, the key comments that the Environmental Protection Agency (EPA) received on the proposed rule, and the principal rationale for EPA's decision.

List of Acronyms

AFO—animal feeding operation
BAT—best available technology economically achievable
BCT—best conventional pollutant control technology
BOD—biochemical oxygen demand
BPJ—best professional judgment
BMP—best management practice
BPT—best practicable control technology currently available
CAFO—concentrated animal feeding operation
CFR—Code of Federal Regulations
CFU—colony forming units
CNMP—comprehensive nutrient management plan
CSREES—USDA's Cooperative State Research, Education, and Extension Service
CWA—Clean Water Act
CZARA—Coastal Zone Act Reauthorization Amendments
ELG—effluent limitations guideline
EMS—environmental management system
EPA—Environmental Protection Agency
EQIP—Environmental Quality Incentives Program
FAPRI—Food and Agricultural Policy Research Institute
FR—Federal Register
ICR—Information Collection Request
NODA—Notice of Data Availability
NOI—notice of intent
NPDES—National Pollutant Discharge Elimination System
NRCS—USDA's Natural Resources Conservation Service
NRDC—Natural Resources Defense Council
NSPS—new source performance standards
NTTAA—National Technology Transfer and Advancement Act
NWPCAM—National Water Pollution Control Assessment Model
OMB—U.S. Office of Management and Budget
POTW—publicly owned treatment works
RFA—Regulatory Flexibility Act
SBA—U.S. Small Business Administration
SBAR (panel)—Small Business Advocacy Review Panel
SBREFA—Small Business Regulatory Enforcement Fairness Act
SRF—State Revolving Fund
TMDL—total maximum daily load
TSS—total suspended solids
UMRA—Unfunded Mandates Reform Act
USDA—United States Department of Agriculture
WWTP—wastewater treatment plant

D. What Is the Comment Response Document?

EPA received more than 11,000 comments on the proposed rule and on the two supplemental Notices of Data

Availability. EPA evaluated all the significant comments submitted and prepared a *Comment Response Document* containing the Agency's responses to those comments. The *Comment Response Document* complements and supplements this preamble by providing more detailed explanations of EPA's final actions. The *Comment Response Document* is available at the Water Docket. See Section E below for additional information.

E. What Other Information Is Available to Support This Final Rule?

In addition to this preamble, today's final rule is supported by extensive other information that is part of the administrative record, such as the *Comment Response Document,* and the key supporting documents listed below. These supporting documents and the administrative record are available at the Water Docket and via e-Docket.

- ''*Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*'' (EPA 821–R–03–001). Hereafter referred to as the *Technical Development Document,* this document presents EPA's technical conclusions concerning the rule. EPA describes, among other things, the data collection activities in support of the rule, the wastewater treatment technology options, wastewater characterization, and the estimated costs to the industry.
- *''Economic Analysis of the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations''* (EPA 821–R–03–002). Hereafter referred to as the *Economic Analysis,* this document presents the methodology employed to assess economic impacts of the final rule and the results of the analysis.
- ''*Cost Methodology for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*'' (EPA 821–R–03–004). Hereafter referred to as the *Cost Support Document,* this document presents the methodology employed to estimate costs that will be borne by CAFOs to comply with the requirements of the final rule.
- ''*Environmental and Economic Benefit Analysis of the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*'' (EPA 821–R–03–003). Hereafter referred to as the *Benefits Analysis,* this document presents the methodologies and results of analyses used to assess environmental impacts of the final rule.
- ''*Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*'' (EPA 821–R–01–002). Hereafter referred to as the *Environmental Assessment,* this document illustrates the environmental impacts associated with animal agriculture.
- ''*Information Collection Request for Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Limitations Guidelines for Concentrated Animal Feeding Operations*'' (EPA ICR No. 1989–02). Hereafter referred to as the *ICR,* this document presents estimates of the labor and capital costs associated with the recordkeeping and reporting requirements of the final rule.

I. Background Information

A. What Is the Context for This Rule?

Nationally, there are an estimated 1.3 million farms with livestock. About 238,000 of these farms are considered animal feeding operations (AFOs)—agriculture enterprises where animals are kept and raised in confinement. AFOs annually produce more than 500 million tons of animal manure that, when improperly managed, can pose substantial risks to the environment and public health. EPA and the United States Department of Agriculture (USDA) are committed to a comprehensive national approach to ensure that manure and wastewater from AFOs are properly managed. EPA and USDA are relying on a comprehensive suite of voluntary programs (*e.g.* technical assistance, training, funding, and outreach) and regulatory programs to ensure that AFOs establish appropriate site-specific comprehensive nutrient management plans (CNMPs) that will protect the environment and public health. Today's rule is a part of this suite of actions. It ensures that the largest of these operations, CAFOs, are required to develop and implement a nutrient management plan as a condition of an NPDES permit. The requirement in this rule to develop and implement a nutrient management plan can generally be fulfilled by developing and implementing a CNMP.

Congress passed the Clean Water Act to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters.'' (33 U.S.C. 1251(a)). The Clean Water Act establishes a comprehensive program for protecting our Nation's waters. Among its core provisions, the Act prohibits the discharge of pollutants from a point source to waters of the United States except as authorized by an NPDES permit. The Clean Water Act also requires EPA to establish national technology-based effluent limitations guidelines and standards (ELGs) for different categories of sources. Section 502 of the Clean Water Act specifically defines the term ''point source'' to include CAFOs. In 1974 and 1976, EPA promulgated regulations that established ELGs for large feedlots (CAFOs) and established permitting regulations for CAFOs. Today's final rule revises the more than 25-year old requirements that apply to CAFOs. This regulatory action, which applies primarily to the largest CAFOs, is an important component of the overall effort to ensure effective management of manure.

Focusing EPA's regulatory program on the largest operations, which present the greatest potential risk to water quality, is consistent with the *Unified National Strategy for Animal Feeding Operations* jointly developed by EPA and USDA (USEPA/USDA, March 1999). The *Strategy* specifies that the vast majority of operations that confine animals are and will continue to be addressed through locally focused voluntary programs. The Strategy defines a national objective for all AFOs to develop CNMPs to minimize impacts on water quality and public health from AFOs. The vast majority (estimated to be about 95%) of these CNMPs will be developed under voluntary programs. The requirement in today's rule that the largest of these operations develop and implement a nutrient management plan is consistent with the objective of the Strategy.

B. Why Is EPA Revising the Existing Effluent Guidelines and NPDES Regulations for CAFOs?

Despite more than 25 years of regulation of CAFOs, reports of discharge and runoff of manure and manure nutrients from these operations persist. Although these conditions are in part due to inadequate compliance with and enforcement of existing regulations, EPA believes that the regulations themselves also need revision. The final regulations being announced today will reduce discharges that impair water quality by strengthening the permitting requirements and performance standards for CAFOs. These changes are

expected to mitigate future water quality impairment and the associated human health and ecological risks by reducing pollutant discharges from facilities that confine a large number of animals in a single location.

EPA's revisions to the existing regulations also address the changes that have occurred in the animal production industries in the United States since the development of the existing regulations. The continued trend toward fewer but larger operations, coupled with greater emphasis on more intensive production methods and specialization, is concentrating more manure nutrients and other animal waste constituents within some geographic areas. These large operations often do not have sufficient land to effectively use the manure as fertilizer. Furthermore, there is limited land acreage near the CAFO to effectively use the manure. This trend has coincided with increased reports of large-scale discharges from CAFOs, as well as continued runoff that is contributing to the significant increase in nutrients and resulting impairment of many U.S. water bodies.

Finally, EPA's revisions to the existing regulations will make the regulations more effective for the purpose of protecting or restoring water quality. The revisions will also make the regulations easier to understand and better clarify the conditions under which an AFO is a CAFO and, therefore, subject to the regulatory requirements of today's final regulations.

C. What Are the Environmental and Human Health Concerns Associated With Improper Management of Manure and Wastewater at CAFOs?

This section provides a brief summary of the environmental and human health concerns associated with the improper management of manure and wastewater at CAFOs. It is intended to provide the necessary context for discussions in subsequent sections of this preamble. Information is provided on the amount of manure generated by animal agriculture and the areas of the country where the amount of manure generated by these operations is considered excess at the farm and county levels as defined in analyses by USDA. This information is critical to framing the action EPA is taking today. A detailed discussion of the environmental and human health impacts is presented in Section VII of this preamble, entitled Environmental Benefits of the Final Rule.

Livestock and poultry manure, if not properly handled and managed by the CAFO, can contribute pollutants to the environment and pose a risk to human and ecological health. EPA's administrative record for this final rule includes estimates of the amount of manure and excess nutrients generated each year by CAFOs and provides information on the types of pollutants known to be present in animal manure and wastewater. The administrative record also documents the potential environmental problems associated with CAFOs, based on States reporting water quality impairment attributable to agricultural and animal production, survey data that show human and ecological health risks associated with these pollutants, and documented cases linking these risks to the discharge and runoff of pollutants from livestock and poultry facilities. More information is provided in the 2001 proposed rule (66 FR 2972–2974 and 66 FR 2976–2984) and other support documents referenced in the proposal and in the administrative record for this final rule. The administrative record contains information on the scientific and technical literature, as well as available survey and monitoring data, to corroborate the Agency's findings.

1. How Do the Amounts of Animal Manure Compare to Human Waste?

USDA estimates that operations that confine livestock and poultry animals generate about 500 million tons of manure annually (as excreted). This compares to EPA estimates of about 150 million tons (wet weight) of human sanitary waste produced annually in the United States, assuming a U.S. population of 285 million and an average waste generation of about 0.518 tons per person per year. By this estimate, all confined animals generate 3 times more raw waste than is generated by humans in the U.S. As a result of today's action, EPA is regulating close to 60 percent of all manure generated by operations that confine animals. Of the estimated amount of nutrients generated by these operations that is in excess of cropland needs, EPA's regulation will account for nearly 70 percent of manure generated by these operations.

2. What Are ''Excess Manure Nutrients'' and Why Are They an Indication of Environmental Concern?

An analysis developed by USDA provides a means to consider the potential environmental risk from confined livestock and poultry manure based on the amount of ''excess'' manure nutrients generated by CAFOs. USDA defines ''excess manure nutrients'' on a confined livestock farm as manure nutrient production that exceeds the capacity of the crop to assimilate the nutrients. USDA's analysis of *1997 Census of Agriculture* data indicates that a considerable portion of the manure nutrients generated at larger animal production facilities exceeds the crop nutrient needs, both at the farm and local county levels. Given consolidation trends in the industry toward larger-sized operations that tend to have less available land on which to spread manure, the amount of excess manure nutrients being produced has been rising.

Among the principal reasons for the farm-level excess of nutrients generated is inadequate land for utilizing manure. USDA data show that the amount of nutrients, and the amount of excess nutrients, produced by confined animal operations rose about 20 percent from 1982 to 1997. During that same period, cropland and pastureland controlled by these farms declined from an average of 3.6 acres in 1982 to 2.2 acres per 1,000 pounds live weight of animals in 1997. The combination of these factors has contributed to an increase in the amount of excess nutrients produced at these operations. Larger-sized operations with 1,000 or more animals exceeding 1,000 pounds accounted for the largest share of excess nutrients in 1997. Roughly 60 percent of the nitrogen and 70 percent of the phosphorus generated by these operations must be transported off-site.

By sector, USDA estimates that operations that confine poultry account for the majority of on-farm excess nitrogen and phosphorus. Poultry operations account for nearly one-half of the total recoverable nitrogen, but on-farm use is able to absorb less than 10 percent of that amount. In 1997 poultry operations accounted for about two-thirds of the total excess on-farm nitrogen. About half of the estimated on-farm excess phosphorus was generated by poultry. This is attributable to not only the limited land area for manure application but also the generally higher nutrient content of poultry manure compared to the manure of most other farm animals, as reported in the scientific literature. Dairies and hog operations are the other dominant livestock types shown to contribute to excess on-farm nutrients, particularly phosphorus.

The regions of the United States that show the largest increase in excess nutrients between 1982 and 1997 are the Southeast and the Mid-Atlantic. The excess amounts are mostly the result of the number and concentration of large poultry and hog operations in those regions. These operations generate high nutrient concentrations and often have the smallest land area per animal unit

for manure application in the United States.

USDA's analysis also indicates which counties have the potential for excess manure nutrients defined as manure nutrients produced in a county in excess of the assimilative capacity of crop and pastureland in that county. (The analysis includes counties that have nutrient levels that exceed the assimilative capacity for all of the crop and pastureland in the county, as well as those counties where half of the county's total nitrogen or phosphorus could be provided by manure from confined animal operations.) The counties with potential excess manure nitrogen totaled 165 counties across the United States in 1997; the counties with potential excess manure phosphorus totaled 374 counties. The areas of particular concern for potential county-level excess manure nutrients are in North Carolina, Georgia, Alabama, Mississippi, Arkansas, California, Maryland, Delaware, Pennsylvania, Virginia, and Washington. If current trends in the livestock and poultry industry continue, more manure will be produced in areas without the physical capacity to agronomically use all the nutrients contained in that manure.

USDA's analysis is reported in ''Confined Animal Production and Manure Nutrients'' (Agriculture Information Bulletin 771) and also in ''Confined Animal Production Poses Manure Management Problems'' in the September 2001 issue of USDA's *Agricultural Outlook.* Both are available at USDA's Web site at *http://www.ers.usda.gov/.* Additional documentation on how this analysis was conducted is in USDA's ''Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States,'' December 2000, available at *http://www.nhq.nrcs.usda.gov/land/pubs/manntr.html.* These documents are also available in the administrative record for today's final rule (*i.e.* docket number W–00–27).

3. What Pollutants Are Present in Animal Manure and Wastewater?

Pollutants most commonly associated with animal waste include nutrients (including ammonia), organic matter, solids, pathogens, and odorous compounds. Animal waste can also be a source of salts and various trace elements (including metals), as well as pesticides, antibiotics, and hormones. These pollutants can be released into the environment through discharge or runoff if manure and wastewater are not properly handled and managed.

4. How Do These Pollutants Reach Surface Water?

Pollutants in animal waste and manure can enter the environment through a number of pathways. These include surface runoff and erosion, overflows from lagoons, spills and other dry-weather discharges, leaching into soil and ground water, and volatilization of compounds (*e.g.,* ammonia) and subsequent redeposition on the landscape. As documented in the administrative record, pollutants from animal manure and wastewater can be released from an operation's animal confinement area, treatment and storage lagoons, and manure stockpiles, and from cropland where manure is often land-applied.

5. How Is Water Quality Impaired by Animal Manure and Wastewater?

Agricultural operations, including CAFOs, now account for a significant share of the remaining water pollution problems in the United States, as reported in the *National Water Quality Inventory: 2000 Report* (hereafter the *''2000 Inventory''*). This report, prepared every 2 years under Section 305(b) of the Clean Water Act, summarizes States' reports of impairment to their water bodies and the suspected sources of those impairments. A more comprehensive discussion of the results of the *2000 Inventory* is included in Section VII of this preamble.

EPA's *2000 Inventory* data indicate that the agricultural sector including crop production, pasture and range grazing, concentrated and confined animal feeding operations, and aquaculture is the leading contributor of pollutants to identified water quality impairments in the Nation's rivers and streams. This sector is also the leading contributor in the nation's lakes, ponds, and reservoirs. Agriculture is also identified as the fifth leading contributor to identified water quality impairments in the nation's estuaries. The inventory does not allow a comprehensive breakout of water quality impairments attributable to CAFOs, but EPA's data show that water quality concerns tend to be greatest in regions where crops are intensively cultivated and where livestock operations are concentrated.

The leading pollutants impairing surface water quality in the United States as identified in the 2000 survey data include nutrients, pathogens, sediment/siltation, and oxygen depleting substances. These pollutants can originate from a variety of sources, including the animal production industry.

The *2000 Inventory* provides a general indication of national surface water quality. While concerns have sometimes been raised about the comparability and consistency of these data across States, the report highlights in a general way the magnitude of water quality impairment from agriculture and the relative contribution compared to other sources. Moreover, the findings of this report are consistent with other reports and studies conducted by government and independent researchers that identify CAFOs as an important contributor of surface water pollution, as summarized in the administrative record for this rulemaking.

6. What Ecological and Human Health Impacts Have Been Caused by CAFO Manure and Wastewater?

Among the reported environmental problems associated with animal manure are surface water (*e.g.,* lakes, streams, rivers, and reservoirs) and ground water quality degradation, adverse effects on estuarine water quality and resources in coastal areas and effects on soil and air quality. The scientific literature, which spans more than 30 years, documents how this degradation can contribute to increased risk to aquatic and wildlife ecosystems; an example is the large number of fish kills in recent years. Human and livestock animal health can also be affected by excessive nitrate levels in drinking water and exposure to waterborne human pathogens and other pollutants in manure. The administrative record provides more detailed information on the scientific and technical research to support these findings.

Section VII of this document provides additional information concerning the adverse impacts of pollutants associated with manure in surface water. Both ecological and human health impacts are addressed.

D. What Are the Roles of the Key Entities Involved in the Final Rule?

EPA recognizes the role of many interested parties in the development of and, ultimately, the successful implementation of this final rule. To the greatest extent possible, EPA has attempted to strike a reasonable balance among the many interests. A short summary of their broad roles is provided below.

1. CAFOs

Entities that are defined or designated as CAFOs have clear and binding legal obligations under this regulation. In general, all CAFOs have a mandatory duty to apply for an NPDES permit and

must comply with the technology and water quality-based limitations in the permit as defined by the permitting authority. Only CAFOs that have successfully demonstrated no potential to discharge may avoid a permit. Each permitted CAFO must also develop and implement a site-specific nutrient management plan. EPA fully expects that a CNMP that is properly developed and implemented, consistent with USDA guidance, will satisfy the nutrient management requirements of this rule.

2. States

The States, including their environmental, agriculture, and conservation agencies, have the key leadership role in implementing programs to ensure that AFOs take the important steps needed to implement sound management practices that protect water quality. State regulatory agencies will play a central role in implementing today's final rule while supporting the voluntary efforts of other State programs and agencies.

3. EPA

EPA's statutory obligation is to establish national regulations that protect and restore the chemical, physical, and biological integrity of the Nation's waters. EPA has undertaken an extensive outreach process to promote understanding of the science, policy, and economic issues surrounding animal agriculture. The Agency will continue to work effectively with the varied interest groups to ensure effective implementation, compliance assistance, and enforcement of these regulations.

4. USDA

USDA is EPA's partner in working collaboratively to ensure that USDA's voluntary programs and EPA's regulatory programs complement each other to support effective nutrient management by AFOs. EPA and USDA will continue to coordinate the development and implementation of tools to support agriculture, in ways that respect the different roles of the two agencies.

5. Other Stakeholders

A host of other entities, such as research and educational institutions, soil and water conservation districts, watershed groups, and many others, can contribute to the use of sound agricultural practices and protection of water quality. The private sector plays an important role in ensuring that CAFOs have the tools and expertise available to protect water quality while enhancing production and remaining profitable. For example, the private sector in partnership with educational institutions and other stakeholders can explore innovative technologies for the management and utilization of animal manure and provide the needed expertise to support development of sound, site-specific, and technically based nutrient management plans.

6. The Public

The public has had, and continues to demonstrate, a keen interest in many aspects of animal agriculture. This final rule establishes obligations for CAFOs to protect water quality and affirms the public's role and involvement throughout the regulatory program.

E. What Principles Have Guided EPA's Decisions Embodied in This Rule?

EPA has considered the implementation of the existing regulations which are more than 25 years old, changes in the industry, the extensive comments on the proposed rule and supplemental notices of data availability, and countless studies, reports, and data in developing this final rule. At the same time, EPA has tried to embody some important principles throughout the final rule. The Agency strives to ensure its rules are based on sound science and economics, promote emerging technologies, and protect watersheds. In addition, the following principles have guided this rulemaking:

Simplicity and Clarity

EPA has tried to make this final rule as simple and easy to understand as possible. This rule provides a clear understanding of who is covered and what they are expected to do.

Emphasis on Large CAFOs

This rule focuses on the operations that pose the greatest risk to water quality. These operations are predominantly large CAFOs and some smaller CAFOs that pose a high risk to water quality.

Flexibility for States

This rule establishes a strong and consistent national expectation for CAFOs, yet provides flexibility for States to address site-specific situations.

Sound Nutrient Management Planning

This rule embodies the goal of developing site-specific nutrient management plans to ensure that animal manure is used consistent with proper agriculture practices that protect water quality.

F. What Are the Major Elements of This Final Rule? Where Do I Find the Specific Requirements?

This section provides a very brief summary of the major elements of this final rule and a brief index on where each of the requirements is located in the final regulations. The regulations for the NPDES permit program are in Part 122 of Title 40 of the Code of Federal Regulations. These NPDES regulations include requirements that apply to all point sources, including CAFOs. The national effluent limitations guidelines for CAFOs are in Part 412 of Title 40 of the Code of Federal Regulations. This summary is not a replacement for the actual regulations.

1. NPDES Regulations for CAFOs

Overall, this final rule maintains many of the basic features and the overall structure of the 1976 NPDES regulations with some important exceptions. First, all CAFOs have a mandatory duty to apply for an NPDES permit, which removes the ambiguity of whether a facility needs an NPDES permit, even if it discharges only in the event of a large storm. In the event that a Large CAFO has no potential to discharge, today's rule provides a process for the CAFO to make such a demonstration in lieu of obtaining a permit. The second significant change is that large poultry operations are covered, regardless of the type of waste disposal system used or whether the litter is managed in wet or dry form.

Third, under this final rule, all CAFOs covered by an NPDES permit are required to develop and implement a nutrient management plan. The plan would identify practices necessary to implement the ELG and any other requirements in the permit and would include requirements to land apply manure, litter, and process wastewater consistent with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients.

2. Effluent Limitations Guidelines Requirements for CAFOs

a. Existing sources. The final ELGs published today will continue to apply to only Large CAFOs, historically referred to as operations with 1,000 or more animal units, although the requirements for existing sources and new sources are different for certain animal sectors. In the case of existing sources, the ELGs will continue to prohibit the discharge of manure and other process wastewater pollutants, except for allowing the discharge of process wastewater whenever rainfall

events cause an overflow from a facility designed, constructed, and operated to contain all process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. In addition, the ELGs that require land application at the CAFO must be at rates that minimize phosphorus and nitrogen transport from the field to surface waters in compliance with technical standards for nutrient management established by the Director. The ELGs also establish certain best management practice (BMP) requirements that apply to the production and land application areas.

b. New sources. For new large beef and dairy operations, the ELGs establish production area requirements that are the same as those for existing sources. In the case of large swine, veal, and poultry operations that are new sources, a new zero discharge standard is established. The rule also clarifies that where waste management and storage facilities are designed, constructed, operated and maintained to contain all manure, litter and process wastewater, including the runoff and direct precipitation from a 100-year, 24-hour rainfall event, and is operated in accordance with certain other requirements, this will satisfy the new standard. Land application requirements for both groups are identical to those established for existing sources.

Table 1.1 provides an annotated summary of the key elements of these final regulations as well as the specific regulatory citation for each change. The chart is intended only to provide a summary and roadmap to the regulations and is not a definitive description of all regulatory requirements. Table 1.2 provides a summary of the time frames for the implementation and complying with the requirements of today's rulemaking.

TABLE 1.1.—REGULATORY SUMMARY

Topic	Regulatory cite (40 CFR)
Definitions	
Animal Feeding Operation (AFO)	122.23(b)(1)
Concentrated Animal Feeding Operation (CAFO)	122.23(b)(2)
Production Area	122.23(b)(8)/412.2(h)
Land Application Area	122.23(b)(3)/412.2(e)
Large CAFOs	122.23(b)(4)
Manure	122.23(b)(5)
Medium CAFOs	122.23(b)(6)
Process Wastewater	122.23(b)(7)/412.2(d)
Overflow	412.2(g)
10-year, 24-hour and 25-year, 24-hour storm	412.2(i)
Setback	412.4(b)(1)
Vegetated buffer	412.4(b)(2)
Multi-year phosphorus application	412.4(b)(3)
Who Needs an NPDES Permit?	
Designated CAFOs	122.23(c)
Duty to apply	122.23(d)
Land application discharges from a CAFO are subject to NPDES requirements	122.23(e)
No Potential to Discharge determinations	122.23(f)
When Must CAFOs Apply for Coverage Under an NPDES Permit?	
Sources covered under prior regulations	122.23(g)(1)
Newly covered CAFOs	122.23(g)(2)
New sources and new dischargers	122.23(g)(3) and (4)
Designated CAFOs	122.23(g)(5)
How Do CAFOs Apply for an NPDES Permit?	
Permit application requirements—Individual or general permits	122.21(i)(1) and 122.28(b)(2)(ii)
What Is Required in NPDES Permits Issued to CAFOs?	
Effluent limitations	122.42(e)(1)
Requirements for CAFOs subject to the ELGs (Part 412):	
Subpart C—Dairy and Beef Cattle Other Than Veal	412.30
Subpart C—Dairy and Beef Cattle Other Than Veal: Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).	412.31
Subpart C—Dairy and Beef Cattle Other Than Veal: Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).	412.32
Subpart C—Dairy and Beef Cattle Other Than Veal: Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).	412.33
Subpart C—Dairy and Beef Cattle Other Than Veal: New source performance standards (NSPS)	412.35
Subpart D—Swine, Poultry, and Veal	412.40
Subpart D—Swine, Poultry, and Veal: Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).	412.43
Subpart D—Swine, Poultry, and Veal: Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).	412.44

TABLE 1.1.—REGULATORY SUMMARY—Continued

Topic	Regulatory cite (40 CFR)
Subpart D—Swine, Poultry, and Veal: Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).	412.45
Subpart D—Swine, Poultry, and Veal New source performance standards (NSPS)	412.46
Subparts C and D—Required Land Application Best Management Practices	412.4(c)
Subparts C and D—Inspection and Record Keeping Requirements	412.37 and 412.47
Additional NPDES CAFO permit requirements:	
Nutrient management plan development and Implementation	122.42(e)(1)
Record-keeping	122.42(e)(2)
Transfer of manure	122.42(e)(3)
Annual reporting requirement	122.42(e)(4)

TABLE 1.2.—CONSOLIDATED TIME LINE FOR IMPLEMENTING TODAY'S RULEMAKING

	Time Frame
Milestone:	
Effective date of regulation	April 14, 2003.
Effective date of Effluent Guideline requirements for the production area applicable to Large CAFOs.	June 12, 2003.
Effective date of Effluent Guideline requirements for the land application area applicable to Large CAFOs.	By December 31, 2006.
Effective date for all CAFOs to develop and implement nutrient management plans.	By December 31, 2006, except for Large CAFOs that are new sources, by date of commencing operations.
Duty to Apply:	
Operations defined as CAFOs prior to April 14, 2003	Must have applied by the date required in 40 CFR 122.21(c).
Operations defined as CAFOs as of April 14, 2003, and that were not defined as CAFOs prior to that date.	As specified by the permitting authority, but no later than April 13, 2006.
Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.	(a) Newly constructed operations: 180 days prior to the time the CAFO commences operation. (b) Other operations (e.g., increase in number of animals): As soon as possible but no later than 90 days after becoming defined as a CAFO, except that, if the operational change that causes the operation to be defined as a CAFO would not have caused it to be defined as a CAFO prior to April 13, 2003, the operation must apply no later than April 13, 2006 or 90 days after becoming defined as a CAFO, whichever is later.
New sources	180 days prior to the time the CAFO commences operation.
Designated CAFOs	90 days after receiving notice of designation.
State Program Revision:	
No statutory changes needed to revise NPDES Program	April 12, 2004.
Statutory changes needed to revise NPDES Program	April 13, 2005.

II. What Events Have Led to This Rule?

The revisions to the National Pollutant Discharge Elimination System (NPDES) and Effluent Limitation Guidelines Programs specified in this final rule are focused on those livestock and poultry operations that are defined or designated as CAFOs. CAFOs are defined as point sources under the Clean Water Act. Following is a brief historical context of key regulatory, legal, and policy actions which have collectively led to today's action.

A. The Clean Water Act

Congress passed the Clean Water Act to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' (33 U.S.C. 1251(a)). The Clean Water Act establishes a comprehensive program for protecting and restoring our Nation's waters. Among its core provisions, the Clean Water Act prohibits the discharge of pollutants from a point source to waters of the United States except as authorized by an NPDES permit. The Clean Water Act establishes the NPDES permit program to authorize and regulate the discharges of pollutants to waters of the United States. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR part 122. The Clean Water Act also provides for the development of technology-based and water quality-based effluent limitations that are implemented through NPDES permits to control discharges of pollutants.

1. The National Pollutant Discharge Elimination System (NPDES) Permit Program

Under the NPDES permit program, all point sources that discharge pollutants to waters of the United States must apply for an NPDES permit and may discharge pollutants only in compliance with the terms of that permit. Such permits must include any nationally established, technology-based effluent discharge limitations (effluent guidelines—discussed below, in subsection II.A.2). In the absence of an applicable national effluent guideline, NPDES permit writers may establish technology-based requirements as determined by the permitting authority on a case-by-case basis, based on their ''best professional judgment'' (BPJ). Water quality-based effluent requirements are also included in permits where technology-based requirements are not sufficient to ensure compliance with State water quality standards or where required to implement a Total Maximum Daily Load (TMDL). For information on TMDLs see section IX.A.2 of this preamble.

Technology- and water quality-based requirements may be in the form of

numeric effluent limitations or in the form of specific BMPs or other non-numeric effluent limitations and standards. In addition, NPDES permits normally include reporting, record-keeping, and other requirements and standard conditions (conditions that apply to all NPDES permits, such as the duty to properly operate and maintain equipment and treatment systems).

NPDES permits may be issued by EPA or a State, Territory, or Tribe authorized by EPA to implement the NPDES program. Currently, 45 States and the Virgin Islands are authorized to administer the NPDES program. This means that most CAFOs will obtain NPDES permits from State governments, not from EPA. Alaska, Arizona, the District of Columbia, Idaho, Massachusetts, New Hampshire, New Mexico, and Puerto Rico and other territories are not currently authorized to implement the NPDES program. In addition, Oklahoma, although authorized to administer the NPDES program, does not have CAFO regulatory authority. No Tribe is currently authorized to implement the NPDES program. This means that CAFOs located in the above-named jurisdictions or in Indian Country will obtain their NPDES permits from EPA.

An NPDES permit may be either an individual permit tailored for a single facility or a general permit applicable to multiple facilities. Before an individual permit is issued, the owner or operator must submit a permit application with facility-specific information to the permitting authority, which reviews the information and prepares a draft permit. The permitting authority prepares a fact sheet explaining the draft permit and publishes the draft permit and fact sheet for public review and comment. Following the permitting authority's consideration of public comments, a final permit is issued. Specific procedural requirements apply to the modification, revocation and reissuance, and termination of an NPDES permit. NPDES permits are subject to a maximum 5-year term and may be renewed when their term expires.

General NPDES permits are available to address categories of discharges that involve similar operations with similar wastes. Once a general permit is drafted, it is published for public review and comment accompanied by a fact sheet that explains the permit. Following EPA's or the State permitting authority's consideration of public comments, a final general permit is issued. The general permit specifies the type or category of facilities that may obtain coverage under the permit. To gain permit coverage, facilities generally must submit a ''notice of intent'' (NOI) to be covered under the general permit. Both general permits and individual permits are used to implement the same pollution control standards.

2. Effluent Limitations Guidelines and Standards

Effluent limitations guidelines and standards (''effluent guidelines'' or ''ELGs'') are national regulations that establish limitations on the discharge of pollutants by industrial category and subcategory. For each category and subcategory guidelines address three classes of pollutants: (1) Conventional pollutants (*i.e.*, total suspended solids (TSS), oil and grease, biochemical oxygen demand (BOD), fecal coliform bacteria, and pH); (2) toxic pollutants (*e.g.*, toxic metals such as lead and zinc; toxic organic pollutants such as benzene); and (3) non-conventional pollutants (*e.g.*, phosphorus). These technology-based requirements are subsequently incorporated into NPDES permits. The Clean Water Act provides that effluent guidelines may include numeric or non-numeric limitations. Non-numeric limitations are usually in the form of BMPs. The effluent guidelines are based on the degree of control that can be achieved using various levels of pollution control technology, as outlined below.

a. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the Clean Water Act. In the guidelines for an industry category, EPA defines BPT effluent limits for conventional, toxic, and non-conventional pollutants. Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than those currently in place in an industrial category if the Agency determines that the technology can be practically applied. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (33 U.S.C. 304(b)(1)(B)).

b. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the Clean Water Act. In general, BAT represents the best existing economically achievable performance of direct discharging facilities in the industrial category or subcategory. The factors considered in assessing BAT are the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded to these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, the achievability is determined on the basis of the total cost to the industrial subcategory and the overall effect of the rule on the industry's financial health. BAT requirements may be based on effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may be based on technology transferred from a different subcategory within an industry or from another industrial category. BAT may be based on process changes or internal controls, even when these technologies are not common industry practice.

c. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the Clean Water Act. The 1977 amendments to the Clean Water Act required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the Clean Water Act requires that EPA establish BCT requirements after considering a two-part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974). Section 304(a)(4) designates the following as conventional pollutants: BOD, TSS, fecal coliform bacteria, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

d. New Source Performance Standards (NSPS)—Section 306 of the Clean Water Act. New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install

the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS represents the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed by the Clean Water Act to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

3. Effluent Guidelines Planning Process—Section 304(m) Requirements

Section 304(m) of the Clean Water Act, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards and (2) promulgating new effluent guidelines. On May 28, 1998, EPA published a Notice of Proposed Effluent Guidelines Plan (63 FR 102) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was ''Feedlots'' (swine, poultry, dairy and beef cattle).

a. Clean Water Act Section 304(m) consent decree. The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of section 304(m) and other statutory authorities that require promulgation of effluent guidelines (*NRDC et al.* v. *Whitman,* Civ. No. 89–2980 (D.D.C.)). Under the terms of the consent decree in that case, as amended, EPA agreed, among other things, to propose effluent guidelines for swine, poultry, beef and dairy portions of the animal industry by December 15, 2000, and to take final action by December 15, 2002.

B. Existing Clean Water Act Requirements Applicable to CAFOs

EPA's regulation of CAFOs dates to the 1970s. The existing NPDES CAFO regulations were issued on March 18, 1976 (41 FR 11458). The existing national effluent limitations guidelines and standards for feedlots were issued on February 14, 1974 (39 FR 5704). The discussion below provides an overview of the scope and requirements imposed under the existing NPDES CAFO regulations and feedlot effluent guidelines. It also explains the relationship of these two regulations, and it briefly summarizes other federal and State regulations that potentially affect AFOs.

1. Scope and Requirements of the 1976 NPDES Regulations for CAFOs

This section provides a simplified summary of the previous NPDES regulation to provide context for today's action. The previous NPDES CAFO regulations promulgated in 1976, determined which AFOs were defined or could be designated as CAFOs under the Clean Water Act and therefore subject to NPDES permit regulations. Under those regulations, CAFOs were defined as AFOs that confined more than 1,000 animal units (AU). In addition, an AFO that confined 300 to 1,000 AU was defined as a CAFO if it discharged pollutants through a man-made device or if pollutants were discharged to waters of the United States that ran through the facility or otherwise came into contact with the confined animals. AFOs were not defined as CAFOs, however, if they discharged only during a 25-year, 24-hour storm. Under the 1976 NPDES CAFO regulations, the permitting authority could also designate any AFO a CAFO, including those with fewer than 300 AU, if it met the discharge criteria specified above and was determined to be a significant contributor of pollution.

2. Scope and Requirements of the 1974 Feedlot Effluent Guidelines

This section provides a simplified summary of the previous effluent guidelines to provide context for today's action. EPA uses the effluent guidelines to establish national requirements limiting discharges to waters of the United States. EPA established the effluent guidelines for feedlots in 1974 based on the best available technology that was economically achievable for the industry. The guidelines were applicable to those facilities in specified sectors (or subcategories) with as many as or more than 1,000 AU that were to be issued an NPDES permit. The 1974 effluent guidelines did not allow discharges of pollutants from CAFOs into the Nation's waters except when a chronic or catastrophic storm caused an overflow from a facility that had been designed, constructed, and operated to contain manure, process wastewater and runoff resulting from a 25-year, 24-hour storm. For permitted facilities where the ELGs did not apply (those with fewer than 1,000 AU), technology-based discharge limits were established using the permit writer's best professional judgment.

C. USDA–EPA Unified National Strategy for Animal Feeding Operations

In 1998, EPA and USDA jointly developed a unified national strategy to minimize the water quality and public health impacts of AFOs. EPA and USDA jointly published a draft *Unified National Strategy for Animal Feeding Operations* on September 21, 1998. After sponsoring and participating in 11 public listening sessions and considering public comments on the draft strategy, a final *Unified National Strategy for Animal Feeding Operations* was published on March 9, 1999. A copy of the *Strategy* is available on the EPA and USDA web sites. The *Unified National Strategy for Animal Feeding Operations* established national goals and performance expectations for all AFOs. The general goal is for AFO owners and operators to take actions to minimize water pollution from confinement facilities and land where manure is applied. To accomplish this goal, the *Strategy* established a national performance expectation that all AFOs should develop and implement technically sound, economically feasible, and site-specific CNMPs to minimize impacts on water quality and public health.

The *Unified National Strategy for Animal Feeding Operations* identified seven strategic issues that should be addressed to better resolve concerns associated with AFOs. These are (1) fostering CNMP development and implementation; (2) accelerating voluntary, incentive-based programs; (3) implementing and improving the existing regulatory program; (4) coordinating research, technical innovation, compliance assistance, and technology transfer; (5) encouraging industry leadership; (6) increasing data coordination; and (7) establishing better performance measures and greater accountability. Today's action addresses the third strategic issue— implementing and improving the existing regulatory program.

III. How Was This Final Rule Developed?

The preamble to the proposed rule presented a detailed discussion of the history of EPA actions addressing CAFOs, including issuance of the original NPDES CAFO regulations and effluent limitations guidelines (ELGs) for feedlots, development of the EPA/State Feedlot Workgroup Report (1993), outreach dialogues with representatives of the pork industry and poultry industry, EPA AFO strategy development, and collaboration with USDA on the development of the

Unified National Strategy for Animal Feeding Operations (66 FR 2965). The discussion below briefly summarizes the key events that have been part of the process of preparing today's final rule.

A. Small Business Advocacy Review (SBAR) Panel

To address small business concerns, EPA's Small Business Advocacy Chairperson convened a Small Business Advocacy Review (SBAR) Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Participants included representatives of EPA, the Small Business Administration (SBA) and the Office of Management and Budget (OMB). ''Small Entity Representatives'' (SERs), who advised the Panel, included small business livestock and poultry producers as well as representatives of the major commodity and agricultural trade associations. Information on the Panel's proceedings and recommendations is in the April 7, 2000, *Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on National Pollutant Discharge Elimination System (NPDES) and Effluent Limitations Guideline (Effluent Guidelines) Regulations for Concentrated Animal Feeding Operations* (hereinafter called the ''*Panel Report*''), along with other supporting documentation included as part of the Panel process. The *Panel Report* details the process that EPA followed, provides meeting summaries, and offers other information, including the composition of both the panel and the SERs.

The report also includes the Panel's recommendations on specific issues concerning the NPDES CAFO regulation and ELGs. Key panel recommendations were to: streamline reporting requirements; minimize burden of any required certifications and testing requirements; and carefully weigh the costs and benefits of removing the 25-year, 24-hour storm exemption for operations with less than 1,000 animal units and of modifying the specific criteria for defining medium-sized AFOs as CAFOs. The entire SBAR report is available in the administrative record for this rulemaking, which is available for public review.

B. Proposed Rule

On January 12, 2001, EPA published a proposal to revise and update two regulations to ensure that manure, wastewater, and other process waters generated by CAFOs do not impair water quality (66 FR 2959). These two regulations were (1) the NPDES provisions that define which operations are CAFOs and establish permit requirements and (2) the ELGs, or effluent guidelines, for feedlots (beef, dairy, swine and poultry subcategories), which establish the technology-based effluent discharge standards for CAFOs. Key proposed changes that would affect the CAFO definition included options for establishing either two or three size categories of CAFOs, the thresholds for different size operations defined as CAFOs, criteria applicable to medium operations, inclusion of dry chicken operations that meet specified size thresholds, and potential revisions to the designation criteria and process. In addition, the proposed rule also presented options for co-permitting entities that exercise substantial operational control over a CAFO, ensuring appropriate public participation in permitting, and encouraging proper management of excess manure that is transferred off-site. Key proposed changes to the ELGs for feedlots included updating the guidelines based on current practices and technologies, the increased use of BMPs, and application of technology options to both the CAFO production area and the land application area (including nutrient management planning).

C. 2001 Notice of Data Availability

On November 21, 2001, EPA published a Notice of Data Availability (hereinafter referred to as the ''2001 Notice'') that presented a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received from USDA (66 FR 58556). The notice had four main components: (1) Discussion of new data and changes EPA was considering to refine its cost and economics model; (2) discussion of new data and changes EPA was considering to refine its nutrient loading and benefits analysis; (3) new data and changes EPA was considering to the proposed NPDES permit program regulations; and (4) new data and changes EPA was considering to the proposed ELG regulations. EPA's 2001 Notice also discussed options that the Agency was considering to enhance flexibility for the use of State NPDES and non-NPDES CAFO programs, including implementation of environmental management systems (EMS).

D. 2002 Notice of Data Availability

On July 23, 2002, EPA published a second Notice of Data Availability (hereinafter referred to as the ''2002 Notice'') that presented a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received after publication of the 2001 Notice. The 2002 Notice had three main components: (1) A discussion of alternative regulatory thresholds for chicken operations using dry litter management practices; (2) the potential creation of alternative performance standards to encourage CAFOs to implement new technologies; and (3) financial data and changes EPA was considering to refine its economic analysis models. The 2002 Notice made these data and potential changes available for public review and comment.

E. Public Comments

A general summary of public comments is included in the discussions of the various issues addressed in this preamble. EPA has prepared a *Comment Response Document* that includes responses to comments submitted for the proposed rule and both notices. All of the comments including supporting documents submitted on today's action are available for public review in the administrative record for this final rule which is filed under docket number W–00–27.

The proposed regulations were published in the **Federal Register** on January 12, 2001 (66 FR 2959), and the comment period closed on July 30, 2001. EPA received approximately 11,000 comments in total on the proposed rule. EPA received comments from a multitude of sources, including private citizens, facility owners and operators, environmental groups, local and State agencies, members of the academic community, banks and insurance companies, congressional representatives, and representatives (including trade associations) from each of the animal sectors (beef, dairy, swine, poultry, horses, ducks, turkey, and others). The comments are addressed in the *Comment Response Document* prepared by EPA in support of today's final rule.

The comment period for the 2001 Notice was from November 21, 2001, through January 15, 2002 (66 FR 58556). Approximately 300 comments were received on the 2001 Notice. Responses to each of these comments are also included in the *Comment Response Document.*

EPA prepared and published in the **Federal Register** a second notice (2002 Notice) during the development of today's final rule. The comment period

for the 2002 Notice was from July 23, 2002, through August 22, 2002. Approximately 150 comments were received on the 2002 Notice. Responses to each of these comments are also included in the *Comment Response Document.*

In addition to the public comments received on the proposal and the two Notices, approximately 200 additional comments on the two Notices were received from various stakeholders. Responses to each of these comments are included in the *Comment Response Document.*

F. Public Outreach

In support of both the proposed rule and today's final rule, EPA has conducted extensive outreach activities. These activities are documented in the administrative record for the final rule, which is available for public review under docket number W–00–27. The discussion that follows is focused on key outreach activities that EPA has conducted.

1. Pre-Proposal Activities

During the development of the proposed regulations for CAFOs, EPA met with many members of the stakeholder community through meetings, conferences, and site visits. EPA convened a SBAR Panel to address small entity concerns, provided outreach materials to and met with several national organizations representing State and local governments, and conducted approximately 110 site visits to collect information on waste management practices at livestock and poultry operations. EPA also established a workgroup that included representatives from USDA, seven States, EPA regions, and EPA headquarters. More detailed information on EPA's public outreach efforts was published in section XII of the **Federal Register** notice for the proposed rule (66 FR 3120).

2. Post-Proposal Activities

a. Public meetings and stakeholder outreach. Following publication of the proposed rulemaking, EPA conducted nine public outreach meetings on the proposed CAFO regulations. In addition, EPA continued to meet with representatives of various stakeholder groups, including representatives from various industry trade associations and environmental groups, as well as researchers from select land grant universities and research organizations. The land grant university staff consulted on this rulemaking included researchers at the Food and Agricultural Policy Research Institute (FAPRI) at the University of Missouri and researchers at The National Center for Manure and Animal Waste Management, composed of researchers from 16 land grant universities supported by USDA-Cooperative State Research, Education and Extension Service (CSREES). EPA has also consulted with State and local governments and several national associations representing State governments. A more detailed account of these efforts is provided in the 2001 Notice (66 FR 58557–58558).

b. USDA–EPA Workgroup meetings. In April 2001 USDA initiated a process to review the proposed revisions to EPA's CAFO rule and identify issues and concerns posed by the rule. USDA identified 15 specific areas of concern and a number of overarching issues. As a follow-up to this process, USDA and EPA's Office of Water initiated monthly meetings on issues of significance for agriculture and the environment, specifically water quality. The goal was to foster greater communication between the two agencies to provide better information to the public and policy makers on areas of mutual concern related to agriculture and water quality, and to facilitate informed decisions on approaches and needs to address the key agriculture and environment issues. In July 2001 EPA and USDA convened a joint workgroup to address the issues identified by the two agencies and begin to develop options for EPA leadership to consider in developing the final rule. The collaboration fostered increased understanding on the part of both agencies with respect to the issues, data, and analyses used to finalize today's CAFO rule.

c. Other outreach activities. As part of the development of this rulemaking, EPA used several additional means to provide outreach to stakeholders. Most notably, EPA has managed a number of Web sites that post information related to these regulations. Supporting documents for the proposed rule were posted to these sites, including the *Technical Development Document, Economic Analysis, Environmental Assessment, Environmental and Economic Benefit Analysis* of the proposed CAFO regulations, and cost methodology reports and guidance related to Permit Nutrient Plans. These are available at *http://www.epa.gov/guide/cafo/.* Other outreach materials are available at *http://www.epa.gov/npdes/caforule* and include brochures describing the proposed CAFO regulations, a compendium of AFO-related State program information, and various materials related to permitting issues to facilitate an understanding of the NPDES program and development of comments on the proposed rule by the public.

IV. CAFO Roles and Responsibilities

A. Who Is Affected by This Rule?

1. What Is an AFO?

In today's final rule, EPA is retaining the definition of an animal feeding operation (AFO) as it was defined in the 1976 regulation at 40 CFR 122.23(b)(1). An animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (1) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (**Note:** EPA is making a typographical correction to the AFO definition. The comma between vegetation and forage growth had been inadvertently dropped from the 1976 final rule in subsequent printings of the **Federal Register**).

What did EPA propose? In the January 12, 2001, proposed rule, the Agency proposed to change the definition of an AFO, intending to eliminate ambiguities about which facilities and operations would be defined as AFOs in certain circumstances where the animals strip the ground of vegetation. The proposal stated that '' * * * Animals are not considered to be stabled or confined when they are in areas such as pastures or rangeland that sustain crops or forage growth during the entire time that animals are present * * *.''

What were the key comments? While it was EPA's intent to clarify the existing AFO definition, the proposed new regulatory language created substantial confusion. For example, many commenters from the beef cattle industry and others strongly believed that the proposed language would include pastures, rangeland, and unconfined wintering operations as AFOs and, in essence, would bring the entire beef industry under the regulations, none of which was intended. These commenters strongly recommended that the existing regulations should be kept intact to avoid new ambiguity. The view of commenters from the dairy sector and the Sustainable Agriculture Coalition was that the exclusion of pastureland and rangeland from the AFO definition was clear in the proposed rule and they found the proposed language acceptable. Other livestock sectors and environmental groups generally did not comment extensively on this issue.

Rationale. Based on public comment and further consideration, EPA concludes that the proposal to revise the AFO definition to exclude areas ''that sustain crops or forage growth during the entire time that animals are present'' created further concern and confusion, rather than clarification. EPA's intent was to make a minor change to the AFO definition to clarify how it would apply to wintering/grazing operations and to incidental vegetation that may exist in the area of confinement. EPA is retaining the existing definition for animal feeding operation because of the widespread familiarity that exists with the existing definition and because EPA's desired clarification can be achieved through preamble language rather than a change to the rule.

In an attempt to address some of the public comments and confusion created by the proposal, EPA is clarifying three topics in this preamble. First, EPA is reiterating that true pasture and rangeland operations are not considered AFOs, because operations are not AFOs where the animals are in areas such as pastures, croplands or rangelands that sustain crops or forage growth during the normal growing season. In some pasture based operations, animals may freely wander in and out of particular areas for food or shelter; this is not considered confinement. However, pasture and grazing-based operations may also have confinement areas (*e.g.* feedlots, barns, pens) that may qualify as an AFO. Second, incidental vegetation in a clear area of confinement, such as a feedlot or pen, would not exclude an operation from meeting the definition of an AFO. Third, in the case of a winter feedlot, the ''no vegetation'' criterion in the AFO definition is meant to be evaluated during the winter, when the animals are confined. Therefore, use of a winter feedlot to grow crops or other vegetation during periods of the year when animals are not confined would not exclude the feedlot from meeting the definition of an AFO. Note that animals must be stabled or confined for at least 45 days out of any 12 month period to qualify the operation as an AFO. EPA assumes that AFOs and permitting authorities will use common sense and sound judgement in applying this definition.

2. What Is a CAFO?

In today's final rule, EPA is retaining the existing structure for determining which AFOs are CAFOs, as well as retaining the existing conditions for defining Medium CAFOs. EPA is also retaining the existing conditions for designation of AFOs as CAFOs. Large facilities are considered CAFOs if they fall within the size range provided in § 123.23(b)(4). Medium AFOs are defined as CAFOs only if they fall within the size range provided in § 122.23(b)(6) and they meet one of the two specific criteria governing the method of discharge: (1) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (2) pollutants are discharged directly into waters of the United States that originate outside the facility and pass over, across, or through the facility or otherwise come into direct contact with the confined animals. Small facilities are CAFOs only if they are so designated by EPA or the State NPDES permitting authority. Refer to Table 4.1 in section IV.A.3 of this preamble for explicit definitions of Large, Medium, and Small CAFOs in each animal sector. Also, as proposed, EPA is no longer using the term ''animal units'' to define size classes in this final rule. Instead, EPA is setting thresholds by specifying the actual number of animals. EPA believes that using the number of animals at an operation to define thresholds more simply illustrates which operations are regulated. Using the number of animals also eliminates any confusion caused by the difference between EPA's and USDA's definitions of the term ''animal unit.''

What did EPA propose? EPA co-proposed two alternative ways to structure the NPDES regulations for defining which AFOs are CAFOs. The first alternative was a ''two-tier structure,'' and the second was a ''three-tier structure.'' In the first alternative, EPA proposed that all AFOs with the equivalent of 500 animal units or more would be defined as CAFOs, and those with fewer than the equivalent of 500 animal units would be CAFOs only if they are designated as such by EPA or the State NPDES permitting authority. In the second alternative, EPA proposed to retain a three-tier structure whereby all large operations are CAFOs, medium operations are CAFOs if they meet specified risk-of-discharge criteria, and small operations are CAFOs only if they are so designated by EPA or the State NPDES permitting authority. EPA also proposed to significantly revise the conditions whereby a medium AFO could be defined as a CAFO. Finally, EPA proposed to require all medium AFOs to certify to the permitting authority that they do not meet any of the conditions for being defined a CAFO.

What were the key comments? The predominance of public comment did not support the two-tier structure, as proposed, whereby all operations with the equivalent of 500 animal units or more would be CAFOs. Many commenters opposed such a low threshold as imposing unnecessary permitting and engineering costs on small operations and on operations that do not discharge, and would very likely cause many small operators to go out of business. Opponents also indicated that the proposal did not recognize geographic differences such as arid regions. Many of those same comments were, however, supportive of a two-tier structure if the regulatory threshold was set at the equivalent of 1,000 animal units or even 750 animal units, leaving discretion for the permitting authority to address all operations below that threshold. Conversely, some commenters indicated that 500 animal units was too high, because it did not address the pollution from smaller operations in their region. There was some preference for a two-tier structure that regulates all facilities above the equivalent of 300 AU, believing that all those operations pose risk to the environment and should be regulated as CAFOs.

Many commenters, including many State agencies, preferred to retain the existing three-tier structure because so many of their existing programs are based on the three-tier structure established in the 1976 regulations. They believe it would be very disruptive to their ongoing programs to have to change the basic structure of the regulations that define who is a CAFO.

Additionally, there was little support among the commenters for the three-tier structure, as proposed, with the new set of broad conditions that were proposed for redefining which of the medium facilities would be CAFOs. Many commenters believed that the existing conditions were adequate for addressing risk of discharge from medium facilities, and that the proposed new conditions would be an unnecessary expansion of who would be considered CAFOs. Further, many commenters indicated that the revised conditions did not add clarity and would not improve implementation. For example, many commenters indicated that one of the proposed conditions, whether an AFO was within 100 feet of waters of the United States, did not take into account facilities that are implementing BMPs to control runoff. The condition for evidence of discharge in the last five years did not take into account operations that may have instituted new practices or corrected problems to prevent future discharges, especially in light of the fact that, in the last two or three years, there has been heightened

awareness of the impacts of AFOs and renewed effort by States to implement both regulatory and non-regulatory AFO programs. The condition defining a facility as a CAFO if it transferred excess manure to off-site recipients also did not correlate closely enough to whether a facility had a risk of discharging, especially in arid regions.

The SBAR Panel did not make a recommendation specifically on the structure of the CAFO regulations. The Panel noted that some States already have effective permitting programs for CAFOs in place and recommended that EPA consider the impact of any new requirements on existing State programs and include in the proposed rule sufficient flexibility to accommodate such programs where they meet the minimum requirements of federal NPDES regulations. The Panel further recommended that EPA continue to consult with States in an effort to promote compatibility between federal and State programs.

Rationale. The Clean Water Act specifically lists CAFOs as point sources, and EPA has broad discretion under the Act to define that term. In the proposal, EPA noted a range of different factors that it considered relevant to determining which operations should be defined as CAFOs.

EPA has concluded that a three-tier structure is preferable to a two-tier structure because it is better suited to identifying those operations that, through a combination of size, concentration and potential to discharge, are more industrial and point source-like in nature and pose the greatest risk to water quality and therefore are appropriate to define as CAFOs. Another important reason to retain a three-tier structure is that changing to a two-tier structure at this point in time would be unnecessarily disruptive in the number of States that currently have three-tier CAFO programs in place. Many of these States have had these programs in place for over two decades, and they have many years of practical experience in operating their programs and issuing permits based on this existing definition. Changing to a two-tier structure not only would be disruptive to the States that are carrying out existing programs but would also create an unnecessary need to build a new understanding of the regulations in the CAFO industry. For these reasons, a three-tier structure is preferable even though it does not have the simplicity of a two-tier structure.

Establishing a two-tier structure at a low threshold, *e.g.*, at either 300 animal units or 500 animal units would be highly burdensome to permit authorities and AFO operators. While some parts of the country experience problems from concentrations of small facilities, this would impose significant costs on the regulated community and permit authorities in all parts of the country, including those areas that do not experience these problems. On the other hand, while it might seem desirable to provide flexibility for States with effective non-NPDES programs by establishing a threshold on the higher end, say at 750 or 1,000 animal units, using such a high threshold across-the-board would apply equally in States that do not have fully developed and effective programs to address water quality risks posed by operations with fewer than 1,000 animal units. This could lead to a definition that would not appropriately identify those operations that are large and concentrated enough and pose enough of a risk of discharge (taking into account the absence of effective State non-NPDES programs in some areas) that they should be identified as CAFOs. A high threshold might also undercut the ability of some permit authorities to address water quality problems associated with smaller facilities, especially in States that have restrictions on imposing CAFO NPDES requirements that are stricter than federal requirements.

Although the final rule retains the three-tier structure for defining who is a CAFO, after consideration of the public comments, EPA has not adopted the new set of conditions that were proposed for defining which medium operations are CAFOs. Instead, EPA is retaining the two conditions in the existing regulations. After careful consideration of the comments, EPA agrees with those commenters who believe that the new set of conditions proposed under the three-tier structure for determining when a medium facility is a CAFO would not necessarily have improved the clarity, effectiveness or enforceability of the regulations, which were the Agency's intended goals. The proposed new conditions were an attempt to better identify those medium operations that are of sufficient size and concentration and pose enough of a risk of discharge that they should be defined as CAFOs. While these conditions may have been environmentally protective on the whole, they were not finely targeted enough to identify the operations that meet these criteria; instead, EPA now believes that they would have caused substantial permitting burden and imposed costs on essentially all operations above 300 animal units.

For example, many commenters indicated that one of the proposed conditions, whether an AFO was within 100 feet of waters of the Unites States, did not take into account facilities that are implementing BMPs to control runoff. The condition for evidence of discharge in the last five years did not take into account operations that may have instituted new practices or corrected problems to prevent future discharges, especially in light of the fact that, in the last two or three years, there has been heightened awareness of the impacts of AFOs and renewed effort by States to implement both regulatory and non-regulatory AFO programs. The conditions defining a facility as a CAFO if it did not have a permit nutrient plan or if it transferred excess manure to off-site recipients also did not correlate closely enough to whether a facility had a risk of discharging, especially in arid regions.

EPA has concluded that retaining the existing two criteria provide an appropriate basis for defining which medium-size operations are CAFOs, while maintaining flexibility for States to tailor NPDES and non-NPDES programs for more comprehensive risk factors that may vary from State to State and even watershed to watershed.

3. What Types of Animals Are Covered by Today's Rule?

Today's revisions to the CAFO effluent guidelines address beef, dairy, swine, veal calves and poultry operations and do not change the effluent guidelines regulations for sheep, horses or ducks. On the other hand, today's final revisions to the NPDES permit regulations generally apply to all CAFOs regardless of species, and specifically address the size thresholds for defining which beef, dairy, swine, veal calves, poultry, sheep, horses, and duck operations are CAFOs. The following sections discuss changes made to the size thresholds for defining which operations in these sectors are CAFOs.

Although the following discussion focuses primarily on circumstances where an AFO is defined as a CAFO, it is important to note that small and medium-size AFOs can be designated as CAFOs by EPA or an NPDES authorized State. Refer to section IV.A.7 and 8 for a discussion of designation.

The thresholds for defining Large, Medium, and Small CAFOs in each sector are summarized in Table 4.1 below.

TABLE 4.1.—SUMMARY OF CAFO SIZE THRESHOLDS FOR ALL SECTORS

Sector	Large	Medium [1]	Small [2]
Cattle or cow/calf pairs	1,000 or more	300–999	Less than 300.
Mature dairy cattle	700 or more	200–699	Less than 200.
Veal calves	1,000 or more	300–999	Less than 300.
Swine (weighing over 55 pounds)	2,500 or more	750–2,499	Less than 750.
Swine (weighing less than 55 pounds)	10,000 or more	3,000–9,999	Less than 3,000.
Horses	500 or more	150–499	Less than 150
Sheep or lambs	10,000 or more	3,000–9,999	Less than 3,000.
Turkeys	55,000 or more	16,500–54,999	Less than 16,500.
Laying hens or broilers (liquid manure handling system).	30,000 or more	9,000–29,999	Less than 9,000.
Chickens other than laying hens (other than a liquid manure handling system).	125,000 or more	37,500–124,999	Less than 37,500.
Laying hens (other than a liquid manure handling system).	82,000 or more	25,000–81,999	Less than 25,000.
Ducks (other than a liquid manure handling system)	30,000 or more	10,000–29,999	Less than 10,000.
Ducks (liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500.

[1] Must also meet one of two ''method of discharge'' criteria to be defined as a CAFO or may be designated.
[2] Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.

A facility confining any other animal type that is not explicitly mentioned in the NPDES and effluent guidelines regulations is still subject to NPDES permitting requirements if it meets the definition of an AFO and if the permitting authority designates it as a CAFO. *See* § 122.23(c) for a discussion of designation.

a. *Chickens.* In today's action, EPA is revising the CAFO definition to include chicken operations that use manure handling systems other than liquid manure handling systems (*see* 40 CFR Part 122, Appendix B of the 1976 regulation). EPA has also eliminated the condition for continuous overflow watering system from the CAFO definition. This action establishes that dry litter chicken operations of specified sizes will need to seek coverage under an NPDES CAFO permit. EPA is establishing size thresholds for dry chicken operations based on the phosphorus content of the manure, and is therefore distinguishing between broiler and layer operations. EPA is not changing the existing threshold for chicken operations using liquid manure systems. The size thresholds for large, medium, and small chicken operations under today's regulations are as follows:

	Large	Medium	Small
Chickens other than laying hens (other than liquid manure handling).	125,000 or more	37,500–124,999	<37,500
Laying hens (other than liquid manure handling)	82,000 or more	25,000–81,999	<25,000
Laying hens or broilers (liquid manure handling)	30,000 or more	9,000–29,999	< 9,000

What did EPA propose? EPA proposed to regulate chicken operations regardless of the type of manure handling or watering system used. EPA proposed to include broilers and layers in a single category with one threshold number. Under the co-proposed three-tier structure, EPA proposed to adopt a Large CAFO threshold of 100,000 chickens and a Medium CAFO threshold of 30,000 chickens. In the co-proposed two-tier structure, the regulatory threshold would have been 50,000 chickens. Subsequently, EPA published a notice of data availability (FR 67, 48099, July 23, 2002) in which the Agency considered whether, under a three-tier structure, the threshold for large broiler operations should remain as proposed at 100,000 broilers, changed to 125,000 broilers, or established at some other threshold. EPA also considered whether the large threshold for laying hens should remain as proposed at 100,000 laying hens, or be changed to 82,000 laying hens. EPA also noted that the thresholds in the 1976 CAFO regulations for chicken operations with liquid manure handling systems or continuous overflow watering systems may remain unchanged in the final rule.

What were the key comments? Comments from poultry industry representatives and owners and operators of poultry operations stated that dry operations (those not using continuous flow watering systems) should not be defined as CAFOs under the NPDES regulations because the absence of water or other liquids would not result in pollutants being discharged through a discrete point source. Some industry representatives asserted that dry and wet manure handling pose different levels of risk and, therefore, EPA's CAFO regulations should distinguish between wet and dry poultry operations. A few commenters indicated that they felt that EPA was proposing to regulate dry poultry operations to address insufficient storage issues at some operations. These commenters believed that properly stored poultry litter would not result in a discharge. In addition some commenters disagreed with EPA's statement that many poultry operations did not have sufficient land to apply litter at agronomic rates. Commenters from this sector also felt that voluntary programs were working to address the excess manure issue. A more limited number of commenters indicated that the inclusion of dry poultry operations should be limited to what they described as very large operations. Commenters defined very large as ranging from more than six houses to more than 10,000 animal units (*e.g.*, 300,000 birds).

Many other commenters supported regulating poultry operations regardless of the watering systems they use because that approach provides equity across all animal sectors and addresses potential risk to water quality posed by dry operations. Some commenters

further stated that EPA should use manure phosphorus as the basis for setting thresholds for such operations.

Rationale. Why is EPA including chicken operations with dry manure and litter handling systems in today's regulations? For some time, poultry operators have been replacing continuous overflow watering systems by more efficient water conserving methods (*e.g.*, on-demand watering). Given this trend, liquid manure systems are used at approximately 25 percent of layer operations and are not generally used at broiler operations. As a result, most chicken operations are not covered by the existing regulations.

For the reasons articulated in the proposed rulemaking (66 FR 3010), and after carefully reviewing the public comments, EPA has determined that including chicken operations with dry manure handling systems is justified to protect water quality. EPA believes that dry poultry operations continue to contaminate surface water and ground water because of rainfall coming in contact with dry manure and litter that is stacked in exposed areas; accidental spills such as from egg-wash facilities and drinking water lines; improper handling of large numbers of mortalities; and improper land application of litter. In addition, included within the coverage of the CAFO regulations are other sectors that use dry technologies, such as ducks, turkeys, and certain swine, beef, and dairy operations using total confinement housing. Inclusion of dry poultry operations is consistent with the regulation of both wet and dry operations within these other animal sectors.

Why were the size thresholds selected? EPA believes that it is appropriate to distinguish between potential risk of discharge posed by wet versus dry handling systems, using the pollutant of most concern, *i.e.* phosphorus, for establishing regulatory thresholds. For nitrogen and BOD, the levels for broilers would result in similar thresholds varying only by 1% to 3%. EPA agrees with commenters who asserted that EPA should determine the chicken threshold values by evaluating phosphorus content in the manure on an annual basis, which takes into account that phosphorus production does not continue during the periods of the year when no manure is generated (*i.e.*, clean out time between flocks when no broilers are present). Traditionally, layers were kept through one year of egg production and sold for meat at 18 to 20 months of age (*see* Section 4 of the *Technical Development Document*). Depending on the relative price of eggs to hens, it has become increasingly common to recycle layers through more than one year of production. Flock recycling consists of stopping the flock's egg production, allowing a suitable rest period, and then bringing the flock back into production. The entire process is known as ''force-molting''. Some producers now keep the birds through two or three complete cycles of egg production. Laying hens are now typically kept for 94 weeks of production. Since layers will continue to produce manure throughout the year the daily phosphorus levels were used in setting thresholds for laying hens. Therefore, EPA is establishing different thresholds based first on wet versus dry manure systems and second on the broad type of poultry, *e.g.*, chickens for meat (broilers) and chickens for eggs (layers) based on phosphorus content of manure generation.

b. Swine Nurseries and Heifer Operations. Today's rule regulates swine nurseries and heifer operations that are defined as CAFOs. Specifically, the Agency has adopted a Large CAFO threshold of 10,000 or more immature swine (*i.e.* weighing less than 55 pounds) and a Medium CAFO threshold of 3,000 to 9,999 immature swine. For heifers, EPA has adopted a Large CAFO threshold of 1,000 head or more and a Medium CAFO threshold of 300 to 999 head.

What did EPA propose? EPA is adopting what was proposed for these animal types in a three-tier structure.

What were the key comments? While a majority of commenters supported the inclusion of immature swine and dairy cattle in the proposed rule, a number of commenters opposed this change, and preferred to retain the exemption for immature animals. A number of commenters noted that many States already have programs at least as strict as the one EPA is proposing, and that States should be allowed the flexibility to determine if including operations with immature animals would improve water quality.

Rationale. Immature swine were not a concern in the past because they were usually part of operations that included mature animals and, therefore, their manure was included in the permit requirements of the CAFO. However, in recent years, these swine operations have become increasingly specialized, increasing the number of large, separate nurseries where only immature swine are raised.

Under the three-phase production pyramids used by most large swine operations, specialized farrowing operations that house only sows and piglets until weaned represent the first phase of raising swine. The weaned piglets are transferred to a nursery at a separate location until they reach about 55 to 60 pounds, at which time they are transferred to a grow-finish facility at another site. EPA's thresholds for swine weighing less than 55 lbs were established on the basis of the average phosphorus excreted from immature swine in comparison to the average phosphorus excreted from swine weighing more than 55 pounds. (Refer to the *Technical Development Document* for more details).

For dairies, immature heifers are often removed to a separate location until they reach maturity. EPA data indicate that some of these animals are confined, some are pastured, and some move back and forth between confinement and pasture. The previous CAFO definition considered only the mature milking cows in determining whether an operation was a CAFO and did not address operations that separately confine immature heifers. EPA believes that these separately confined heifer operations should be included in the regulatory definition of a CAFO because they may generate as much manure as a CAFO dairy given that the animals are maintained until fully grown, and they confine the animals in a manner very similar to CAFO beef feedlots.

EPA agrees that the number of immature animals kept in confinement with mature animals varies greatly and should not be the basis for determining whether an AFO is a CAFO. In situations where immature animals (*e.g.* heifers and swine) are confined with mature animals, the immature animals are not counted for purposes of determining whether an AFO is defined as a CAFO based on the number of mature animals. Once an AFO is defined as a CAFO, based on any of the threshold values provided in table 4.1, manure and process wastewater generated by all immature and mature animals in confinement would be subject to NPDES permit requirements.

c. Horses. Today's rule retains the animal number thresholds for defining which horse operations are CAFOs. AFOs with 500 or more horses are defined as Large CAFOs, AFOs with 150 to 499 horses are defined as Medium CAFOs under certain conditions (*see* § 122.23(b)(7)), and AFOs with fewer than 150 horses are Small CAFOs only if designated in accordance with § 122.23(c).

What did EPA propose? In the January, 2001 proposed rule, EPA did not consider changing the CAFO definition thresholds for horses. As a result of the comments and data received on the proposal, EPA

considered in a subsequent Notice of Data Availability (66 FR 58556, November 21, 2001) two alternative options for revising the horse thresholds. One option would retain the existing regulatory threshold in a two-tier structure. For example, if the regulatory threshold was dropped to 500 AU, EPA would retain 500 horses as the 500 AU equivalent, and those with fewer than 500 horses would be CAFOs only if so designated on a case-by-case basis. EPA suggested this option because the Agency agreed with commenters that there was no need to increase regulation of this sector; by maintaining the status quo EPA would be neither increasing nor decreasing the regulated universe. In the second option, EPA would have set one horse equal to one beef cow thereby establish regulatory thresholds similar to those for beef operations. As a result, in a three-tier structure, Large horse CAFOs would have 1,000 animals or more, and Medium horse CAFOs would have 300–999 horses. EPA presented the second option after examining data submitted by industry that suggested that a 1,000 pound horse may generate similar manure as a 1,000 pound beef cow. However, because that data did not differentiate thoroughbred race horses (typically on high-energy feed which might alter manure composition) from other horses, EPA requested more definitive data to justify the second approach.

What were the key comments? A number of comments were submitted by horse industry associations and individual horse operations requesting that EPA not lower the threshold for horses, as the existing regulation was adequate. They further suggested that this rulemaking would be an opportunity to revisit the basis for the existing threshold, and requested that EPA change it to one horse being equal to one beef cattle, asserting that there is no scientific basis for making one horse equal to two beef cattle (which is how the existing regulation defines horse CAFOs). Industry representatives provided data on manure content to support their position, although they did not provide manure data specific to racehorses. The commenters also explained that the horse industry is fundamentally different in how it is organized and operated from the other sectors that focus on food production, and that this sector has not seen the kinds of changes (*e.g.*, expansion and consolidation) that EPA is seeking to address in today's rule. Further, they point out that most large racetracks are in urban areas and are currently subject to a variety of EPA-initiated and State-administered programs related to water pollution and storm water runoff control.

Some commenters requested that EPA not reduce the regulatory thresholds, and asked EPA to retain the ability of permit writers to use BPJ to establish site-specific BMPs. Industry representatives also asked the Agency to clarify that confinement pertains to stalls or similar structures in buildings and not to fenced areas, and that it does not include short visits to stalls for shoeing, veterinary evaluation, or related activities.

Rationale. It should be noted that the thresholds for the CAFO definition refer only to horse operations where animals are confined for 45 days (non-consecutive) over a 12 month period. Thus, to be considered a Large CAFO, the operation would need to confine 500 horses at one time for 45 days or longer in a 12-month period, and to be a Medium CAFO at least 150 horses would need to be confined for 45 days or longer in a 12-month period. The areas associated with confinement at horse facilities would constitute the production area, and would not include pastures and other unconfined areas. EPA notes the 1974 ELG for horses assumed the majority of horse CAFOs were racetracks. Although race tracks accounted for less than 0.1 percent of all horse operations today, race tracks still account for more than 96% of all horse operations with 500 horses or more. Boarding/training stables comprise the remaining few operations with 500 horses or more. Such operations would not be considered CAFOs unless all of the horses were kept in confinement (as opposed to pasture). Data suggests most horse operations confine their animals for short-term stabling or visits to stalls for shoeing, veterinary evaluation, or related activities. However, according to consultations with the American Horse Council, it is unlikely that these visits would involve a number of horses large enough to define the operation as a CAFO. For example, a ranch maintaining over 500 horses would typically have fewer than 100 stalls or stables (*i.e.* confinement areas). Therefore, those operations that confine enough horses for a long enough period to be defined as CAFOs are generally racetracks.

In the 1970s regulations, the Agency considered racetracks when originally determining the size of an operation that must comply with the effluent guidelines, and the records indicate the size of operation was based on the manure generated by thoroughbred racehorses. Based on some comments that EPA should re-evaluate the classification of horses by bodyweight or manure content, EPA collected more current manure characteristics data from ASAE, USDA, and based on this data presented alternative thresholds for horses in the *2001 NODA* (*see* 66 FR 225, page 58595). After reviewing the data, EPA generally agrees that the phosphorus content of horse manure is similar to that of a beef cow. However, as described above, the majority of horse CAFOs are racetracks, and the more general data on recreational and work horses is not comparable. The Agency also reviewed the data submitted by horse industry representatives and determined that this data also did not distinguish manure generated by racehorses with that of a recreational or farm horse, and thus EPA does not believe the record is sufficient to justify a change to the existing regulatory thresholds.

The effluent guideline, which is not being changed in today's final rulemaking, continues to be applicable to those horse operations confining 500 horses or more, including stables such as at racetrack operations. Other horse operations that may be defined or designated as CAFOs would continue to follow permit requirements based on the BPJ of the permitting authority.

d. Ducks. Today's final rulemaking revises the thresholds for defining whether a duck operation is a CAFO. The following thresholds apply to duck operations where the AFO uses other than a liquid manure handling system (''dry systems''): 30,000 or more ducks for a Large CAFO and 10,000 to 29,999 ducks for a Medium CAFO. For small operations with fewer than 10,000 ducks, EPA or the State permitting authority may designate them as a CAFO. For operations where the AFO uses a liquid manure handling system (''wet systems''), EPA is retaining the existing thresholds. That is, those with 5,000 or more ducks are considered Large CAFOs; those with 1,500 to 4,999 ducks may be Medium CAFOs (if the other conditions are met); and small operations with fewer than 1,500 ducks would become CAFOs only if designated in accordance with § 122.23(c).

What did EPA propose? In the January, 2001 proposed rule, EPA did not consider changing the existing animal unit equivalents for ducks. As a result of comments received on the proposal, EPA considered in a subsequent *2001 Notice of Data Availability (NODA)* (66 FR 58566, November 21, 2001) two alternative options for establishing thresholds for duck operations. One option would treat

dry systems similarly to chicken operations (*e.g.*, at the time of the *NODA,* EPA was considering 100,000 ducks would have constituted a Large CAFO). Another option would establish a Large CAFO threshold of 30,000 ducks based on the quantity and content of duck manure, using data and recommendations supplied by Purdue University. In all cases, the threshold for Large CAFOs with wet systems would remain at 5,000 ducks.

What were the key comments? A number of commenters on both the proposal and the *NODA* from duck industry associations, individual duck operations and some States requested that EPA change the threshold in the CAFO definition for ducks. They urged EPA to consider revising the duck thresholds to a higher number. By retaining the 5,000 duck threshold, they noted, essentially all duck operations in the United States would be required to apply for an NPDES permit. Commenters noted that management practices have changed significantly since the 5,000 duck threshold was established. The management practices currently used to raise ducks are similar to chicken operations. Commenters claim that these dry facilities should be regulated like chicken operations, basing the threshold either on phosphorus manure levels or using a threshold similar to chickens. State commenters agree that the threshold for these types of facilities should be raised but suggest retaining the existing threshold for wet systems.

Rationale. The existing NPDES regulation and the effluent guideline make no distinction between dry and wet systems. The duck thresholds were originally established in the 1970s and were based primarily on ducks being raised outside on ponds or with a stream running through an open lot. These types of facilities have been referred to as ''wet'' lot operations. Today's regulation refers to them as AFOs that use liquid manure handling systems. This preamble also refers to them as ''wet systems.'' For purposes of today's rulemaking, these include duck operations that use ponds, wet lots, or buildings with lagoons.

EPA agrees with commenters that the management practices more typically used today to raise ducks are similar to chicken operations where the birds are confined to a building on solid bedding or in a building with a concrete pit underneath it where manure collects. These types of facilities have been referred to as ''dry lot'' operations. Where these practices are utilized, and are not combined with liquid manure handling systems, such as lagoons, they present much less risk of a discharge than do wet systems. Today's regulation refers to them as AFOs that use ''other than liquid manure handling systems.'' This preamble also refers to them as ''dry systems.''

After examining information concerning the current technologies of the duck industry, EPA concurs that it is appropriate to adjust the regulatory thresholds for dry systems, while retaining the existing threshold for wet systems. EPA is setting the Large CAFO threshold for duck operations with dry systems at 30,000 birds or more based on data produced by Purdue University and the American Society of Agriculture Engineers (ASAE), which are available in the administrative record. This threshold was calculated using phosphorus manure levels and assuming an approximate 3 duck to 1 chicken ratio. The medium size threshold is 10,000 to 29,999 ducks and the small threshold is less than 10,000 ducks. These thresholds were set at these levels based on the same 3 duck to 1 chicken ratio. Data on both layer and broiler chickens were averaged to obtain this ratio. This threshold is generally consistent with the thresholds adopted in current State programs, especially Indiana where the majority of the duck operations are located. This decision is also consistent with today's final decision on the chicken threshold, where EPA has established higher thresholds for layer operations using other than liquid manure handling systems than for layer operations using liquid manure handling systems.

e. Cow/Calf. In today's final rule, a beef cow/calf pair counts as one animal when temporarily confined in a pen, lot, barn, or stable. However, a cow/calf pair counts as two animals after the offspring are weaned.

What did EPA propose? The proposed rule did not discuss a convention to count cow/calf pairs. In response to comments from the beef industry, EPA described a convention in the November 2001 *NODA* to count a cow/calf pair as one animal for 120 days after the calf is weaned, after which they would be considered two animals.

What were the key comments? Comments on the proposal from organizations and individuals representing the beef sector indicated that they thought the proposal would alter the way mature and immature beef cow pairs are counted. They commented that if a cow/calf pair was counted as two animals, the proposed rule would have a significant impact on small beef operations that are largely pasture-based. Environmental organizations generally did not comment on this issue.

In comments on the 2001 Notice, States and industry commenters unanimously supported the proposal to explicitly count a cow/calf pair as one animal. Many commenters said that, in practice, producers think of the cow and calf as a single entity until weaning time when the young animal becomes physically separated and requires separate penning and housing, and suggested adopting this standard. Some commenters suggested other alternatives, such as counting a cow/calf pair as 1.2 animal units, or differentiating the AU equivalent based on the age of the calves (*e.g.*, up to two months old the cow/calf would be counted as one animal unit, from two to six months calves would be counted as 0.3, from six months to a year counted as 0.6, *etc.*)

Rationale. As described in the 2001 Notice, EPA has always assumed that cow/calf operations are typically pasture-based and would not normally fall within the coverage of the CAFO regulations. Such operations typically confine animals only temporarily for birthing, veterinary care, or other purposes. This temporary confinement may result in the operation being defined as an AFO, in which case it could in turn be defined as a CAFO should it meet certain conditions. However, it is not likely that this temporary confinement would involve enough animals to define the operation as a CAFO. EPA would like to make it clear that it is still not the Agency's intention to regulate pasture-based or rangeland operations. Counting a cow/calf pair as one animal is consistent with how EPA treats mother/offspring pairs housed together at the same location in other sectors (*e.g.*, dairy and swine).

After considering public comment, EPA determined that it was appropriate to consider a cow/calf pair as one animal until the calf is weaned, rather than to specify a particular time period after weaning, which would have entailed additional, potentially burdensome, record keeping requirements (*e.g.* date of weaning for each calf).

f. Eliminate the mixed animal calculation. With today's final rulemaking, EPA is eliminating the formula for calculating whether an AFO is a CAFO because of the accumulation of several different animal types in confinement at one facility. An AFO is defined as a CAFO only if the specific threshold for any one animal sector covered by today's final regulations is met. Once a given operation is defined

as a CAFO, regardless of animal type, the regulations apply to all of the manure, litter, and wastewater generated by the operation. In the event that waste streams from multiple livestock species are co-mingled, and the regulatory requirements for each species are not the same, the permit must include the more stringent requirements.

What did EPA propose? EPA proposed to eliminate the mixed animal calculation.

What were the key comments? A number of comments were received concerning the elimination of the mixed animal calculation. Commenters opposed to the elimination of the calculation believe it is more protective of the environment to count all of the animals at an operation, in order to address the cumulative quantities of manure through the CAFO permit. Some commenters also claimed that eliminating the mixed animal calculation would create an opportunity for larger operations to avoid permitting by maintaining slightly fewer than the regulatory thresholds for several types of animals. Comments supporting EPA's proposal agreed that this change simplifies the regulation, provides relief to small farms, and focuses the regulation on the larger, more specialized facilities that tend to be more industrialized.

Rationale. As described in the proposed rulemaking (66 FR 3005) EPA is eliminating the mixed animal calculation for several reasons. First, this action simplifies the regulations. In addition, EPA's analysis indicates that the mixed animal calculation would have caused only a small fraction of the smaller AFOs to have been defined as CAFOs, so the Agency believes that this action does not materially change the scope of coverage of this regulation. To the extent that coverage is changed at all, it appropriately would be shifted away from smaller operations that tend to have more sustainable practices and sufficient crop land for land application of their manure nutrients. Should an AFO with mixed animals types be found to be a significant contributor of pollutants to waters of the United States, it could still be designated a CAFO in accordance with the designation provisions of this final rule.

4. Is My AFO a CAFO If It Discharges Only During Large Storm Events?

Today's final rule defines an operation as a CAFO regardless of whether the operation discharges only in the event of a large storm. In other words, today's final rule eliminates the 25-year, 24-hour storm permitting exemption for defining a CAFO. EPA notes, however, that the 25-year, 24-hour storm design criterion in the ELGs for large CAFOs is not being changed, except for new sources in the swine, veal, and poultry sectors (*see* preamble section IV.C.2)

What did EPA propose? EPA proposed to eliminate the 25-year, 24-hour storm event exemption from the definition of a CAFO.

What were the key comments? Comments from the animal agriculture industry were generally opposed to eliminating the permit exemption. Their position was that facilities that discharge only as a result of a storm event that exceeds a 25-year, 24-hour storm should not be covered by an NPDES permit. Environmental organizations and others supported the elimination of the exemption based on the position that it was not being used appropriately by the industry. States were split on whether to eliminate the exemption, depending largely on their current regulatory policy. Many commenters confused the proposed elimination of this exemption with consideration of the appropriate design standard for permitted facilities.

The SBAR Panel agreed that removing the 25-year, 24-hour exemption was generally appropriate for Large CAFOs because of the significant potential for environmental harm from Large CAFOs when the manure is not properly managed. The Panel also recognized that, under the terms of the proposal, eliminating the exemption would mean that some facilities would need to apply for a permit even though they have sufficient manure management and containment in place or, for some other reason, do not discharge except in a 25-year, 24-hour storm.

The Panel recommended that EPA consider reduced application requirements for small operators affected by the removal of the exemption. In the proposed rule EPA requested comment on whether to retain this exemption for small facilities as well as how many animals would be considered ''small'' for this purpose. The Agency carefully analyzed these issues during the development of this final rule.

Rationale. For the reasons stated in the proposal (66 FR 3006), and based on EPA's analysis of comments and other information, the Agency continues to believe that the 25-year, 24-hour storm permit exemption has created confusion and ambiguity that undermines the ability of permitting authorities to implement the CAFO regulations effectively. Eliminating this provision will: (1) Ensure that all Large CAFOs are appropriately permitted; (2) ensure through permitting that facilities are, in fact, properly designed, constructed, operated, and maintained to contain manure and the rainfall associated with a 25-year, 24-hour storm event or the revised standard for new sources in the swine, veal calf, and poultry sectors; (3) improve the ability of EPA and State permit authorities to monitor compliance; (4) ensure that facilities do not discharge pollutants from their production areas and that they land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, and process wastewater; and (5) achieve EPA's goals of simplifying the regulations, providing clarity to the regulated community, and improving the consistency of implementation.

The 25-year, 24-hour exemption was not applicable to operations that became CAFOs by designation. Since small AFOs can only become CAFOs by designation, the elimination of this exemption will not affect the universe of Small CAFOs (refer to section IV.A.7 for a discussion of designation).

Because EPA is not changing the criteria under which medium facilities are defined as CAFOs, the elimination of the 25-year, 24-hour storm permitting exemption is not expected to significantly affect the universe of Medium CAFOs either. EPA believes that at most medium facilities that meet the existing conditions for being defined as a CAFO, discharges would most likely occur not only in the 25-year, 24-hour storm but as a result of lesser storms as well. For example, a facility with a pipe or other man-made conveyance is likely to discharge to surface water in wet weather, or for that matter could potentially discharge even in dry weather. Similarly, a facility that has a stream or other water of the United States running through the production area meets the definition of a CAFO and is also likely to discharge in less than the 25-year, 24-hour storm. By using the existing criteria, the Agency does not believe that there will be a significant increase in the number of medium facilities defined as CAFOs. Medium facilities that meet these conditions are encouraged to take advantage of available technical support and eliminate the conditions that cause them to be defined as a CAFO.

Accordingly, EPA believes that the Agency has addressed the principal concerns raised by the SBAR Panel. In addition, the Agency has taken steps to reduce the amount of information

required as part of the permit application process, thereby addressing the other concern raised by the Panel.

In providing comments on the proposed rule, a number of commenters appear to have confused EPA's proposal to eliminate the 25-year, 24-hour storm event as a permit exemption with issues relating to the design standard for the effluent limitation guideline. In this final rule, the Agency is eliminating the use of the 25-year, 24-hour storm only for the purpose of determining who is required to be covered by an NPDES permit. The Agency is retaining the existing design standard for containment based on the 25-year, 24-hour storm event (except for new sources in certain animal sectors, as discussed elsewhere in this preamble).

The elimination in today's rule of the 25-year, 24-hour storm exemption from permitting is also compatible with today's requirement for all CAFOs to apply for a NPDES permit. In section IV.B.1 below, EPA explains the reasons for adopting a more comprehensive ''duty to apply'' today, including the unique characteristics of CAFOs and the zero discharge regulatory approach (except for large storm events) that applies to them, the historical experience showing the lack of permitting of Large CAFOs, and the need to simplify and clarify the applicability of the rule. Retaining the 25-year, 24-hour storm exemption from permitting would not be compatible with these reasons and indeed would perpetuate confusion over which operations are required to apply for a permit.

Having eliminated the 25-year, 24-hour storm exemption from permitting, today's rule nevertheless allows operations to avoid permitting if they can demonstrate that they truly have no potential to discharge (*see* section IV.B.2). However, operations that do have the potential to discharge, even if just in the 25-year, 24-hour storm, may not receive a determination of no potential to discharge.

5. How Are Land Application Discharges of Manure and Process Wastewaters at CAFOs Covered by This Rule?

Today's rule clarifies that runoff from the application of CAFO manure, litter, or process wastewaters to land that is under the control of a CAFO is a discharge from the CAFO and subject to NPDES permit requirements, except where it is an agricultural storm water discharge. All permits for CAFOs must contain terms and conditions on land application in order to ensure appropriate control of discharges that are not agricultural storm water.

What did EPA propose? EPA proposed to define an AFO to include both the animal production areas of the operation and any land areas under the control of the owner or operator on which manure and process wastewaters are applied. The definition of a CAFO is based on the AFO definition and therefore would have included the land application areas as well. Accordingly, a CAFO's permit would include requirements to control discharges from both its production area and its land application area.

What were the key comments? A number of commenters asserted that EPA lacks the authority to include permit requirements governing a CAFO's land application of manure and process wastewaters. They claim generally that the runoff from such land application is a nonpoint source discharge and therefore is not subject to NPDES requirements. In particular, they argue that because land application areas are not places where animals are concentrated or fed, there is no basis in the Act for including them in the definitions of AFO and CAFO. In addition, in their view, runoff of CAFO manure and process wastewaters from land application areas is excluded from the point source definition because it is ''agricultural storm water.'' They believe that land application runoff is appropriately addressed only through nonpoint source, voluntary, incentive-based programs. Accordingly, these commenters objected to the proposal to include land application areas in the definition of an AFO and CAFO.

One commenter also stated that EPA's policy reasons for including land application areas in the AFO and CAFO definitions are not convincing. Excluding land application areas from the AFO and CAFO definitions, this commenter notes, does not necessarily mean that CAFO generated manure could be land applied without concern for the environment. For example, as a nonpoint source discharge, land application discharges would still be subject to State controls, the Clean Water Act nonpoint source program (section 319), and the TMDL program.

In contrast, certain other commenters indicated that there is a significant need to better address manure and related discharges from CAFO land application areas and therefore they agreed with the proposal to include the land application areas in the AFO/CAFO definitions. These commenters stated that this approach is consistent with recent court decisions and that addressing land application runoff is critical to ensuring water quality protection.

Rationale. EPA noted in the proposal that the runoff from land application of manure at CAFOs is a major route of pollutant discharges from CAFOs; that in some regions of the country, the amount of nutrients present in land-applied manure has the potential to exceed the nutrient needs of the crops; that areas exist of widespread phosphorus saturation of the soils; and that research shows a high correlation between areas with impaired lakes, streams and rivers due to nutrient enrichment and areas where there is dense livestock and poultry production.

EPA fundamentally disagrees with those commenters who asserted that the Agency lacks authority over land application discharges at CAFOs because this is an attempt to regulate nonpoint source pollution. Under the Clean Water Act, the Agency has broad discretion to determine what are point source discharges from CAFOs. EPA explained in the proposal why it is appropriate to clearly specify that land application discharges of manure and process wastewater from areas where CAFO manure and process wastewaters have been overapplied are discharges by the CAFO that are subject to NPDES requirements rather than being nonpoint source discharges. In brief, EPA stated in the proposal that the pipes and other manure-spreading equipment that convey CAFO wastes to the fields are an integral part of the CAFO, and so discharges from this equipment should be considered discharges from the CAFO. Further, land application areas are integral to CAFO operations, and there have been significant discharges in the past attributed to land application of CAFO wastes. The proposal noted in addition that defining CAFOs in this way is consistent with EPA's effluent limitations guidelines for other industries, which consider on-site waste treatment systems to be part of the production facilities in that the regulations restrict discharges from the total operation.

EPA believes that, in explicitly including CAFOs in the definition of a point source (CWA Sec. 502(14)), Congress intended that discharges of manure and process wastewater from a CAFO to waters of the U.S. should be regulated through the NPDES permit program. Since one important manner by which CAFOs may produce such discharges is to apply manure and process wastewater to land areas under their control, EPA believes that Congress must have intended discharges from a CAFO's land application area to be at least potentially included as

regulated point source discharges. However, Sec. 502 also includes a specific exclusion from the definition of a point source for ''agricultural storm water discharges.'' EPA explains in the following section how it interprets these two statutory provisions in order to identify which discharges from a CAFO's land application area are agricultural storm water discharges and therefore are not point source discharges.

Because the runoff from land application of manure at CAFOs is a major route of pollutant discharges from CAFOs, and for the other reasons articulated above, EPA does not believe it is sufficient to rely on non-regulatory controls cited by one of the commenters, such as the CWA section 319 program, or State non-NPDES authorities.

While EPA is today making explicit in the regulations that a CAFO's land application of CAFO manure and process wastewaters is subject to NPDES requirements, the Agency is doing so through different regulatory language from what was proposed. EPA proposed to amend the AFO definition to include the land application areas at the facility as well as the animal production areas. Following the proposal, however, concerns were raised that this language could be misconstrued to mean that CAFO permits must include terms and conditions on any pollutants running off the operation's land application areas (for example, runoff of pesticides). This was not EPA's intent. The focus of this rulemaking is on the CAFO manure and process wastewaters that may be discharged by the CAFO. Therefore, EPA has chosen not to include the land application areas at an animal feeding operation within the definition of an AFO or CAFO in the final regulations. Instead, EPA has added section 122.23(e), entitled ''Land application discharges from a CAFO are subject to NPDES requirements,'' which states as follows: ''The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14).'' This provision goes on to state that a discharge of manure or process wastewater from a CAFO's land application areas is an agricultural storm water discharge under certain conditions, as discussed in the next preamble section.

The Agency emphasizes that in today's amendments to the CAFO regulations, a CAFO's responsibility for land application discharges extends only to the CAFO's own land application areas, which includes areas at the CAFO itself or otherwise under the CAFO owner's or operator's control. Also, as noted, today's land application rule provisions apply only to the application of manure, litter, and process wastewaters at the CAFO, and not to other pollutants that may exist at the operation.

As explained above, EPA also believes that the final rules adopted today appropriately account for the exclusion of ''agricultural storm water discharges'' from the definition of a point source in the Clean Water Act. This subject is discussed in the following section.

6. How Is EPA Applying the Agricultural Storm Water Exemption With Respect to Land Application of CAFO Manure and Process Wastewaters?

EPA is clarifying in today's rule that discharges of manure, litter, and process wastewaters from the land application areas of a CAFO are agricultural storm water discharges where the manure or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater. Such practices, as specified in 122.42(e)(1) (vi)–(ix) must be included in all CAFO permits.

What did EPA propose? For purposes of land application of manure from an AFO or CAFO, EPA proposed to define the term ''agricultural storm water discharge'' as a discharge composed entirely of storm water, as defined in § 122.26(a)(13), from a land area upon which manure and/or wastewater has been applied in accordance with proper agricultural practices, including land application of manure or wastewater in accordance with either a nitrogen-based or, as required, a phosphorus-based manure application rate. Also, as noted, the proposed effluent guidelines included technology-based requirements for a CAFO's land application areas that were based on the CAFO's use of proper agricultural practices. (*See* 66 FR at 3029–32).

What were the key comments? A number of the commenters who claimed that EPA does not have authority to regulate land application at CAFOs focused on the exclusion for agricultural storm water discharges. In their view, under this exclusion, all runoff of manure, litter, or process wastewaters from a CAFO's crop fields is exempt from the NPDES program as agricultural storm water. In contrast, other commenters took the view that because of the Act's specific naming of CAFOs as point sources, none of the runoff from CAFO crop fields is entitled to the agricultural storm water exemption.

Rationale. The CWA states that the term ''point source'' does not include ''agricultural storm water discharges'' (section 502(14)). Nothing in the statutory language or legislative history indicates that Congress did not mean to include agricultural storm water discharges from a CAFO in this exclusion. EPA therefore believes that in order to interpret the inclusion of CAFOs as point sources and the agricultural storm water exclusion consistently, it is necessary to identify the conditions under which discharges from the land application area of a CAFO are point source discharges that are subject to NPDES permitting requirements and those under which they are agricultural storm water discharges and therefore are not point source discharges.

EPA has determined that it is appropriate to base the distinction between agricultural storm water discharges and regulated point source discharges of manure, litter, and process wastewater from a CAFO on whether or not the manure and process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater. The specific types of practices that EPA believes are needed to ensure this are specified in 122.42(e) (1)(vi)–(ix). Where such practices have been used, EPA believes it is reasonable to conclude that any remaining discharge is agricultural storm water. Conversely, where such practices have not been used, EPA believes it is reasonable to conclude that land application discharges of manure, litter, or process wastewater are not agricultural storm water but are discharges that Congress meant to subject to NPDES permitting requirements when it explicitly included CAFOs in the definition of a point source.

When manure or process wastewater is applied in accordance with practices designed to ensure appropriate agricultural utilization of nutrients, it is a beneficial agricultural production input. This fulfills an important agricultural purpose, namely the fertilization of crops, and it does so in a way that minimizes the potential for a subsequent discharge of pollutants to waters of the U.S. EPA recognizes that even when the manure, litter, or process wastewater is land applied in accordance with practices designed to

ensure appropriate agricultural utilization of nutrients, some runoff of nutrients may occur during rainfall events, but EPA believes that this potential will be minimized and any remaining runoff can reasonably be considered an agricultural storm water discharge.

EPA notes that any dry weather discharge of manure or process wastewater resulting from its application to land area under the control of a CAFO would not be considered an agricultural storm water discharge and would thus be subject to Clean Water Act requirements. As a matter of common sense, only storm water can be agricultural storm water. Further, if manure or process wastewater were applied so thickly that it ran off into surface waters even during dry weather, this would not be consistent with practices designed to ensure appropriate agricultural utilization of nutrients.

In this rule, EPA is clarifying how it believes the scope of regulated point source discharges from a CAFO is limited by the agricultural storm water exemption. EPA does not intend its discussion of how the scope of point source discharges from a CAFO is limited by the agricultural storm water exemption to apply to discharges that do not occur as the result of land application of manure, litter, or process wastewater by a CAFO to land areas under its control and are thus not at least potentially CAFO point source discharges. In explaining how the scope of CAFO point source discharges is limited by the agricultural storm water exemption, EPA intends that this limitation will provide a ''floor'' for CAFOs that will ensure that, where a CAFO is land applying manure, litter, or process wastewater in accordance with site specific practices designed to ensure appropriate agricultural utilization of nutrients, no further effluent limitations will be authorized, for example, to ensure compliance with water quality standards. Any remaining discharge of manure or process wastewaters would be covered by the agricultural storm water exemption and would be considered nonpoint source runoff. Further, the Agency does not intend that the limitation on the scope of CAFO point source discharges provided by the agricultural storm water exemption be in any way constrained, so long as manure, litter, or process wastewater is land applied by the CAFO in accordance with site specific nutrient management practices that ensure appropriate utilization of nutrients. In particular, EPA does not intend that the applicability of the agricultural storm water exemption to discharges from land application areas of a CAFO be constrained by requirements to control runoff resulting from the application of pesticides or other agricultural practices.

Although as noted above, manure and process wastewater discharges from the land application area are not directly subject to water quality-based effluent limits, EPA encourages States to address water quality protection issues in their technical standards for determining appropriate land application practices.

The Agency disagrees with the commenters who would interpret the agricultural storm water provision to exclude all of the runoff from a CAFO's land application areas. It would not be reasonable to believe that Congress intended to exclude as an ''agricultural'' storm water discharge any and all discharges of CAFO manure from land application areas, for example, no matter how excessively such manure may have been applied without regard to true agricultural needs. Similarly, EPA does not agree with the commenters who believe that the agricultural storm water discharge exclusion does not apply at all to CAFOs because Congress singled out CAFOs by specifically including them in the definition of point source. There is nothing in the text of the point source definition (CWA section 502(14)) that indicates that Congress intended the agricultural storm water discharge exclusion not to apply to CAFOs.

After considering all the comments, EPA has decided that it is not necessary to include a definition of the term ''agricultural storm water'' in the rule text at section 122.23(b). EPA believes that the amended regulatory text at 40 CFR 122.23(e), in combination with this preamble discussion, adequately clarifies the distinction between regulated point source discharges and non-regulated agricultural storm water discharges from the land application area of a CAFO.

Under the final rule, as proposed, discharges from the production area at the CAFO (*e.g.*, the feedlot and lagoons) are not eligible for the agricultural storm water exemption at all, because they involve the type of industrial activity that originally led Congress to single out CAFOs as point sources.

Today's final rule also requires all permits for CAFOs to include terms and conditions to address land application. *See* section 122.42(e) and Part 412. The Agency has included this requirement because it has the authority to regulate point source discharges and any discharge of CAFO manure, litter, or process wastewaters from the land application area of a CAFO which is not agricultural storm water is subject to the Clean Water Act. EPA believes that the only way to ensure that non-permitted point source discharges of manure, litter or process wastewaters from CAFOs do not occur is to require that CAFOs apply for NPDES permits that will establish requirements that ensure that manure, litter, and process wastewater are only applied to CAFO land application areas in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

7. When and How Is an AFO Designated as a CAFO?

In today's final rule, EPA is retaining the requirement for an on-site inspection and a determination that an AFO is a significant contributor of pollutants to waters of the United States prior to designating an AFO as a CAFO. A small AFO may be designated only if it discharges either: (1) Into waters of the United States through a man-made ditch, flushing system, or other similar man-made device or (2) directly into waters of the United States that originate outside of the facility and pass over, across, or through the facility or otherwise come into contact with the confined animals. Medium operations may also be designated as CAFOs even if they do not meet either of the two conditions for being defined as a CAFO.

What did EPA propose? In the proposed rule, EPA presented two options with respect to the designation criteria. EPA proposed to retain the existing criteria under a three-tier structure and proposed to eliminate them under a two-tier structure. In addition, EPA requested comment on several additional alternatives that would have retained the criteria only for small operations.

EPA also proposed to modify the on-site inspection requirement to explicitly include other forms of information gathering such as use of monitoring data, fly-overs, and satellite imagery. EPA also proposed a technical correction, changing the term ''significant contributor of *pollution*'' to ''significant contributor of *pollutants.*''

What were the key comments? EPA received limited comment concerning proposed changes to the designation criteria. Only a few States specifically supported the elimination of the criteria. A few representatives of the livestock industry generally supported elimination of the criteria for operations of all sizes. Commenters were generally opposed to EPA's proposal to modify the on-site inspection requirement to

allow for alternative data gathering methods. Some commenters acknowledged that the alternative methods of data collection proposed by EPA can indicate situations where a potential water quality problem exists; however, most commenters asserted that on-site inspections by knowledgeable personnel are the only fair and accurate method of determining whether an AFO is a significant contributor of pollutants.

The SBAR Panel raised concern over the proposed changes to the designation criteria, and the potential to cause more small businesses to be subject to regulation. The Panel supported the retention of the existing designation criteria and process.

Rationale. EPA has decided to retain the existing designation criteria and process because the existing criteria strike an appropriate balance for ensuring protection of surface water quality while maintaining flexibility for States to assist small and medium operations before they become subject to NPDES requirements for CAFOs. Retaining the requirement for an on-site inspection will help ensure a reasoned assessment of the situation has been performed and make the operation aware that it may be designated a CAFO.

AFOs that do not meet the regulatory definition of a CAFO can often be effectively addressed by State voluntary programs or regulatory non-NPDES programs focused on the elimination of the conditions that pose a threat to water quality. Implementing these voluntary or non-NPDES State programs can help to ensure that medium and small operations implement proper practices and are not designated as CAFOs. If documented threats to water quality are not addressed by the owner or operator of particular AFOs, the NPDES CAFO regulations provide States with appropriate flexibility to use designation as an effective mechanism to designate these operations as CAFOs on a case-by-case basis. Once designated as CAFOs, these operations are subject to the permitting requirements defined in today's action. Note that the ELGs apply only to Large CAFOs. For Medium and Small CAFOs appropriate permit limits should be established according to the BPJ of the permitting authority.

Although no change has been made to either the former designation criteria or the requirement for an on-site inspection, EPA is adopting as final a technical correction to the regulatory language on designation, changing the term from ''significant contributor of *pollution*'' to ''significant contributor of *pollutants.*'' for the reasons discussed in the proposal. This technical correction makes the NPDES CAFO regulations consistent with the rest of the NPDES program. EPA received very few public comments on this revision.

If, after conducting an on-site inspection, the NPDES authorized State (or EPA in certain circumstances—see below) determines that an AFO is a significant contributor of pollutants to waters of the United States, the AFO may be designated as a CAFO. The determination of whether an AFO is a significant contributor of pollutants to waters of the United States should consider the cumulative impacts of multiple AFOs that may be causing or contributing to the exceedance of water quality standards.

8. Can EPA Designate an AFO as a CAFO Where the State Is the Permitting Authority?

Today's final rule explicitly authorizes the EPA Regional Administrator to designate CAFOs in NPDES authorized States where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant. Upon designation, the operation would be required to apply to the appropriate permitting authority for permit coverage. It should be noted that EPA is not assuming authority or jurisdiction to issue permits to the CAFOs that it designates in authorized NPDES States (except for those in Indian Country). That authority would remain with the authorized States.

What did EPA propose? EPA proposed to explicitly authorize EPA designation of AFOs as CAFOs in NPDES authorized States, without limiting this authority to AFOs contributing to impairments in downstream or adjacent jurisdictions.

What were the key comments? In comments submitted on the proposed rule, States and the livestock and poultry industry were generally opposed to EPA designation in NPDES authorized States. A number of commenters argued that EPA did not have the authority to designate in a State with an authorized NPDES permit program. Environmental organizations and allied commenters were generally supportive of EPA's designation authority. Those supportive of EPA's proposal believed that this authority would be an important component of ensuring that the revised regulations are fairly implemented across the entire country.

Rationale. After careful consideration of the comments, EPA has decided to limit EPA designation authority, in NPDES authorized States, to circumstances where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant. In these situations, the State in which the discharge is located may not have the same incentives for designating sources as it would if the impaired water affected by the discharger were located in the State. This approach will ensure consistent implementation of designation requirements across State boundaries where there are serious water quality concerns. EPA expects NPDES authorized States to ensure consistency within State boundaries. It is not EPA's intention to make such designations lightly or without close coordination with affected States. EPA's designation authority will be helpful in sensitive situations where one State finds it difficult to resolve water quality impairments caused by AFOs in another State.

EPA disagrees with those commenters who believe that the Agency does not have the legal authority to designate CAFOs in authorized States. In today's action, EPA is asserting similar, albeit more limited, authority to designate CAFOs as compared to designation of storm water point sources. *See* 40 CFR 122.26(a)(1)(v) and 122.26(a)(9).

Ultimately, EPA's authority to designate derives from the CWA itself. CWA Section 501(a) provides the Agency with the authority to designate point sources subject to regulation under the NPDES program, even in States approved to administer the NPDES permit program. This interpretive authority to define point sources and nonpoint sources was recognized by the D.C. Circuit in *NRDC* v. *Costle*, 568 F.2d 1369, 1377 (DC Cir. 1977). The interpretive authority arises from CWA Section 501(a) when EPA interprets the term ''point source'' at CWA Section 502(14).

9. How Can States Use Non-NPDES Programs To Prevent Medium and Small Operations From Being Defined or Designated as CAFOs?

EPA promotes the efforts of States to actively use a variety of strategies to work with owners and operators of AFOs to ensure that they do not meet the criteria that would result in their being defined or designated Small or Medium CAFOs.

Operators of medium and small facilities are encouraged to participate in voluntary programs that promote sustainable agriculture and the

reduction of environmental impacts. EPA anticipates that participation in these programs will assist them in eliminating conditions which would result in the AFO being defined or designated as a CAFO. For example, it may be that an operation that confines 500 cattle and that participates in a voluntary program to develop and implement a CNMP, as defined by USDA, could proactively fix situations that may otherwise cause them to meet the criteria for being defined or designated as a CAFO. EPA intends to develop a small entity compliance guide to assist small business and additional tools needed to assist AFOs in complying with this requirement. Please refer to a more extensive discussion of how this rule promotes and encourages State flexibility in section V.F.

10. What CAFOs Are New Sources?

Today's final rule makes no changes to the definition of ''new source'' in 40 CFR 122.2 or the definition and criteria for new source determinations in 40 CFR 122.29 with respect to CAFOs. For purposes of applying the new source performance standards in today's final rule, a source would be a new source if it commences construction after April 14, 2003 (*see* 40 CFR 122.2). Each source that meets this definition is required to achieve the new New Source Performance Standard upon commencing discharge.

What did EPA propose? EPA proposed additional criteria for determining who is a new source, including:

1. The CAFO is constructed at a site at which no other source is located;

2. The CAFO totally replaces the housing including animal holding areas, exercise yards, and feedlot, waste handling system, production process, or production equipment that causes the discharge or potential to discharge pollutants at an existing source; or

3. The CAFO constructs a production area that is substantially independent of an existing source at the same site.

What are the key comments? Some industry commenters expressed the view that the new source definitions were too broad and would result in many existing CAFOs being considered by their permitting authority as new sources. Commenters interpreted the proposal to mean that operations undergoing routine operation and maintenance or replacement of individual structures and equipment could be considered a new source under the proposed language. These existing facilities defined as new would have to undergo costly improvements to comply with the NSPS. In addition, the new source definition would be a disincentive to conduct routine maintenance and improvements at an operation. The commenters indicated that EPA did not provide enough rationale to include this language and that other industries do not have such a broad new source definition. Industry commenters, including some conservation districts, concluded that EPA should retain the existing definition.

Comments from environmental organizations and private citizens indicated their belief that all expanding AFOs should be considered CAFOs and subject to NSPS, and that these standards should be more restrictive than the existing source standards.

Rationale. After reviewing public comment and reconsidering this proposed revision, EPA has concluded that the existing regulation at § 122.29(b) provides adequate criteria for determining who is a new source. EPA's intention was to provide permit writers with clear and specific criteria applicable to CAFOs to improve clarity of these regulations. In retrospect, the only clarification that was provided was related to § 122.29(b)(ii), which refers to when the new construction ''totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.'' While the Agency disagrees with commenters that the proposed revisions would expand the scope of the existing regulation, EPA decided that it was not necessary to adopt the proposal as the existing regulation is sufficient for EPA to provide guidance on determining new sources. Further, EPA is not adopting the proposal in the interest of keeping the regulation simple. Nevertheless, EPA believes some clarity as to which CAFOs are new sources is appropriate. In response to commenters who believe that EPA should consider any facility that expands to be a new source, EPA did not propose such a definition, the reasons for which are discussed at 66 FR 3066 of the proposed rulemaking. EPA is clarifying that it is not the intent of this section to serve as a disincentive to CAFOs to maintain, upgrade, or otherwise enhance facilities and waste management systems to improve their operational and environmental performance. Thus, EPA is clarifying that an expanding source is not automatically defined as a new source. For example, a facility that expands its operation by simply extending existing housing structures by constructing new housing adjacent to existing housing, is not typically considered a new source. Under existing provisions at § 122.29(b) such expansions at an existing facility would not result in the facility becoming defined as a new source unless the modifications totally replace the process or production equipment that causes the discharge of pollutants, or the new/modified facility's production and waste handling processes are substantially independent of the preexisting source.

B. Who Needs a Permit and When?

1. Who Needs To Seek Coverage Under an NPDES Permit?

Today's rule requires all CAFO owners or operators to seek coverage under an NPDES permit, except in very limited situations where they make an affirmative demonstration of ''no potential to discharge,'' as discussed below. This ''duty to apply'' applies without exception; it makes no difference, for example, whether the CAFO manure management system has been appropriately designed and operated to prevent discharges except during large storm events. Recognizing that there may be certain situations in which no reasonable potential to discharge exists, EPA has also established the ability for a CAFO owner or operator to demonstrate that the facility has no potential to discharge from either its production areas or its land application areas. If the permitting authority agrees with the demonstration of no potential to discharge, the operation would not need to obtain an NPDES permit. The no potential to discharge demonstration is not relevant to small or medium operations because an actual discharge is a required criterion for a small or medium operation to be considered a CAFO.

What did EPA propose? EPA proposed to require all CAFOs to seek coverage under an NPDES permit, except where they can demonstrate no potential to discharge.

What were the key comments? Environmental groups were largely in favor of the duty to apply provision, and sought to ensure that all Large CAFOs in particular had a duty to apply. These commenters expressed concern about the impacts of unregulated operations, the potential for CAFOs to discharge, and the lack of permitting of CAFOs under the current regulations. Many commenters stated that because of the potential to discharge CAFOs should have NPDES permits.

Trade associations and industry commenters were largely opposed to the duty to apply requirement. A number of these commenters questioned EPA's legal authority for requiring permit applications from CAFOs that claim not to discharge. They argued that the Clean

Water Act requires an NPDES permit only for an actual discharge of pollutants to the waters of the United States. Commenters also noted that imposing a duty to apply is inconsistent with EPA's past interpretations of the Clean Water Act, pointing to past instances in which EPA has stated that permits are required only for actual discharges.

An industry commenter also disagreed with EPA's reasons for finding that there is a need to impose a duty to apply for a permit for CAFOs. The commenter disagreed with EPA's belief that many large AFOs have not applied for permits because of widespread confusion over the CAFO regulatory requirements and stated that any confusion in the regulations can easily be remedied by EPA. The commenter noted that there could be other reasons these operations are not permitted (for example, the operation does not discharge, it discharges only in a 25-year, 24-hour storm, or is a dry poultry facility). Commenters also questioned EPA's finding that many CAFOs are discharging without a permit and stated their belief that CAFO discharges are no more intermittent (and thus no more difficult to detect and document) than those in other industries.

These commenters also asserted that EPA is not authorized and not justified in putting the burden on the CAFO to show that it does not discharge. According to the commenters, this presumption of a discharge weakens the requirement of an actual discharge in the Act and will result in EPA regulating facilities that Congress intended to exclude from the NPDES program.

State comments were mixed. Most supported the duty to apply provision, including the no potential to discharge determination, agreeing with EPA that any operation that meets the definition of a CAFO should be required to apply for a permit. Some States indicated that the criteria for becoming a CAFO needed to be clear, and then facilities would know when they are CAFOs and would comply with the duty to apply. Other States opposed this proposal for a variety of reasons, including that shifting the burden of proof to the facility would be onerous, especially if EPA lowers the regulatory threshold; that there was no need to impose a permit in order to ensure that livestock operations have nutrient management plans; and that EPA should not create duplicative efforts in States with effective programs.

Although the SBAR Panel did not comment on the proposed duty to apply requirements, the Panel did comment on EPA's proposal to require all medium facilities either to certify that they are not CAFOs or to seek coverage under an NPDES permit. The Panel recommended that EPA carefully consider the burden of such requirements. The Panel also was concerned that requiring full permit applications from the number of Medium CAFOs contemplated at proposal may impose a significant burden with limited environmental benefits, and recommended that EPA carefully consider appropriate streamlining options. Finally, the SBAR Panel recommended that, before adding any new application or certification requirements for operators in this size range, EPA should carefully weigh the burden and environmental benefits of expanding the scope of the regulations in this way.

Rationale. After careful consideration of the comments, EPA is adopting the ''duty to apply'' in today's final regulations. This revised duty to apply is designed to identify and ultimately to prevent actual unauthorized discharges to the waters of the United States, consistent with the intent and goals of the Clean Water Act. CAFOs that demonstrate that they do not have a potential to discharge will not need to seek coverage under a permit, as discussed in section IV.B.2 of this preamble.

EPA continues to believe that there is a strong need and a sound basis for adopting this duty to apply and that it is within the Agency's authority to do so. EPA fully discussed its rationale for this provision in the proposal. There, the Agency discussed the duty for CAFOs, other than those which discharge only in the event of a 25-year, 24-hour storm, to apply for a permit under the existing NPDES regulations (40 CFR 122.21(a)) and explained a number of reasons behind the need for a clarified and more broadly applicable duty to apply for CAFOs.

EPA disagrees with the comment that there is no need for a duty to apply because there may be legitimate reasons for so many operations being unpermitted at present. In fact, there are numerous documented instances in the administrative record of actual discharges at unpermitted CAFOs that are not associated with 25-year, 24-hour storms. EPA also disagrees that CAFO discharges are no more intermittent than those in other industries. Operations in other industries are typically designed to routinely discharge after appropriate treatment; this is not the case at CAFOs, where discharges are largely unplanned and intermittent. It is thus much easier for CAFOs to avoid permitting by not reporting their discharges. EPA continues to believe that imposing a duty to apply for all CAFOs is appropriate given that the current regulatory requirements are being misinterpreted or ignored. Moreover, simply clarifying the regulations would not necessarily be adequate, because operations might still claim that the Clean Water Act requires no permit application if the facility claims not to discharge. As discussed in the proposal, Congress contemplated that EPA could set effluent standards at zero discharge, where appropriate, and that EPA would effectuate these standards through permits; this statutory scheme would be negated if CAFOs were allowed to avoid permitting by claiming that they already meet a zero discharge standard.

EPA noted in the proposal that it had not previously sought to categorically adopt a duty to apply for an NPDES permit for all facilities within a particular industrial sector. The Agency explained that it is doing so for reasons that involve the unique characteristics of CAFOs and the zero discharge regulatory approach (except for large storm events) that applies to them. EPA also noted that since the inception of the NPDES permitting program in the 1970s, only a small number of Large CAFOs have actually sought permits. The Agency is adopting this revised duty to apply for all of these reasons, including this historical experience showing the lack of permitting of Large CAFOs, while numerous documented discharges occurred over time. This change also serves to substantially simplify and clarify the applicability of the rule.

In addition, there is a sound basis in the administrative record for the presumption that all CAFOs have a potential to discharge to the waters of the United States such that they should be required to apply for a permit, unless they can show no potential to discharge. EPA does not agree with the claim that the presumption of a discharge will weaken the requirement of an actual discharge in the Clean Water Act and will result in EPA regulating facilities that Congress intended to exclude from the NPDES program. CAFOs will have the opportunity to demonstrate that they do not have a potential to discharge and therefore would not be required to apply for a permit.

2. How Can a CAFO Make a Demonstration of No Potential To Discharge?

Today's rule specifies that a Large CAFO need not have an NPDES permit if the permitting authority finds that the operation has no potential to discharge.

This final rule provides that Large CAFOs may request and submit technical information as the basis for a permitting authority to determine that there is no potential to discharge. Today's rule also establishes requirements for the permitting authority to issue a public notice that such a request has been received. The request for a no potential to discharge determination must be submitted by the date upon which the CAFO is required to seek permit coverage (*See* 40 CFR 122.23(g) and section IV.B.3 and Table 4.2 of this preamble). Within 90 days of receiving the request, the Director will let the CAFO know whether or not the request for a no potential to discharge determination has been granted. If the request is denied, the CAFO must seek permit coverage within 30 days after the denial.

What did EPA propose? EPA proposed that Large CAFOs have a duty to apply for an NPDES permit unless the permitting authority, upon request from the CAFO, makes a case-specific determination that a CAFO has no potential to discharge pollutants to water of the United States.

What were the key comments? Trade associations and industry commenters generally opposed the requirement to demonstrate ''no potential to discharge.'' Their objections largely follow from their view that CAFOs should not be required to apply for a permit in the first instance absent evidence of an actual discharge. Having to show ''no potential to discharge'' in order to avoid a permit would place a difficult or impossible burden on operations to prove a negative, in their view. They also expressed concerns over the resources and expense of showing ''no potential to discharge'' and about how permitting authorities will be able to interpret and apply this standard consistently. Certain environmental groups, on the other hand, were also opposed to this provision, but their view is that CAFOs should be required to apply for permits without exception, and there should be no allowance for CAFOs to avoid permitting based on a finding of ''no potential to discharge.'' They also voiced concerns that this provision will invite abuse by States that seek to avoid permitting responsibilities. On the subject of whether the rules should include a public process for the ''no potential to discharge'' determination, public commenters expressed views both for and against including this process. Those seeking to have a public process included their belief that it will serve as a check against any abuses in making these determinations.

Rationale. Today's rule requires all CAFOs to apply for a permit unless they have received a determination by the Director that the facility has ''no potential to discharge.'' The ''duty to apply'' provision is based on the presumption that every CAFO has a potential to discharge and therefore must seek coverage under an NPDES permit. However, the Agency does not agree with commenters that there should be no opportunity to rebut this presumption and avoid permitting because EPA recognizes that, although they may be infrequent, there may be instances where a CAFO truly does not have a potential to discharge. For example, the CAFO may have no potential to discharge because it is located at a great distance from any water of the United States (*see* further discussion on this subject below). In such circumstances, it would make little sense to impose NPDES permit requirements in order to protect against such discharges. Therefore, the Agency believes that it is reasonable to allow facilities that demonstrate ''no potential to discharge'' to be released from the requirement to seek coverage under an NPDES permit. Although today's regulation allows facilities to submit ''no potential to discharge'' claims, an unpermitted CAFO that does in fact discharge pollutants to waters of the U.S., with or without a determination of ''no potential to discharge,'' would be in violation of the Clean Water Act.

The requirement for demonstrating no potential to discharge is not being extended to small and medium AFOs since the specific criteria that must be met prior to becoming CAFOs requires the existence of a discharge. Whereas large AFOs are defined as CAFOs based on number of animals alone, small and medium AFOs only become CAFOs after meeting specific discharge-related criteria. A small AFO can only be designated as a CAFO by the State Director or Regional Administrator where it is determined that it is a significant contributor of pollutants to waters of the U.S. A medium AFO can become a CAFO by designation or definition. As in the case of small AFOs, a medium AFO can only be designated where it is determined to be a significant contributor of pollutants to waters of the United States. A medium AFO that is a CAFO by definition must meet one of the two ''method of discharge'' criteria prior to being defined as a CAFO. Thus, it is meaningless to consider such facilities as having no potential to discharge.

EPA's intention is that the term ''no potential to discharge'' is to be narrowly interpreted and applied by permitting authorities. This provision is intended to be a high bar that excludes those Large CAFOs from having an NPDES permit only where the CAFO can demonstrate to a degree of certainty that they have no potential to discharge to the waters of the United States. The no potential to discharge status is intended to provide relief where there truly is no potential for a CAFO's manure or wastewater to reach waters of the United States under any circumstances or conditions. Such circumstances would include, for example, CAFOs that are located in arid areas and far from any water body or those that have completely closed cycle systems for managing their wastes and that do not land apply their wastes. For example, a CAFO that meets the following conditions might be able to demonstrate no potential to discharge: (1) Located in an arid or semi-arid environment; (2) stores all its manure or litter in a permanent covered containment structure that prevents wind dispersal and precipitation from contacting the manure or litter; (3) has sufficient containment to hold all process wastewater and contaminated storm water and (4) does not land apply CAFO manure or litter because, for example, the CAFO sends all its manure or litter to a regulated, offsite fertilizer plant or composting facility. In particular, EPA believes that land application of its manure and wastewater would, in most cases, be enough by itself to indicate that a CAFO does have a potential to discharge (although conceivably no potential to discharge could be shown based on the physical features of the site, such as lack of proximity to waters of the United States). This discussion should help to address commenters concerns that there could be inconsistencies in how permitting authorities could interpret and apply the standard for ''no potential to discharge''.

The term ''no potential to discharge'' means that there is no potential for any CAFO manure, litter, or wastewater to be added to waters of the United States from an operation's production or land application areas, without qualification. If a Large CAFO chooses to make a demonstration of no potential to discharge, it is the CAFO's responsibility to provide appropriate supporting information that the permitting authority can use when reviewing the demonstration. The supporting information should include, for example, a detailed description of the types of containment used for manure focusing on the attributes of the containment that ensure no discharges

will occur. In addition, there may be instances where after preliminary review of the demonstration, the permitting authority may require the submission of supplemental information to assist in making a determination.

EPA disagrees with commenters' statements that the demonstration of ''no potential to discharge'' will place an impossible or excessively costly burden on facilities. EPA believes that, in many instances, the information that is specified in 40 CFR 122.23(f)(2) will be adequate for the Director to determine whether or not the facility has a potential to discharge. In such instances, there would be no greater cost to the facility than if it were to apply for a permit. If additional information is necessary, the Agency does not believe that it will result in greatly increased costs, because such information (including, for example, design specifications or other technical information) would be readily available to the facility and could be easily provided to the permitting authority.

Today's rule requires that a request for a no potential to discharge determination include most of the information required for a permit application, as specified in § 122.21(f) and (i)(1)(i) through (ix). This information will serve as the primary source of information relating to the facility's qualifications to avoid an NPDES permit. While some additional information may be available to the Director, including for example regional rainfall, soil, and hydrological conditions, the Director may require supplemental, site-specific information to make this determination. However, EPA is not requiring a CAFO owner or operator pursuing a no potential to discharge determination to certify to the development of its nutrient management plan, as required by § 122.21(i)(1)(x) for a CAFO that seeks permit coverage after December 31, 2006.

Within 90 days of receiving a request for a no potential to discharge determination the permitting authority will notify the CAFO of its decision on the request. During this review period, a CAFO that has submitted a request for a no potential to discharge determination does not have a duty to seek coverage under an NPDES permit. The final rule differs from the proposal in not imposing a duty to apply on CAFOs that have submitted a no potential to discharge request until there is a denial of the request by the Director. EPA believes that this is a preferable approach, because it does not risk the imposition of NPDES permit requirements on CAFOs even though they may qualify for a determination that they have no potential to discharge. To guard against abuse of this provision, the Agency is establishing a limited time of 90 days for the Director to make its determination.

If the permitting authority finds that no potential to discharge has not been demonstrated, the CAFO owner or operator must seek permit coverage within 30 days of the denial of the request. States may use the information submitted with the request for a no potential to discharge determination to proceed with individual permit development or for coverage under a general permit. However, in order to obtain coverage, the CAFO owner or operator would also be required to provide a request for coverage and include the information required by § 122.21(i)(1)(x), when applicable.

After all necessary information is submitted, and before making a final decision to grant a ''no potential to discharge'' determination, today's rule requires the Director to issue a public notice stating that a no potential to discharge request has been received. This notice must be accompanied by a fact sheet which includes, when applicable: (1) A brief description of the type of facility or activity which is the subject of the no potential to discharge determination; (2) a brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and (3) a description of the procedures for reaching a final decision on the no potential to discharge determination. The Director must base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the permitting authority. If the Director's final decision is to deny the ''no potential to discharge'' determination, the CAFO owner or operator must submit a permit application within 30 days after denial of the no potential to discharge determination.

The Agency believes that the process described above addresses concerns raised by commenters that States might abuse the intended effect of this provision and allow facilities that should be permitted as CAFOs to avoid permitting. The Agency believes this process should ensure that the Director has adequate information to properly decide whether a facility has a potential to discharge or not, and also ensures that the public will be made aware of such determinations and can act appropriately if it appears that determinations are not being made as required by this provision. Also, as noted above, facilities that actually do discharge without a permit are subject to enforcement for a violation of the Clean Water Act—even if they have previously received a no potential to discharge determination. This should provide a strong incentive to CAFOs not to file a frivolous request.

3. When Must CAFOs Seek Coverage Under a NPDES Permit?

Table 4.2 summarizes the time frames by which CAFOs (existing and new sources) must apply for an NPDES permit. Refer to section IV.A.11 of this preamble for a discussion of the new source definition.

TABLE 4.2.—TIME FOR SEEKING COVERAGE UNDER AN NPDES PERMIT

CAFO status	Time frame to seek coverage under an NPDES permit	Examples
Operations defined as CAFOs prior to April 14, 2003.	Must have applied by the date required in 40 CFR 122.21(c).	Operations that previously met the definition of a CAFO and were not entitled to the 25-year, 24-hour storm permit exemption.
Operations defined as CAFOs as of April 14, 2003, and that were not defined as CAFOs prior to that date (e.g. existing operations that become defined as a CAFO as a result of changes in this rule).	As specified by the permitting authority, but no later than April 13, 2006.	For example, ''dry'' chicken operations (operations that did not use a liquid manure handling or continuous overflow watering system), stand-alone immature swine, heifer and calf operations, and those AFOs that were entitled to the permitting exemption for discharging only in the event of a 25-year, 24-hour storm.

TABLE 4.2.—TIME FOR SEEKING COVERAGE UNDER AN NPDES PERMIT—Continued

CAFO status	Time frame to seek coverage under an NPDES permit	Examples
Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.	(a) newly constructed operations: 180 days prior to the time the CAFO commences operation; (b) other operations (e.g. increase in number of animals): As soon as possible but no later than 90 days after becoming defined as a CAFO, except that, if the operational change that causes the operation to be defined as a CAFO would not have caused it to be defined as a CAFO prior to April 14, 2003, the operation must apply no later than April 13, 2006 or 90 days after becoming defined as a CAFO, whichever is later.	For example, an AFO that increases the number of animals in confinement to a level that would result in the operation becoming defined as a CAFO.
New sources	180 days prior to the time the CAFO commences operation.	For example, a new Large CAFO that commences construction after April 14, 2003.
Designated CAFOs	90 days after receiving notice of designation.	

What did EPA propose? The Agency proposed to delay the effective date of the revised definition of a CAFO until three years from the date of publication of the final rule, and thereby delay the date by which permits would be required for newly defined CAFOs until three years after the date of the final rule. During that three-year interim period, the Agency proposed that the existing CAFO definition would remain in effect. For example, prior to the effective date of the revised CAFO definition, the revised new source and new discharger provisions would apply only to those facilities meeting the definition of a CAFO under the existing regulatory definition. For designated CAFOs, EPA proposed that the CAFO must apply for a permit within 90 days of being designated.

What were the key comments? Some commenters felt that extending the time for compliance allowed too much time for implementation of the new regulations, and would only result in further delays in addressing the problems associated with discharges from CAFOs. Other commenters took the view that three years is too little time for States or industry to meet the new requirements, from either a technical or economic standpoint. Most of those who commented on this issue sought clarity in setting the effective dates for the regulations.

Rationale. In today's rule, EPA is establishing time frames for seeking coverage under a permit that are appropriate to the various categories of CAFOs, depending upon their status with respect to the effective date of the rule.

For the reasons discussed in Section IX of the preamble to the proposed rule, the Agency does not believe that it would be reasonable to require permit coverage for all CAFOs immediately on the effective date of this rule. Following issuance of today's rule, 40 CFR 123.62 provides authorized States with time to revise their State NPDES programs (one year or two years if statutory changes are needed). Further, most States will need approximately an additional year to develop a general permit, publish a draft of the general permit for public comment, and issue a final general permit for the many CAFOs that EPA expects to be covered under a general permit. EPA believes that a three-year time frame for newly defined CAFOs to obtain permit coverage is reasonable and justified based on the requirements of 40 CFR 123.62, together with the need to develop and issue general permits, and for the reasons stated below.

Today's rule is likely to result in fewer facilities being defined as CAFOs than anticipated at the time of proposal. Because States will not need to address concerns associated with identifying, permitting, and ensuring compliance by the large number of medium-size facilities anticipated as potential CAFOs at the time of proposal, EPA does not believe that concerns that States would need more than three years to meet the new requirements are justified.

The Agency is, however, changing its approach to achieve the proposed time frame for requiring CAFOs to seek coverage under a permit. Rather than delaying the effective date for the definition of a CAFO, as was proposed, EPA is simply establishing a three-year time frame for when newly defined CAFOs must seek coverage under a permit.

Today's approach is consistent with Congressional intent in the 1972 Clean Water Act. Today's rule marks the first time in many years, except in the case of storm water sources, that the Agency is revising the scope of the term point source to include additional facilities under the definition. In the 1972 Clean Water Act, Congress provided more than two years for point sources to obtain coverage under a permit (§ 402(k)). Similarly, in this instance, EPA believes that Congress would have intended for the Agency to provide additional time for these newly covered sources to obtain permit coverage. This additional time is necessary for States to revise their regulations and to develop and issue permits, and it provides facilities some time to take the necessary steps to comply with these new requirements.

Moreover, EPA believes that there will be other advantages as a result of the approach taken in today's rule. The first is to avoid the confusion that would be associated with having different and conflicting definitions of a CAFO present simultaneously in the Code of Federal Regulations, which would be the case if EPA were to promulgate a revised definition of CAFO but delay the effective date of the definition for three years. The second is to encourage States to issue new permits and cover newly defined CAFOs as soon as possible within the time period specified. CAFOs are encouraged to seek coverage under a permit once general permits addressing those facilities are available. A third reason is that this approach is consistent with EPA's approach when the Agency promulgated the storm water phase II regulations, although those regulations were based on a somewhat different statutory foundation.

For all of the reasons stated above, the Agency is exercising its discretion to define these newly regulated facilities as point sources, while delaying their duty

to apply for a permit until three years from the effective date of today's rule.

Today's rule does not extend the date by which operations that were defined as CAFOs under the prior regulations should have applied for a permit (*see* 40 CFR 122.21). In particular, EPA notes that those operations that previously met the criteria for being a CAFO, but who erroneously claimed the 25-year, 24-hour storm exemption and avoided applying for an NPDES permit on that basis, continue to be in violation of the regulations and need to immediately apply for NPDES permit coverage. Today's rule also does not extend the date by which operations that have previously been designated as a CAFO should have applied for an NPDES permit.

The third category described in Table 4.2 pertains to a category of permittees who become CAFOs subsequent to the effective date of today's rule, but who are not defined as ''new sources'' in accordance with the new source criteria. For example, a newly constructed Medium CAFO falls in this category, since it is not subject to the new source performance standards in Part 412. Newly constructed CAFOs in this category must seek coverage under an NPDES permit 180 days prior to the time the CAFO commences operation. This requirement is designed to parallel the time for permit application for new sources. Other operations that become CAFOs after the effective date of today's rule, including, for example, operations that increase the number of animals in confinement to a level that would result in the operation being defined as a CAFO, but that are not new sources, are required to seek permit coverage as soon as possible but no later than 90 days after being defined as a CAFO. EPA is establishing this date by which such new dischargers must seek coverage under an NPDES permit in consideration of the unique nature of AFO operations. In other industries, a facility would typically require significant capital improvements to become a newly discharging point source. AFOs, on the other hand, may become a new discharger merely by increasing the number of animals housed in confinement at the facility. Moreover, the increase necessary to meet the threshold numbers necessary to be defined as a CAFO could be relatively small. Such an increase could be necessary in response to fast-changing market conditions, in which case it would be an undue burden on the AFO to encounter a delay of 180 days before being able to operate as a CAFO. Inasmuch as CAFOs are not continuous dischargers, the Agency believes that it is reasonable and sufficient for a CAFO that is a new discharger (other than those that are newly constructed operations) to seek coverage within 90 days after becoming defined as a CAFO.

EPA is establishing an additional permit application deadline in this category of three years where the change that causes the operation to be defined as a CAFO would not have caused it to be defined as a CAFO if the change had occurred prior to the effective date of today's rule. This would include, for example, a dry poultry operation that, sometime after the effective date of today's rule, adds animals and exceeds the threshold for becoming defined as a CAFO. The Agency is establishing this permit application deadline since it is appropriate to treat such facilities on an equal footing to dry poultry operations that become defined as CAFOs as of the effective date of today's rule and who therefore have three years to apply for a permit. It would have been inequitable to have allowed a dry poultry operation that exists at the time this rule becomes effective to have three years to apply but to require a dry poultry operation that becomes a CAFO because it adds a small number of animals shortly after this rule becomes effective to apply within 90 days.

4. What Are the Different Types of Permits?

Today's final rule allows the permitting authority to determine the most appropriate type of permit coverage for a CAFO. Under the NPDES regulations, the two basic types of NPDES permits that can be used are individual permits and general permits. Refer to section V.E. of this preamble for further discussion about the different types of permits.

What did EPA propose? The proposed rule would have required States to conduct a public process for determining which criteria, if any, would require a CAFO owner or operator to apply for an individual rather than a general permit. The proposed rule also would have added a set of CAFO-specific criteria for when the Director may require an individual permit: (1) CAFOs located in an environmentally or ecologically sensitive area; (2) CAFOs with a history of operational or compliance problems; (3) CAFOs that are exceptionally large operations as determined by the permitting authority; and (4) significantly expanding CAFOs. EPA noted in the preamble to the rule as well that it had considered identifying a specific size threshold for individual permits, such as 5,000AU or 10,000AU, and solicited comment and information relating to such a threshold.

What were the key comments? Comments from industry and State agencies by and large were both against setting criteria for individual permits and against establishing a public process for developing such criteria. States in particular felt that existing NPDES regulations already adequately defined the process for developing individual and general permits, and strongly advocated against being told at the federal level what criteria to use in issuing permits. Environmental groups commented that they wanted strict federal criteria for individual permits out of concerns regarding the need for federal oversight over large operations and because of their keen interest in the public involvement afforded by individual permits. Many of these commenters stated that all Large CAFOs (*i.e.*, all with what was formerly termed 1,000 AU) should be required to have an individual permit.

Rationale. EPA elected not to set conditions for determining which CAFOs must have individual rather than general permits or to require the States to establish such conditions. The Agency determined that selecting a set of specific thresholds fundamentally fails to recognize the diversity of feeding operations in States across the nation. What may be a ''large'' facility in one State is often not viewed as such in another. This view was confirmed by the Agency's findings on this issue that although many States set criteria for who must have individual rather than general permits, these conditions vary greatly from State to State and are generally dominated by regional environmental concerns.

5. How Does a CAFO Apply for a Permit?

CAFO owners or operators must submit an application for an individual permit or submit a NOI (or the State's comparable form) for coverage under an applicable general permit. If a general permit is not available, the CAFO does not meet the eligibility requirements for coverage under the general permit, or the CAFO would otherwise prefer to be covered by an individual permit, the CAFO owner or operator must submit to the permitting authority an application (EPA's Form 2B for CAFOs and Aquatic Animal Production Facilities or the State's comparable form) for an individual permit. Today's final rule does not make any changes in how a CAFO applies for a permit.

6. What Are the Minimum Required Elements of an NOI or Application for an Individual Permit?

Today's final rule revises the information requirements for seeking coverage under an NPDES permit for CAFOs. Today's rule revises the NPDES individual permit application for CAFOs (Form 2B for CAFOs and Aquatic Animal Production Facilities), and specifies the information required in an NOI form for coverage under a CAFO general. EPA is requiring applicants for coverage under either individual or general CAFO permits to provide the same information:

(i) The name of the owner or operator;

(ii) The facility location and mailing addresses;

(iii) Latitude and longitude of the production area (entrance to production area);

(iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of paragraph (f)(7) of § 122.21;

(v) Specific information about the number and type of animals, whether in open confinement and housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(vi) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(viii) Estimated amount of manure, litter, and process wastewater generated per year (tons/gallons);

(ix) Estimated amount of manure, litter, and of process wastewater transferred to other persons per year (tons/gallons); and

(x) For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

The complete Form 2B application containing all of the amendments to the application is included as an appendix to this preamble. The required data elements of the NOI are the same as the minimum data elements in the revised Form 2B. Where EPA is the permitting authority, it is EPA's intent to use the National NOI Processing Center to process NOIs.

What did EPA propose? EPA proposed to require applicants for individual permits to submit the following information in addition to the information required at 40 CFR 122.21(f) and 122.21(i):

- Acreage available for agricultural use of manure and wastewater;
- Estimated amount of manure and wastewater to be transferred off-site;
- Name and address of any person or entity that owns animals to be raised at the facility; directs the activity of persons working at the CAFO; specifies how the animals are grown, fed, or medicated, or otherwise exercises control over the operations of the facility; (in other words, that may exercise substantial operational control);
- If a new source, a copy of the draft Permit Nutrient Plan (PNP);
- Information about whether buffers, setbacks, or conservation tillage is being used to protect water quality; and
- A topographic map (required by Form 1) that identifies the latitude and longitude of the production area and the depth to ground water that may be hydrologically connected to surface water, if any.

EPA proposed that similar information be provided in a revised NOI for coverage under an NPDES CAFO general permit.

What were the key comments? Most of the comments received on this issue were from the States. Several citizens and associations also submitted comments. Several commenters wanted EPA to delete the requirement that the permittee submit the Permit Nutrient Plan with the permit application. Some States would also like to continue to use their forms and not the revised Form 2B. Some commenters argued that the proposed requirements set an undesirable precedent that is both unnecessary, (because NOI requirements are normally specified in the relevant general permit) and that could negatively affect other industries and reduce the flexibility of State permitting authorities.

The SBAR Panel did not specifically comment on the content of the changes to Form 2B and the NOI, but the Panel noted the substantial number of small entities in the medium range and recommended that EPA carefully consider the burden of any additional certification or application requirements. The Panel further noted that EPA had not ruled out the option of requiring a full permit application from all operations in the medium range. The Panel was concerned that such an approach may impose a significant burden with limited environmental benefits and therefore recommended that EPA carefully consider appropriate streamlining options before considering a more burdensome approach. Finally, the Panel recommended that before adding any new application or certification requirements for operators in the medium range, EPA should carefully weigh the burden and environmental benefits of expanding the scope of the regulations in this way.

Rationale. To clarify the subsequent discussion, it is important to point out that EPA is not adopting the term ''Permit Nutrient Plan'' in this final rule. The Agency is referring to the nutrient management planning requirements of today's rule simply as the nutrient management plan. EPA is not requiring the nutrient management plan to be submitted as part of the permit application for existing sources or new dischargers. Instead, the permitting authority may establish within the permit what information relative to the nutrient management plan must be submitted. At a minimum, nutrient management plans must be maintained on-site and be available upon request by EPA or the State permitting authority. Regarding the changes to the individual permit application form and the NOI for coverage under a general permit, EPA believes that the minimum data elements adopted in today's rule will provide permitting authorities with the essential information needed to evaluate permit applications properly and will ensure national consistency of information received by permit authorities. To the extent that a permitting authority needs additional information to support a permit application, it can use other Clean Water Act information gathering authorities (*e.g.,* section 308 of the Clean Water Act) to obtain such information. The new data elements correspond with the new rule requirements, including land application information.

In today's final rule, the Agency has revised the topographic map requirements for a permit application for CAFOs, by specifying that the CAFO must provide a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area. In today's final rule, the Agency is consolidating all of the information to be submitted as part of a CAFO's request to seek coverage under an NPDES permit in 40 CFR 122.21(i). This information must be submitted by a CAFO, whether the CAFO is seeking coverage under an

individual permit or a general permit. In establishing the topographic map requirement of § 122.21(i)(iv), the Agency is requiring the descriptive information necessary for permitting a CAFO, and not including all of the elements specified in 40 CFR 122.21(f)(7), which generally do not apply to a CAFO's operations.

In the future, EPA plans to allow the electronic submission of all NPDES permit applications such as Forms 1, 2B, and Notices of Intent for general permits (including attachments such as maps and diagrams). EPA has proposed a separate rule dealing with electronic reporting and recordkeeping (66 FR 46161; August 31, 2001) and is currently working to address comments and resolve technical and legal issues. None of the information collection requirements being promulgated in today's rulemaking are intended to limit or conflict with the future use of electronic reporting or recordkeeping.

C. What Are the Requirements and Conditions in an NPDES Permit?

All CAFO NPDES permits must contain a number of requirements and conditions, including effluent limitations, special conditions, standard conditions, and monitoring and reporting requirements. The December 1996 *U.S. EPA NPDES Permit Writers Manual,* 40 CFR 122.41, and 40 CFR 122.42 provide a detailed discussion of all aspects of an NPDES permit. This section focuses primarily on the major elements of a CAFO NPDES permit that are affected by today's rule. Specifically, this section describes the effluent limitations, special conditions applicable to CAFOs, standard conditions included in all NPDES permits, and monitoring and reporting requirements.

1. What Are the Different Types of Effluent Limitations That May Be in a CAFO Permit?

When developing effluent limitations for a CAFO NPDES permit, the permitting authority must consider limits based on applicable technology-based requirements or any more stringent requirements necessary to protect water quality. A water quality-based effluent limitation is designed to protect the quality of the receiving water by ensuring State or Tribal water quality standards are met. In cases where a technology-based permit limit is not sufficiently stringent to meet water quality standards, the permit must include appropriate water quality-based standards. For example, a technology-based standard for a CAFO might allow overflows from storage lagoons under certain circumstances. In some cases, the overflows might have to be restricted or further controlled to ensure that water quality standards are met. EPA does not expect that water quality-based effluent limitations will be established for CAFO discharges resulting from the land application of manure, litter, or process wastewater. As explained in Section IV.A.6 above, if a CAFO complies with the technical standards for nutrient management established by the Director, any remaining discharges of manure or process wastewater from the land application area are considered agricultural storm water. However, EPA encourages States to address water quality protection issues in their technical standards for determining appropriate land application practices. Today's rule does not change any aspects of water quality-based effluent limitations in the NPDES regulations.

There are two general approaches to developing technology-based limitations: (1) Using national effluent limitations guidelines (ELGs) and (2) using BPJ on a case-by-case basis (in the absence of ELGs). Today's rule revises the ELGs for Large CAFOs. Small and Medium CAFOs are not subject to the ELGs; therefore, the permitting authority will rely on BPJ to establish technology requirements for Small and Medium CAFOs. Revisions to the ELGs are discussed in detail below.

2. Effluent Limitations Guidelines for Large CAFOs

The effluent limitations section in NPDES permits is the primary mechanism for controlling discharges of pollutants to waters of the U.S. This section of the permit describes the specific limitations, in either a narrative or numeric form, that apply to the permittee. The permit contains either technology-based effluent limits (those based on a determination of the degree of pollutant reduction that can be achieved by applying pollution control technologies or practices) or water quality-based effluent limits (those based on the condition of the receiving water body) or both, and it may contain additional BMPs, as needed. This section discusses the ELGs established for Large CAFOs.

Today's final rule establishes new ELGs for Part 412, Subpart C, which applies to beef cattle, dairy cattle, and heifers; and Part 412, Subpart D, which applies to veal calves, swine, and poultry (chickens and turkeys). Today's rule also revises the applicability of Part 412, Subpart A to cover only horses and sheep.

Requirements for Large CAFOs are being established under the authority of Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), Best Conventional Pollutant Control Technology (BCT), and NSPS, consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

a. To which CAFOs do the effluent guidelines apply?. In today's final rule, EPA is revising the 1974 ELGs for beef cattle, dairy cattle, veal calves, swine, and poultry. Consistent with the 1974 ELG regulation, EPA is continuing to apply technology-based ELGs only to those operations which are defined as Large CAFOs at 40 CFR 122.23. In the case of Medium or Small CAFOs, or CAFOs not otherwise subject to Part 412, effluent limitations will be established on a case-by-case basis by the permitting authority using BPJ.

This final rule removes language referring to the type of manure handling or watering system employed at laying hen and broiler operations; as a result, it expands the scope of the rule to also address chicken operations with dry litter management systems. The term ''dry'' does not mean that no wastewaters are associated with these types of operations. For example, poultry waste includes manure, poultry mortalities, litter, spilled water, waste feed, water associated with cleaning houses, runoff from litter stockpiles, and runoff from land where manure has been applied. Today's rule adds explicit references to veal operations and includes requirements for Large veal CAFOs under Part 412, Subpart D. (Veal calves were included in the 1974 ELGs as part of ''slaughters steers and heifers.'') Today's rule further expands the applicability of the effluent guidelines to cover Large heifer CAFOs and operations that confine immature swine (*i.e.*, swine weighing less than 55 pounds).

What did EPA propose? In the proposed rule, EPA applied the technology-based ELGs to all Large CAFOs (the 1974 ELGs apply to only Large CAFOs) and proposed to expand the scope of the rule to apply to Medium CAFOs as well. Small CAFOs were excluded from the applicability of the ELGs in the proposed rule, and the limits included in their permits were to be based on BPJ. EPA also proposed to expand the scope of the rule to include heifer operations, immature swine operations (*e.g.*, swine nurseries), and chicken operations with dry litter management systems.

What were the key comments? EPA received a variety of comments regarding the size of operation to which the ELGs should apply. A number of comments favored retaining the framework of the 1974 ELGs, limiting the applicability of the ELGs to Large CAFOs and relying on the use of BPJ for Small and Medium CAFOs. Some commenters favored allowing even broader use of BPJ, with the permitting authority establishing BPJ-based permit limits for all CAFOs, regardless of size. Conversely, other commenters suggested applying the ELG requirements to all CAFOs, including Small and Medium CAFOs. In general, commenters expressing support for applying ELG requirements to Small and Medium CAFOs believe that basing permit requirements on BPJ will lead to a lack of uniformity in permit development. They believe the permit writers should not have an inappropriate amount of flexibility and there should be consistent effluent limitations for all CAFOs.

The SBAR Panel provided comments to EPA on this topic during the development of the proposed rule, suggesting that EPA consider less stringent ELGs for Medium CAFOs or allow permits for Medium CAFOs to be developed based on BPJ. The SBAR Panel stated that providing a mechanism for permitting authorities to establish less stringent guidelines for smaller facilities, based on consideration of economic achievability, could result in permit conditions that are more appropriately tailored to smaller operations and reduce the overall financial burden on the industry.

Rationale. The ELGs being promulgated in today's rule apply only to Large CAFOs, which is consistent with the approach used for the 1974 ELG regulation. EPA is not extending the ELG requirements being codified at 40 CFR Part 412 to Small or Medium CAFOs because setting the permit limitations for these facilities using BPJ allows for the establishment of permit conditions that are more appropriately tailored to and more directly address the site-specific conditions that led to the facility being defined or designated as a CAFO. This approach is consistent with the manner in which permit requirements for Small and Medium CAFOs have been established prior to today's rule.

The ELGs promulgated in today's rule mimic the fundamental structure embodied in the NPDES provisions. The NPDES provisions at Part 122 establish a threshold (in terms of numbers of animals) above which every AFO is defined as a CAFO (specifically, these are defined as Large CAFOs). Similarly, EPA has determined that, because of the nature of these Large CAFOs and the potential risk discharges from these operations pose to the environment, the ELGs promulgated today should apply to Large CAFOs. However, for the reasons discussed below and consistent with the approach used in establishing the 1974 ELGs, EPA is not establishing ELGs for Small or Medium CAFOs. EPA's analyses, based on USDA data, show that small and medium AFOs are more likely than Large CAFOs to have a sufficient land base for utilizing manure nutrients at rates consistent with appropriate agricultural utilization of nutrients. Small and medium AFOs are defined or designated as CAFOs only when certain conditions that pose an environmental risk are present at the operation. Since these smaller operations become CAFOs only if certain conditions are present, and the highly site-specific conditions that trigger any particular operation being defined or designated as a Small or Medium CAFO will vary from facility to facility, discharges from Small and Medium CAFOs are more appropriately controlled through NPDES permit limitations on a BPJ basis. EPA expects that, by tailoring the permit requirements for Small and Medium CAFOs on a BPJ basis, these smaller facilities will be able to better and more efficiently target their more limited resources to reducing their environmental impacts. This increased flexibility for setting the permit requirements for Small and Medium CAFOs will reduce the overall financial burden on the industry. Consistent with the Unified National AFO Strategy, EPA is focusing today's ELGs on those larger operations that present the greatest potential risk to water quality.

EPA is extending the applicability of the ELGs to heifer operations and operations that confine immature swine (*i.e.*, swine weighing less than 55 pounds). Increasingly, swine operations may specialize in a production phase, such as a nursery that confines swine under 55 pounds. In the dairy sector, some operators prefer to obtain their dairy cattle from heifer-raising operations. These heifer operations specialize in raising immature dairy cattle until the cattle are ready for their first calving. These operations for immature animals are increasing in both size and number, and they operate similarly to other CAFOs. Therefore, EPA is today including immature swine under Subpart D (swine/poultry/veal) and heifer operations under Subpart C (beef/dairy/heifer) of the ELGs.

In addition, EPA is expanding the scope of the ELGs to address chicken operations with dry litter management systems to better address water quality impacts associated with both storage and land application of manure, litter, and process wastewaters. EPA believes that improper storage, as well as improper land application rates that exceed the appropriate agricultural utilization of nutrients, has contributed to water quality problems, especially in areas with large concentrations of poultry production. Nutrients from large poultry operations continue to contaminate surface waters because of rainfall coming in contact with dry manure that is stacked in exposed areas, accidental spills, etc. In addition, land application remains the primary management method for significant quantities of poultry litter (including manure generated from facilities using dry systems). Most poultry operations are located on smaller parcels of land in comparison to other livestock sectors, placing increased importance on the proper management of the potentially large amounts of manure, litter, and process wastewaters that they generate.

In the 1974 ELG regulations, EPA established requirements in a manner that placed CAFOs into one of two groups, or subcategories, based on the type of animals at the operation: One subcategory established requirements for ducks only; the second subcategory established identical ELG requirements for CAFOs with horses, sheep, slaughter steers and heifers (including veal calves), dairy cattle, chickens, turkeys, and swine.

Today's rule establishes ELGs based on segregating the animal sectors into four different subcategories. The ELG regulations at Part 412, Subpart A now apply only to Large CAFOs with horses and sheep, but the ELG requirements for these operations remain unchanged by today's rule. Part 412, Subpart B continues to apply only to CAFOs with at least 5,000 ducks and these requirements also remain unchanged by today's rule. Today's rule segregates the remaining animal types covered by the ELGs into two additional subcategories. Part 412, Subpart C applies to Large CAFOs with dairy or beef cattle other than veal (heifer operations are covered by this subpart), and Part 412, Subpart D applies to Large CAFOs with swine, veal, or poultry. EPA developed these subcategories to better reflect similarities in production and waste management practices among the operations grouped together.

The operations in Subpart C predominantly use production and waste management practices that differ

substantially from those practices used at operations in Subpart D. Large swine, poultry, and veal calf operations predominantly maintain their animals in confinement housing as opposed to the open outdoor lots used at the vast majority of large beef feedlots, heifer operations, and dairies (while dairy cattle at many dairies spend much of their time indoors either in the milking parlor or in barns, most dairy cattle also have access to outdoor areas similar in many respects to the outdoor areas at beef feedlots). The open outdoor lots present at beef feedlots expose large areas to precipitation, necessitating the ability to collect storm water runoff in retention ponds. Heifer operations (other than those that are pasture-based) are configured and operated in a manner very similar to beef feedlots, and thus have very similar waste management practices. Dairies also frequently keep animals in open areas for some period of time, whether it is simply the pathway from the barn to the milk house or an open exercise lot. Storm water runoff from these open areas must be collected in addition to any storm water that contacts food or silage. As is the case for beef feedlots and heifer operations, the runoff volume from the exposed areas is a function of the size of the area where the cattle are maintained, and the amount of precipitation.

Because swine, poultry, and veal calves are predominantly maintained in confinement housing, the waste management practices at Large CAFOs covered by Subpart D differ substantially from the practices at Subpart C operations. These confinement operations are able to manage manure largely in a relatively dry form, or contain liquid wastes in storage structures such as lagoons, tanks, or underhouse pits. Broiler and turkey operations generate a dry manure which can be kept covered either under a shed or with tarps. Laying hen operations with dry manure handling practices usually store manure below the birds' cages and inside the confinement building. Nearly all swine, veal, and poultry operations confine their animals under roof, avoiding the use of open animal confinement areas that generate large volumes of contaminated storm water runoff. These Subpart D operations differ most notably from Subpart C operations in that they, in most cases, do not have to manage the large volumes of storm water runoff that must be collected at Subpart C operations. While Subpart D operations that manage wastes in uncovered lagoons must be able to accommodate precipitation, they are largely able to divert uncontaminated storm water away from the lagoons and minimize the volume of wastes they must manage.

The statutory factors considered as a basis for subcategorization are discussed in Section IV.C.2.f of the preamble and in the *Technical Development Document.*

b. What are the land application effluent guidelines for all Large CAFOs covered by Subparts C and D (beef, dairy, heifer, swine, poultry, and veal)? The ELGs described in this section apply to all Large CAFOs covered by Part 412, Subpart C (beef, dairy, and heifer) and Subpart D (swine, poultry, and veal). These BPT, BCT, BAT, and NSPS requirements are being established for the reasons discussed below in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

Today's final rule establishes requirements to ensure the proper application of manure, litter, and other process wastes and wastewaters to land under the control of Large CAFOs. The ELGs established by this rule require Large CAFOs to prepare and implement a site-specific nutrient management plan (described in detail in Section IV.C.3), for manure, litter, and other process wastewater applied to land under their ownership or operational control. In addition to preparing the site-specific nutrient management plan, and the recordkeeping and reporting requirements described in Section IV.D, Large CAFOs need to conduct the following land application BMPs and can use other BMPs that assist in complying with the ELGs:

- Land-apply manure, litter, and other process wastewaters in accordance with a nutrient management plan that establishes application rates for each field based on the technical standards for nutrient management established by the Director.
- Collect and analyze manure, litter, and other process wastewaters annually for nutrient content, including nitrogen and phosphorus.
- At least once every five years, collect and analyze representative soil samples for phosphorus content from all fields where manure, litter, and other process wastewaters are applied.
- Maintain a setback area within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters where manure, litter, and other process wastewaters are not applied. As a compliance alternative, the CAFO may elect to establish a 35-foot vegetated buffer where manure, litter, or other process wastewaters are not applied. For further flexibility the CAFO may demonstrate to the permitting authority that a setback or vegetated buffer is unnecessary or may be reduced.
- Periodically conduct leak inspections of equipment used for land application of manure, litter, or process wastewater.
- Maintain on-site the records specified in 40 CFR 412.37(c). These records must be made available to the permitting authority and the Regional Administrator, or his or her designee, for review upon request. Records must be maintained for 5 years from the date they are created.

Today's rule requires Large CAFOs to determine and implement site-specific nutrient application rates that are consistent with the technical standards for nutrient management established by the permitting authority. Permitting authorities have discretion in setting technical standards that minimize phosphorus and nitrogen transport to surface water. Technical standards for nutrient management should appropriately balance the nutrient needs of crops and potential adverse water quality impacts in establishing methods and criteria for determining appropriate application rates. The permitting authority may use the USDA Natural Resource Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, or other appropriate technical standards, as guidance for development of the applicable technical standard. The current NRCS Nutrient Management technical standard describes three field-specific risk assessment methods to determine whether the land application rate is to be based on nitrogen or phosphorus, or whether land application is to be avoided. These three methods are: (1) Phosphorus Index; (2) Soil Phosphorus Threshold Level; and (3) Soil Test Phosphorus Level. The permitting authority has the discretion to determine which of these three methods, or other State-approved alternative method, is to be used.

The field-specific risk assessment provides CAFOs with the information needed to determine if manure nutrients should be applied at a nitrogen or phosphorus application rate, or if no manure application is appropriate. In today's rule, EPA clarifies that CAFOs may apply conservation practices, best management practices, or management activities to their land application areas, which in aggregate may reduce field vulnerability to off-site phosphorus

transport to surface waters. This may reduce the field-specific risk rating to a level consistent with manure application at a nitrogen rate in accordance with the technical standard established by the Director.

When establishing technical standards for nutrient management, the permitting authority also shall include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the standards. Flexibilities should include consideration of multi-year phosphorus application (also called phosphorus banking) on fields that do not have a high potential for phosphorus runoff to surface water, implementation of phosphorus-based nutrient management phased-in over time, and other components as determined appropriate by the Director.

EPA recognizes that, under some conditions, CAFOs may experience practical difficulties in applying manure nutrients to fields at a low phosphorus rate. Application equipment at some CAFOs may be unable to deliver the small phosphorus amount needed by crops in a single year. Thus, EPA is clarifying in this rule that CAFOs may elect to use a multi-year phosphorus application rate in accordance with the technical standards established by the Director. A multi-year approach allows a single application of phosphorus applied as manure at a rate equal to the recommended phosphorus application rate or estimated phosphorus removal in harvested plant biomass for the crop rotation or multiple years in the crop sequence. Crop rotations may vary in length depending on the crops produced, geographic area, and other site-specific conditions. For example, a two-year rotation may be common in some areas, while a three-year rotation may be more common in others. Rotations involving grains or hays, such as alfalfa, may run for five or more years. In other instances, crops are produced in a continuous cycle. Many wastewater spray fields are permanently in hay and grasses. In practice, multi-year phosphorus applications typically would be based on applying manure nutrients at a rate achievable with a CAFOs application equipment, and determining the removal rate in order to calculate the length of time until the next manure nutrient application window. Thus, multi-year applications may provide the phosphorus needed for a few to many years. The field would not receive additional phosphorus applications until the amount applied in the single year had been removed through plant uptake and harvest. However, under any multi-year application, the rate at which manure nutrients are applied would not exceed the annual nitrogen recommendation of the year of application. Nor would application be made on sites determined inappropriate based on a high potential for phosphorus runoff to surface water. The appropriateness of multi-year phosphorus application would be based on a field-specific risk assessment in accordance with the technical standard established by the Director.

What did EPA propose? The proposed rule included ELGs that would have required CAFOs to develop and submit a certified Permit Nutrient Plan, which would be reviewed annually and recertified every five years, and would have limited manure spreading on all land owned or under the operational control of the CAFO to the nitrogen-based rate, unless soil or other field conditions at the CAFO warranted limiting the application rate to the more stringent phosphorus-based rate. EPA also proposed to require a series of land application BMPs, including those listed above in this section of the preamble.

What were the key comments? EPA received a number of comments supporting the type and frequency of manure, litter, process wastewater, and soil sampling. Some commenters were opposed to establishing the proposed phosphorus-based standard in nutrient management plans, while other commenters stated that EPA should establish phosphorus-based standards for all CAFOs. In addition, some commenters were opposed to the inclusion of specific manure, litter, or wastewater application rates in NPDES permits, but supported the development of site-specific rates in a nutrient management plan.

EPA received many comments on the requirement to prohibit land application of manure, litter, and other process wastewaters within a 100-foot setback. Some commenters supported the 100-foot setback; however, the majority of commenters expressed opposition to establishment of a setback, in many cases stating that the setback restriction will unnecessarily reduce the available acreage for manure application and will be costly to implement because of its inflexibility. The commenters also stated that it should be left to States or a nutrient management planner to determine whether a setback or vegetated buffer is warranted, and to determine the size of such areas. The proposed rule considered allowing CAFOs to establish a 35-foot vegetated buffer strip as an alternative to the 100-foot setback. Many commenters were in favor of an approach that offers flexibility to the CAFO and to the nutrient management planner to incorporate site-specific considerations while utilizing the maximum amount of manure nutrients on site. They suggested that in cases where the operation can demonstrate that manure application will not affect surface water, such as when application occurs down-gradient of the surface water, no setback or buffer should be required.

The SBAR Panel noted the high cost of phosphorus-based application relative to nitrogen-based application and supported EPA's intent to require the use of a phosphorus-based application rates only where determined necessary based on field-specific conditions. According to the SBAR Panel, if the soil is not phosphorus-limited, then nitrogen-based application should be allowed. The SBAR Panel recommended that EPA consider leaving the determination of whether to require the use of phosphorus-based rates to BPJ and that EPA work with USDA in exploring such an approach.

Rationale. The nutrient-based limitations in this rule will reduce the discharge of nitrogen, phosphorus, and other pollutants in field runoff by restricting the amount of manure, litter, and other process wastewaters that may be applied to the amount that is appropriate for agricultural purposes, according to technical standards established by the permitting authority. Application of manure, litter, and other process wastewaters in excess of the crop's nutrient requirements increases the pollutant runoff from fields because the crop does not need these nutrients, increasing the likelihood of their being released to the environment. In many cases, the application of manure at a nitrogen-based rate is consistent with appropriate agricultural utilization of nutrients. Soils are able to retain the amounts of phosphorus that would be applied, or other site-specific conditions (*e.g.*, the types of conditions assessed through the phosphorus index approach) are such that the runoff of phosphorus and other pollutants or the likelihood of the pollutants reaching surface waters are adequately controlled.

However, allowing all manure to be spread at the nitrogen-based application rate may not always ensure appropriate agricultural utilization of nutrients. In areas that have high to very high phosphorus buildup in the soils, allowing continued application at a nitrogen-based rate could allow for continued discharge of phosphorus from the CAFO's cropland and consequently may not adequately control phosphorus discharges from these areas. In addition,

EPA believes that in some instances phosphorus levels in soils are so high, or site-specific conditions (*e.g.*, highly erodible soils) are such that any application of manure, litter, or other process wastewaters would be inconsistent with appropriate agricultural utilization of nutrients and would lead to excessive levels of nutrients and other pollutants in runoff. EPA expects that these factors will be taken into account as State permitting authorities develop appropriate technical standards for the land application of manure by CAFOs.

The trace metals present in animal wastes, when applied to fields at either nitrogen- or phosphorus-based rates, are made available to plants in sufficient quantities that they provide many of the micronutrients necessary for proper plant growth. Excessively high levels of these trace metals, however, can inhibit plant growth. By limiting manure applications to the nitrogen- or phosphorus-based rate, CAFOs will also be limiting the rate at which metals are applied to fields and thus reduce the potential for applying excessive amounts of the trace metals.

Nitrogen-based application rates are generally based on the following factors: (1) The nitrogen requirement of the crop to be grown based on the operation's soil type and crop; and (2) realistic crop yields that reflect the yields obtained for the given field in prior years or, if not available, from yields obtained for the same crop at nearby farms or county records. Once the nitrogen requirement for the crop is established, the manure application rate is generally determined by subtracting any other sources of nitrogen available to the crop from the crop's nitrogen requirement. These other sources of nitrogen can include residual nitrogen in the soil from previous applications of organic nitrogen, nitrogen credits from previous crops of legumes and crop residues, or applications of commercial fertilizer, irrigation water, and biosolids. Application rates are based on the nitrogen content in the manure and should also account for application methods, such as incorporation, and other site-specific practices. Phosphorus-based application rates generally take into account the phosphorus requirements of the crop, as well as the amount of phosphorus that will be removed from the field when the crop is harvested. EPA expects that State standards will generally provide CAFOs the flexibility to determine, separately for each field, whether manure is to be applied at the nitrogen- or the phosphorus-based application rate. Thus, EPA expects that as the ELG requirements are implemented, some CAFOs will be able to apply manure at the nitrogen-based rate for all of their fields; some CAFOs will be limited to the phosphorus-based rate on all of their fields; and the remaining CAFOs will have some fields that are limited to the phosphorus-based rate and some fields where manure can be applied at the nitrogen-based rate. In making these field-specific determinations, CAFOs must use the method authorized by the permitting authority.

Today's rule specifies that manure, litter, or other process wastewaters are not to be applied within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. As a compliance alternative to the 100-foot setback, the CAFO may elect to establish a 35-foot vegetated buffer where application of manure, litter, and other process wastewaters are not applied; or may demonstrate to the permitting authority that a setback or vegetated buffer is unnecessary or may be reduced because implementation of alternative conservation practices or site-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.

A setback is an area where manure, litter, or other process wastewaters are not applied, but crops may continue to be grown. The transport of nutrients and other pollutants in manure to surface waters and the rate at which transport occurs is dependent on the land use, geography, topography, climate, amount and method of manure application, and the nature and density of vegetation in the area. The setback achieves pollutant reductions by increasing the distance pollutants from the land application of manure, litter, or other process wastewaters have to travel to reach surface waters. The setback requirements established by this rule will minimize the potential runoff of pathogens, hormones such as estrogen, and metals and reduce the nutrient and sediment runoff.

Because a setback may not be the most cost-effective practice to control runoff in all cases, this rule includes a compliance alternative that allows the CAFO to establish a 35-foot vegetated buffer in lieu of the 100-foot setback A vegetated buffer is a permanent strip of dense perennial vegetation, where no crops are grown, that slows runoff, increases water infiltration, absorbs nutrients, and traps pollutants bound to sediment. The vegetated buffer is more effective (on a per-foot of width basis) than the setback at reducing pollutant runoff, therefore the compliance alternative allows the buffer width to be smaller than the setback. Both approaches are expected to achieve comparable pollutant reductions. (EPA decided not to require all fields receiving manure, litter, or other process wastewaters to have a vegetated buffer because that would unnecessarily require CAFOs to take that portion of the cropland out of production.)

The setback requirements included in today's rule contain an additional compliance alternative that allows the CAFO to implement alternative conservation practices that will provide pollutant reductions equivalent to or better than the 100-foot setback. In some cases, the CAFO may be able to demonstrate to the permitting authority that no setback is necessary based on site-specific conditions, such as when the surface water is located up-gradient from the area of manure application.

Manure must be sampled at least once per year and analyzed for its nutrient content, including nitrogen and phosphorus. EPA believes that annual sampling of manure is the minimum frequency to provide the necessary nutrient content on which to establish the appropriate application rate. The nutrient composition of manure varies widely among farms because of differences in animal species and management, and manure storage and handling practices. The only method available for determining the actual nutrient content of manure for a particular operation is laboratory analysis. If the CAFO applies its manure more frequently than once per year, it may choose to sample the manure more frequently. Sampling the manure as close to the time of application as practical provides the CAFO with a better measure of the nitrogen content of the manure. Generally, nitrogen content decreases through volatilization during manure storage when the manure is exposed to air. All CAFOs must collect and analyze soil samples for phosphorus at least once every 5 years from all fields under their control that receive manure. Soil tests are an important tool to determine the crop phosphorus needs and to determine the optimum application rate. Crop rotation cycles vary, and State programs require soil sampling at varying frequencies that in many cases are tied to the soil type. EPA requires soil sampling at least once every 5 years to correspond with the permit cycle for CAFOs, although States may require more frequent sampling. Without manure and soil analyses, CAFOs might apply more commercial fertilizer than is needed or spread too much manure on their fields. Either

practice can result in overfertilization, affecting crop yields and increasing the pollutant runoff from fields.

Records of the application of manure and wastewater must be maintained on site. These records are: (1) The expected crop yields; (2) the date manure, litter, or process wastewater is applied to each field; (3) the weather conditions at the time of application and 24 hours before and after application; (4) test methods used to sample and analyze manure, litter, process wastewater, and soil; (5) results from manure and soil sampling; (6) explanation of the basis for determining manure application rates, as provided in the technical standards established by the Director; (7) the calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater; (8) total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations of the total amount applied; (9) the method used to apply the manure, litter, or process wastewater; and (10) dates of manure application equipment inspection. Crop yields and the manure and soil testing data, as well as records on applications conducted in previous years, are used to determine whether to apply manure on a nitrogen or phosphorus basis and the amount of nutrients to be applied. The CAFO and the permitting authority will use the remaining land application records to track the amount of nutrients applied and to ensure that application occurs consistent with the nutrient management plan.

EPA believes the land application rates, the 100-foot setback (or the use of equivalent practices authorized by the compliance alternative), and the other land application BMPs included in this rule will ensure that manure, litter, and other process wastewaters are applied in a manner consistent with appropriate agricultural utilization of the nutrients in manure, litter, and other process wastewaters. Effluent limitations in the form of BMPs are particularly suited to the regulation of CAFOs. For many CAFOs, controlling discharges to surface waters is largely associated with controlling storm water. Storm water discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose nature and extent vary according to geography and local land use. Water quality impacts, in turn, also depend on a wide range of factors, including the magnitude and duration of rainfall events, the time period between events, soil conditions, the fraction of land that is impervious to rainfall, other land use activities, and the ratio of storm water discharge to receiving water flow. CAFOs are required to apply their manure, litter, and other process wastewaters to land in accordance with the site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, and other process wastewaters. The manure provides nutrients, organic matter, and micronutrients, which are very beneficial to crop production when applied appropriately. The amount or rate at which manure can be applied that ensures appropriate agricultural utilization of nutrients varies based on site-specific factors at the CAFO. These factors include the crop being grown, the expected crop yield, the soil types and soil concentration of nutrients (nitrogen and phosphorus), and the amount of other nutrient sources to be applied. For these reasons, EPA has determined that relying exclusively on numeric ELGs to control these discharges is infeasible. EPA has determined that the BMPs specified in today's rule represent the minimum elements of an effective BMP program and are necessary to control point source discharges to surface water. In this rule, EPA is promulgating only those BMPs that are appropriate on a nationwide basis, while giving States and permittees the flexibility to determine the appropriate practices at a local level to achieve the effluent limitations. The BMPs included in this rule are necessary to ensure appropriate agricultural utilization of nutrients in manure, litter, and other process wastewater.

EPA rejected establishing national requirements in this rule that would prohibit manure application to frozen, snow-covered, or saturated ground. As envisioned, the prohibition considered (but also rejected) at the time of proposal would have required CAFOs to install sufficient storage capacity to hold manure for the period of time during which the ground is frozen, snow-covered, or saturated. According to EPA's analyses, to meet such a requirement CAFOs in some areas, such as northern States, would need to be able to store manure, litter, and other process wastewaters for up to 270 days, depending on the amount of precipitation and severity of winter. In practice, such a prohibition could result in some facilities needing storage to hold manure and wastes for 12 months to allow for spreading manure at times that coincide with crop growing periods.

EPA rejected establishing these requirements in the final ELGs because pollutant runoff associated with the application of manure, litter, or other process wastewaters on frozen, snow-covered, or saturated ground is dependent on a number of highly site-specific variables, including climate and topographic variability, distance to surface water, and slope of the land. Such variability makes it difficult to develop a national technology-based standard that is reasonable and does not impose unnecessary cost on CAFO operators. Further, given the site-specific nature of the cropland and runoff characteristics, quantifying the pollutant reduction associated with these requirements is difficult and imposing such requirements through a national regulation could divert resources from other technologies and practices that are more effective. Therefore, EPA believes that requirements limiting the application of manure, litter, or other process wastewaters to frozen, snow-covered, or saturated ground are more appropriately addressed through NPDES permit limits established by the permitting authority. Although EPA has decided not to include requirements limiting the application of manure, litter, or other process wastewaters to frozen, snow-covered, or saturated ground in today's rule, the permitting authority retains the authority and is encouraged to include these types of requirements as technology-based standards using BPJ in NPDES permits as appropriate.

EPA is establishing provisions at 40 CFR 122.42(e) for permitting authorities to include in NPDES permits a requirement for the CAFO to develop and implement a nutrient management plan. Under these provisions, NPDES permits are to include prohibitions, practices, and procedures to achieve compliance with 40 CFR part 412, when applicable, or effluent limitations based on BPJ when 40 CFR part 412 does not apply.

As discussed above in this section and in section IV.C.3, today's rule requires CAFOs to develop and implement a nutrient management plan. For Large CAFOs, this requirement is reflected in the effluent guideline as the BPT/BCT/BAT/NSPS limitations on land application discharges (see 40 CFR 412.4(c)). Other CAFOs are also subject to the requirement to develop and implement a nutrient management plan (see 40 CFR 122.42(e)(1)), although the permitting authority would establish precise elements of the plan, such as manure application rates, on a BPJ basis.

For the reasons detailed below, EPA has concluded that there are certain constraints, including currently insufficient infrastructure capacity, that prevent Large CAFOs (except new sources) from being able to develop and implement the land application BMPs, including the nutrient management plan, by the date they will need to seek permit coverage under the requirements of this rule. Therefore, the ELGs promulgated today require Large CAFOs that are existing sources to implement the land application requirements at 40 CFR 412.3(c) by December 31, 2006 because that is the date when EPA is assured that the required planning is in fact available to the large number of regulated sources and, therefore, becomes BPT/BCT/BAT. (EPA has similarly concluded that Small and Medium CAFOs subject to the NPDES provisions for nutrient management plans also will be unable to develop and implement a nutrient management plan by the date they will need to seek NPDES permit coverage under the requirements of this rule, for reasons of insufficient infrastructure. Therefore, EPA is requiring Small and Medium CAFOs that are existing sources to develop and implement nutrient management plans by December 31, 2006.) For all CAFOs that are new sources (*i.e.*, Large CAFOs constructed after the effective date of this rule), the land application requirements at 40 CFR 412.4(c) apply immediately, as discussed further below.

Nutrient management plans are complex documents and their preparation requires knowledge in a number of areas. To adequately address the requirements established by today's rule, the nutrient management plan should be prepared by individuals (either CAFO owners and operators, or their technical consultants) who are competent in or have an understanding of a number of technical areas, including soil science and soil fertility, nutrient application and management, crop production, soil and manure testing and results interpretation, fertilizer materials and their characteristics, BMPs for the management of nutrients and water, and applicable laws and regulations. Because of this, EPA believes it is reasonable to anticipate that many CAFOs will choose to acquire the services of consultants with the technical expertise to prepare nutrient management plans and make recommendations regarding the implementation of the land application BMPs (*e.g.*, whether to use one of the authorized compliance alternatives in lieu of the setback requirements; options for reducing the nutrient content of manure, such as treatment or alternative feeding strategies; modifications to cropping strategies and land application practices).

Further, while the provisions of 122.42(e)(1) and 412.4(c)(1) do not specifically require nutrient management plans to be prepared or reviewed by certified experts, EPA recognizes that USDA, and other organizations such as the American Society of Agronomy, Crop Science Society of America, Soil Science Society of America, and a number of land grant universities, recommend that nutrient management plans be prepared by trained and certified specialists. USDA has published technical guidance that calls for the development of CNMPs and details the specific components and considerations that should be addressed during CNMP development. The Unified AFO Strategy, developed jointly by USDA and EPA, defines a national objective for all AFOs to develop CNMPs to ensure appropriate agricultural utilization of nutrients. (The vast majority of these CNMPs will be developed under voluntary programs.) EPA is not requiring CAFOs to use certified experts in preparing the nutrient management plans and is not requiring CAFOs to develop CNMPs, but the regulatory requirements for nutrient management plans are designed to dovetail with USDA standards for CNMPs so that CAFOs can meet EPA's nutrient management plan requirements and USDA's CNMP objectives in a single undertaking. It is therefore reasonable to expect that many CAFOs will opt to have their nutrient management plans prepared by certified specialists, an outcome that EPA encourages.

As discussed in more detail below, EPA interprets Section 301(b)(2) of the CWA to require that, for any effluent guideline promulgated, or any technology-based limitation established on a BPJ basis, after March 31, 1989, a discharger must achieve immediate compliance with the BPT/BCT/BAT effluent limitations upon issuance of the discharger's NPDES permit. With imposition of the nutrient management plan requirement, there may be a large number of CAFOs that are all trying to develop plans at the same time. Yet, there is a limited pool of certified preparers and other technical experts that are available nationwide to develop nutrient management plans and CNMPs. It is reasonable to recognize that Large CAFOs (and Small and Medium CAFOs), along with AFOs, could be competing for the services of the certified preparers and other technical experts. EPA estimates there are approximately 15,500 CAFOs, including 11,000 Large CAFOs, and 222,000 AFOs. AFOs are not required to prepare CNMPs, but their access to sources of public funds, such as EQIP, may be contingent on their adherence to NRCS technical standards, including preparation of a CNMP. Thus, additional time is needed for development and implementation of the plan.

Another aspect that prevents CAFOs from immediately complying with the land application BMPs is the need for States to ensure that they have established appropriate technical standards that CAFOs will use to determine the appropriate application rates for their fields. These standards must be a part of the State NPDES permitting program revisions discussed in Section V.C of this preamble. In addition, CAFOs will need some time to determine whether they have sufficient cropland for applying all of the nutrients contained in the manure, litter, and other process wastewaters that they generate. If they determine that they have excess nutrients, the CAFOs will need to identify alternatives for reducing the nutrient content, or seek markets for the excess nutrients such as off-site cropland, centralized processing facilities (*e.g.,* pelletizing plants, centralized anaerobic digester-based power generation facilities), or other solutions. These activities cannot logically commence until the CAFO has developed the plan and knows what its allowable manure application rate is.

EPA considered whether CAFOs should be required to implement certain elements of the land application BMPs in advance of preparing a nutrient management plan, but rejected doing so because the elements of the land application BMPs are inseparably linked together. The nutrient management plan is the tool CAFOs must use to assess soil and other field conditions at their operation, in conjunction with manure characterization data and crop rotations and yield projections, to determine the site-specific nitrogen or phosphorus-based rate at which manure, litter, and other process wastewaters are to be applied. The proper application rate can not be reasonably determined without first preparing the nutrient management plan. CAFOs will also use their nutrient management plan to inform their decision making on whether to comply with the provisions at 412.4(c)(5) by establishing the 100-foot setback on their fields or to instead select one of the compliance alternatives authorized by those provisions. EPA has also

determined that requiring manure and soil sampling and the record-keeping requirements included in 412.37(c) in advance of preparing and implementing the nutrient management plan would impose an unnecessary burden on CAFOs because, in the absence of a nutrient management plan that determines the appropriate application rates, these elements will not directly establish that manure will be applied in a manner that ensures appropriate utilization of nutrients. (Some of these actions, such as manure and soil sampling, may well be undertaken by the CAFOs as they develop their nutrient management plans, but EPA determined it was unnecessary for the regulation to impose these requirements in advance of nutrient management plan development and implementation.)

The land application BMPs, including the requirement to develop and implement a nutrient management plan, will immediately apply to all Large CAFOs who commence construction after the effective date of this rule (*i.e.,* new sources). Section 306(b)(1)(B) specifies that new source performance standards shall become effective upon promulgation. New sources engage in extensive site selection, facility design, and construction activities prior to commencing operations. Aspects addressed during this phase include location considerations (*e.g.,* climate and topographical factors), facility design variables to optimize the production process, and waste management considerations including the identification of optimal waste handling practices (*e.g.,* waste collection methods, the use of topographical elevation changes to facilitate waste handling) and disposal options (*e.g.,* on-site application on cropland, shipment to off-site markets). These activities undertaken by new sources prior to commencing construction are highly technical in nature, and CAFOs will typically engage the services of a number of consultants. While CAFOs are expected to engage the services of technical consultants to develop the nutrient management plans required by this rule, the analyses embodied within the nutrient management plan will not significantly add to the scope of analyses new sources will engage in prior to commencing operations.

EPA has considerable discretion under CWA section 304(b)(2) to determine whether and when a particular technology or process is BPT, BCT, or BAT. EPA also has broad authority to interpret CWA section 301. In *E.I. du Pont de Nemours & Co.* v. *Train,* 430 U.S. 112 (1977), the Supreme Court accorded great deference to EPA in promulgating effluent limitations guidelines as regulations under section 301, noting that ''[CWA Section] 101(d) requires us to resolve any ambiguity on this score in favor of the Administrator.'' *Id.* at 128. The Supreme Court also found that section 501(a) supports EPA's broad use of its regulatory authority to implement section 301. *Id.* at 132. EPA believes that its decision to promulgate the land application BMPs, including the nutrient management plans, with a future date for implementation is authorized by sections 301 and 304. Section 301(b)(2) in particular directs EPA to promulgate ELGs that, within the constraints of economic achievability, ''will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants.'' Section 301(b)(2)(A).

EPA is aware that CWA sections 301(b)(2)(C) & (D) require ELGs to be achieved ''in no case later than three years after the date such limits are promulgated under section 304(b), and in no case later than March 31, 1989.'' This language does not speak to the precise question EPA confronts here: whether EPA can promulgate ELGs that are phased in over time. In this case, for the reasons discussed above, while EPA believes that the requirement to develop and implement a nutrient management plan will be an ''available'' technology in the near future, it is not now available for the large number of CAFOs subject to today's rule. For this reason, EPA is, in essence, today promulgating what will be the available technology for the future, similar to what the Agency did for the pulp & paper effluent guideline. See 63 FR 18604 (Apr. 15, 1998). EPA is specifying the future date of December 31, 2006 because that is the date by which it predicts that sufficient capacity and capability to develop and implement a nutrient management plan and associated BMPs will be available to the great number of regulated sources. The availability of technical experts, including certified preparers, is a critically important component of the planning requirement, and in a sense is itself the technology basis for that BPT/BCT/BAT limitation. The Clean Water Act requires compliance with a promulgated ELG—*e.g.,* to develop a nutrient management plan—only once the technology ripens as the basis for that ELG, in this case as an available technology. While EPA is promulgating the nutrient management plan requirement as BPT/BCT/BAT in this rulemaking, EPA's record indicates that it may not truly be available for the subcategory as a whole until December 31, 2006.

c. What are the production area requirements for all existing and new Large beef, dairy, and heifer CAFOs (Part 412, Subpart C)? In today's final rule, consistent with the 1974 ELG regulation, EPA is continuing to establish BMPs for the CAFO production area, which includes the animal confinement areas and the manure storage and containment areas. These BPT, BCT, BAT, and NSPS requirements are being established for the reasons discussed in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

EPA is largely retaining the current effluent guidelines that apply to beef and dairy operations, and adding language extending these requirements to heifer-raising operations. These regulations, which are codified at 40 CFR Part 412, Subpart C, prohibit the discharge of manure, litter, and other process wastewaters, except for allowing discharge when rainfall causes an overflow from a facility designed, maintained, and operated to contain all manure, litter, and process wastewaters, including storm water, plus runoff from the 25-year, 24-hour rainfall event. In addition, today's rule requires Large CAFOs to comply with the following BMPs:

- Perform weekly inspections of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure;
- Perform daily inspections of water lines, including drinking water or cooling water lines;
- Install depth markers in all surface and liquid impoundments (*e.g.*, lagoons, ponds, tanks) to indicate the design volume and to clearly indicate the minimum capacity necessary to contain the 25-year, 24-hour rainfall event, including additional freeboard requirements;
- Correct any deficiencies found as a result of daily and weekly inspections as soon as possible;
- Do not dispose of mortalities in liquid manure or process wastewater treatment systems, and mortalities must be handled in such a way as to prevent discharge of pollutants to surface water, unless alternative technologies implemented under alternative performance standards are designed to handle mortalities; and
- Maintain on-site a complete copy of the records specified in 40 CFR

412.37(b) and (c). These records must be available to the permitting authority and the Regional Administrator, or his or her designee, for review upon request. Records must be maintained for 5 years from the date they are created.

What did EPA propose? EPA proposed to establish effluent guidelines that include the requirements promulgated in today's rule, and that would also have required all Large beef and dairy CAFOs (including heifers) to prevent discharges to the ground water beneath the production area (animal confinement areas, manure stockpiles, and impoundments) where there is a direct hydrologic connection to surface waters.

What were the key comments? EPA received numerous comments on the proposed inclusion of ground water monitoring and protection requirements for beef and dairy CAFOs. Many commenters opposed the proposed ground water requirements, stating that EPA lacks the authority to regulate ground water contamination in this rule and that the cost to comply with the proposed requirements would threaten the viability of these operations. The commenters also felt that EPA would need to define the term ''direct hydrologic connection to surface water'' if ground water requirements were to be implemented. EPA also received comments supporting the inclusion of ground water requirements in this rule, arguing that individual State programs are not always protective of these types of discharges.

EPA received a number of comments suggesting the rule should allow for less frequent inspections of the production area; should establish effluent limitations that would allow CAFOs to discharge treated manure, litter, and process wastewaters (as opposed to the requirements in the 1974 ELGs based on the containment of these wastes); and should allow CAFOs to dispose of mortalities in surface impoundments designed for that purpose. Other commenters stated that EPA should retain the existing zero discharge requirement established by the 1974 ELGs and should not allow CAFOs to discharge the wastes they currently must contain, even if the wastes are treated before being discharged.

Rationale. The production area requirements established today for Large beef, dairy, and heifer CAFOs will provide effective control of discharges of manure and other process wastewaters to surface water. These requirements are widely demonstrated as achievable and are in use at most beef, dairy, and heifer CAFOs and the containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which storage structures should be constructed.

CAFOs must properly design, operate, and maintain storage structures to contain all manure, litter, and process wastewater including the runoff from a 25-year, 24-hour rainfall event. The determination of the necessary storage volume should reflect the maximum length of time anticipated between emptying events. The design storage volume must reflect manure, wastewater, and other wastes accumulated during the storage period; normal precipitation less evaporation on the surface area during the entire storage period; normal runoff from the facility's drainage area during the storage period; 25-year, 24-hour precipitation on the surface (at the required design storage volume level) of the facility; 25-year, 24-hour runoff from the facility's drainage area; residual solids after liquids have been removed; necessary freeboard (USDA's Natural Resources Conservation Service (NRCS) recommends a minimum of 1 foot of freeboard); and, in the case of treatment lagoons, a minimum treatment volume necessary to allow anaerobic treatment to occur. Additional storage may also be required to meet management goals or other regulatory requirements. For example, if the permitting authority needs further controls to assure compliance with site-specific water quality standards. EPA encourages CAFOs to consider relevant ASAE and NRCS standards as one method to ensure appropriate design and construction.

CAFOs should actively operate and maintain the manure storage structure, including solids removal or dewatering when appropriate, to retain the capacity for the 25-year, 24-hour rainfall event. Recent studies suggest proper operation and maintenance will prevent most, if not all, overflows and discharges from manure storage areas. One recent study from Iowa State University suggested 76 percent of earthen manure structures lacked appropriate accompanying management and maintenance activities. Another study in North Carolina stated more than 90 percent of violations were attributed to operation and management deficiencies. Other studies also list typical shortcomings as including: careless transfer of manure to application equipment; improper manure agitation practices; inadequate controls to prevent burrowing animals and plants from eroding the storage berms and sidewalls; lack of routine inspection of land application and dewatering equipment during lagoon drawdown; and infrequent visual confirmation of adequate freeboard. Therefore, this rule establishes certain record keeping requirements that document the design basis for the structures, inspection and other maintenance activities related to the operation of the structures, and any overflows that occur. These records will help the CAFO operator to demonstrate that any overflows that do occur are consistent with the proper operation and maintenance of storage structures designed to contain all process wastewater, including the runoff from a 25-year, 24-hour rainfall event.

Although most CAFOs already have containment structures properly sized to contain their process wastes and the contributions from rainfall up to a 25-year, 24-hour rainfall event, many of these operations are not properly maintaining their systems to retain the capacity for such a rainfall event. Therefore, today's rule specifies that surface and liquid impoundments (*e.g.,* lagoons, ponds, and tanks) are required to have depth markers installed. The depth marker indicates the maximum volume that should be maintained under normal operating conditions allowing for the volume necessary to contain the 25-year, 24-hour rainfall event. Without such a depth marker, a CAFO operator might allow lagoons and other impoundments to fill to a level such that the capacity to contain the direct precipitation and runoff from a 25-year, 24-hour rainfall event is not maintained, leading to overflows that are inconsistent with the proper operation and maintenance of the system. In addition, closed or covered liquid impoundments are required to have depth markers installed to properly maintain these storage systems, such that dry weather discharges do not occur. Depth markers are necessary tools that allow operators to actively manage (*e.g.,* dewater, remove solids) the liquid levels in their impoundments and ensure that adequate capacity is retained for the 25-year, 24-hour rainfall event. Remote sensors can also be used to monitor liquid levels in lagoons and impoundments. This sensor technology can be used to monitor changes in liquid levels, either rising or dropping levels. These sensors can also trigger an alarm when the level is changing rapidly or when the liquid level has reached a critical level. The alarm can transmit to a wireless receiver to alert the CAFO owner or operator and can also alert the permitting authority. The

advantage of this type of system is the real-time warning it can provide the CAFO owner or operator that a lagoon or impoundment is in danger of overflowing. It can provide the CAFO operator an opportunity to better manage operations and prevent catastrophic failures. These sensors are more expensive than depth markers; however, the added assurance they provide in preventing catastrophic failures might make them attractive to some operations.

Today's rule prohibits the disposal of dead animals in any liquid impoundments or lagoons and requires operations to handle dead animals in ways that prevent contributing pollutants to waters of the United States, except as provided for by alternative performance standards using technologies designed to handle mortalities. Improper disposal of mortalities can lead to surface or ground water contamination, or both, as well as noxious odors and the potential for disease transmission by scavengers and vermin. Historically, burial was the most common method of carcass disposal, but it is now prohibited in many States. By prohibiting the disposal of dead animals in liquid impoundments, this rule will eliminate the discharge of pollutants from carcasses in overflows and in the runoff from land application areas.

Weekly inspections ensure that any storm water diversions at the production area, such as roof gutters or any devices that channel storm water to the wastewater and manure storage and containment structure, are free from debris. Daily inspections of the automated systems providing water to the animals ensure they are not leaking or spilling, which by increasing the rate at which process wastewater is generated can lead to discharge of pollutants to surface water. The manure storage or treatment facility must be inspected weekly to ensure structural integrity. For surface and liquid impoundments, the berms must be inspected for leaking, seepage, wind or water erosion, excessive vegetation, unusually low or high liquid levels, reduced freeboard, depth of the manure and process wastewater in the impoundment as indicated by the depth marker, and other signs of structural weakness. EPA believes these inspections are necessary to ensure proper maintenance of the production area and prevent discharges of manure, litter, and other process wastewater to surface waters.

Records of these inspections must be maintained on-site, as well as records documenting any problems noted and corrective actions taken, the design basis for the structures, and the estimated volume of any overflows that occur. The depth of all liquid manure storage impoundments must be noted during each week's inspection. Production area inspection data allow operators to actively manage and maintain their surface and liquid impoundments to ensure the structural integrity of the system and avoid catastrophic failure of such systems. These records also assist the CAFO operator to minimize discharges to the extent possible and demonstrate that any overflows that do occur are consistent with the proper operation and maintenance of storage structures to contain all process wastewater including the runoff from a 25-year, 24-hour rainfall event.

As with the land application requirements, effluent limitations in the form of BMPs are particularly suited to the regulation of CAFOs. For many CAFOs, controlling discharges to surface waters is largely associated with controlling runoff and controlling overflows from manure storage structures. CAFO runoff can be highly intermittent and is usually characterized by very high flows occurring over relatively short time intervals. Whether the runoff or overflow will lead to a discharge, as well as the volume of any discharge that does occur and the nature of the pollutants present in the discharge, can vary substantially depending on the operating practices and physical characteristics of the operation (*e.g.,* paved vs. unpaved surfaces, manure handling practices, climate, amount of area exposed to the precipitation). For these reasons, EPA has determined that relying exclusively on numeric ELGs to control these discharges is infeasible.

EPA believes the production area BMPs included in this rule are necessary to ensure proper maintenance of the production area and prevent discharges, except whenever precipitation causes an overflow of process wastewater from a facility designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. There are numerous reports of operations discharging pollutants from the production area during dry weather; discharges from CAFOs that failed to maintain the required storage capacity to contain the 25-year, 24-hour rainfall; and instances of leakage and catastrophic failure of lagoons and other manure storage structures. Information in the record for this rule indicates that many of the discharges could have been avoided if CAFOs had practiced the BMPs in this rule frequently enough to detect and correct discrepancies before they led to discharges.

The proposed rule would have imposed explicit national requirements for certain CAFOs to address possible discharges to surface water via ground waters that have a direct hydrologic connection to surface waters. These operations would have been required to sample groundwaters to demonstrate that there is no discharge through a direct hydrologic connection to surface waters, unless they determined to the satisfaction of the permitting authority the absence of a direct hydrologic connection. Where a direct hydrologic connection to surface waters exists, controls on discharges to groundwater would have been required.

In today's effluent limitation guidelines, EPA is rejecting establishing requirements related to discharges to surface water that occur via ground water with a direct hydrologic connection.

Pollutant discharges from CAFOs to surface water via a groundwater pathway are highly dependent on site-specific variables, such as topography, climate, distance to surface water, and geologic factors such as depth of groundwater, soil porosity and permeability, and subsurface structure. The factors affecting whether such discharges are occurring at CAFOs are so variable from site to site that a national technology-based standard is inappropriate. Further, given the site-specific nature of these situations, quantifying the pollutant reduction associated with nationally-established requirements would be difficult. Imposing requirements through a national ELG could divert resources from other technologies and practices that are more effective at controlling CAFO discharges to surface waters. Therefore, EPA believes that requirements limiting the discharge of pollutants to surface water via groundwater that has a direct hydrologic connection to surface water are beyond the scope of today's ELGs.

Furthermore, EPA recognizes there are scientific uncertainties and site-specific considerations with respect to regulating discharges to surface water via groundwater with a direct hydrologic connection to surface water. EPA also recognizes there are conflicting legal precedents on this issue. Nothing in this rule shall be construed to expand, diminish, or otherwise affect the jurisdiction of the Clean Water Act over discharges to surface water via groundwater that has

a direct hydrologic connection to surface water.

At the time of proposal, EPA considered, but rejected, requiring CAFOs to sample surface waters adjacent to feedlots and/or land under control of the feedlot to which manure is applied. This option would have required CAFOs to sample surface waters both upstream and downstream from the feedlot and land application areas following significant rainfall. In this final rule, EPA is continuing to reject imposing surface water monitoring requirements on CAFOs through the effluent guidelines because of concerns regarding the difficulty of designing and implementing through a national rule an effective surface water monitoring program that would be capable of detecting, isolating, and quantifying the pollutant contributions reaching surface waters from individual CAFOs; and because the addition of in-stream monitoring does not by itself achieve any better controls on the discharges from CAFOs than the controls imposed by this rule. In-stream monitoring could be an indicator of discharges occurring from the CAFO; however, unless conditions are appropriate and a well-designed sampling protocol is established, it is equally possible that the in-stream monitoring considered at proposal would measure discharges occurring from adjacent non-CAFO agricultural sources. These non-CAFO sources would likely be contributing many of the same pollutants considered under the sampling option. EPA considered alternative parameters that would isolate constituents from CAFO manure and wastewater from other possible sources contributing pollutants to a stream. Pathogens were considered as potential indicator parameters that could be used if adjacent operations do not also have livestock or are not using manure or biosolids as fertilizer sources. As discussed in the preamble for the proposed rule, however, there are concerns about the ability of CAFOs to collect and analyze samples for these pollutants (unless the sampling program is appropriately designed and tailored to the CAFO) because of the technical difficulty in obtaining representative samples and because of holding time constraints on collected samples associated with the analytical methods for these parameters. Accordingly, EPA believes that the imposition of in-stream monitoring requirements is more appropriately addressed through NPDES permit conditions established by the permitting authority. Although EPA has rejected the inclusion of in-stream monitoring requirements in this rule, the permitting authority retains the authority to include them in NPDES permits as either technology-based requirements based on BPJ, or water quality-based requirements, where the permitting authority determines they are necessary.

Another option considered, and rejected, at proposal would have required large dairy (and swine) operations to install anaerobic digester systems to treat their manure. Requiring anaerobic digester systems was not considered for beef and heifer operations because the wastes from these facilities would not support the operation of digester systems. (Refer to the *Technical Development Document* for more information on the operation of digester systems.) As discussed at proposal, anaerobic digesters offer certain benefits to CAFOs (*e.g.*, energy recovery, control of methane emissions), but they would not necessarily lead to significant reductions for many of the pollutants discharged to surface waters from CAFOs. Mandating the use of anaerobic digesters could divert resources from or complicate the installation of other technologies that can achieve even better performance. Further, use of an anaerobic digester does not eliminate the need for liquid impoundments to store dairy parlor water and barn flush water and to capture storm water runoff from the open areas at the dairy. Digesters do not necessarily reduce the nutrients in animal wastes. Most of the phosphorus removed from the effluent is concentrated in the digested solids, which are still subject to land application requirements. Similarly, metals present in the animal waste are not reduced and remain in the digester effluent and solids.

Although the ELG requirements in this rule are not specifically designed to reduce the pathogens in animal wastes, today's rule may achieve some reductions of pathogens in CAFO discharges by applying manure at rates that ensure appropriate agricultural utilization of nutrient and establishing setbacks or buffers where manure, litter, and other process wastewater are not applied. Pathogen die-off can also occur during the period manure is stored prior to land application, and further die-off of pathogens is expected to occur when the animal waste is exposed to sunlight following application to land. Because of the presence of pathogens in animal wastes and the potential risk they pose to human health and the environment, EPA continues to be concerned about the potential for transmission of pathogenic disease from CAFOs. This concern is substantiated by information in the rulemaking record regarding instances of foodborne and waterborne disease outbreaks. However, based on the current state of the science, a quantified link has not been established between pathogenic diseases outbreaks and CAFO discharges and runoff. EPA has a number of research efforts underway to better understand and reduce the environmental impact resulting from the discharge and runoff of manure from these facilities. This research will help inform future decisions to address pathogens in CAFO discharges.

d. What are the production area requirements for Large swine, poultry, and veal CAFOs (Part 412, Subpart D)? (1) Existing Large swine, poultry and veal CAFOs. Today's final rule establishes ELGs for existing swine, poultry, and veal operations that are the same as those described above in Section IV.C.2.c. for beef and dairy operations. Consistent with the 1974 ELG regulation, EPA is continuing to establish BMPs for the CAFO production area, which includes the animal confinement areas and the manure storage and containment areas. These BPT, BCT, and BAT requirements are being established for the reasons discussed in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

EPA is retaining the current effluent guidelines that apply to swine, poultry, and veal operations, and adding language extending these requirements to immature swine, and to chicken operations with dry litter management practices. These regulations, which are codified at 40 CFR Part 412, Subpart D, prohibit the discharge of manure, litter, and other process wastewater, except for allowing discharge when rainfall causes an overflow from a facility designed, maintained, and operated to contain all manure, litter, and process wastewaters, including storm water, plus runoff from the 25-year, 24-hour rainfall event. In addition, today's rule requires Large CAFOs to comply with certain BMPs described above in Section IV.C.2.c.

What did EPA propose? EPA proposed to establish production area effluent guidelines for existing swine, poultry, and veal operations that would prohibit all discharges from CAFO production areas. Under the proposed rule, existing operations subject to the requirements of Part 412, Subpart D, would not have been allowed to discharge any manure, litter, or other process wastewaters, including the overflow of manure and other process

wastewaters from their containment systems.

What were the key comments? EPA received comments both opposing and supporting the proposed requirements that would have eliminated the allowance for overflows for swine, poultry, and veal CAFOs. Many commenters opposed to eliminating the overflow allowance argued that the cost to comply with such requirements would threaten the viability of their operations. Some stakeholders also stated that the use of impermeable lagoon covers (as a means for achieving compliance with the proposed requirements) would pose a number of operational challenges: freezing, biogas collection, clean storm water management, wind shear, cover repair, and disposal of spent covers. For these reasons, these stakeholders concluded the proposed zero discharge standard was technologically infeasible.

Rationale. The production area requirements established today for existing Large swine, poultry, and veal CAFOs will provide effective control of discharges of manure and other process wastewaters to surface water, consistent with the statutory factors the Clean Water Act requires EPA to consider in establishing effluent guidelines for existing sources (BPT, BCT, and BAT). These requirements are widely demonstrated as technologically achievable for these operations, and the containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs. Further, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which storage structures should be constructed.

CAFOs must properly design, operate, and maintain storage structures to contain all manure, litter, and process wastewater including the runoff from a 25-year, 24-hour rainfall event. The determination of the necessary storage volume should reflect the maximum length of time anticipated between emptying events. The design storage volume must reflect manure, wastewater, and other wastes accumulated during the storage period; normal precipitation less evaporation on the surface area during the entire storage period; normal runoff from the facility's drainage area during the storage period; 25-year, 24-hour precipitation on the surface (at the required design storage volume level) of the facility; 25-year, 24-hour runoff from the facility's drainage area; residual solids after liquids have been removed; necessary freeboard (NRCS recommends a minimum of 1 foot of freeboard); and, in the case of treatment lagoons, a minimum treatment volume necessary to allow anaerobic treatment to occur. Additional storage may also be required to meet management goals or other regulatory requirements. EPA encourages CAFOs to use relevant ASAE and NRCS standards as one method to ensure appropriate design and construction. This is also consistent with EPA's approach to estimating the costs of compliance with today's rule.

CAFOs should actively operate and maintain the manure storage structure, including solids removal or dewatering when appropriate, to retain the capacity for the 25-year, 24-hour rainfall event. Recent studies suggest proper operation and maintenance will prevent most, if not all, overflows and discharges from manure storage areas. One recent study from Iowa State University suggested 76 percent of earthen manure structures lacked appropriate accompanying management and maintenance activities. Another study in North Carolina stated more than 90 percent of violations were attributed to operation and management deficiencies. Other studies also list typical shortcomings as including: careless transfer of manure to application equipment; improper manure agitation practices; inadequate controls to prevent burrowing animals and plants from eroding the storage berms and sidewalls; lack of routine inspection of land application and dewatering equipment during lagoon drawdown; and infrequent visual confirmation of adequate freeboard. Therefore this rule establishes certain recordkeeping requirements that document the design basis for the structures, inspection and other maintenance activities related to the operation of the structures, and any overflows that occur. These records will help the CAFO operator to demonstrate that any overflows that do occur are consistent with the proper operation and maintenance of storage structures designed to contain all manure, litter, and process wastewater, including the runoff from a 25-year, 24-hour rainfall event.

As with the land application requirements, effluent limitations in the form of BMPs are particularly suited to the regulation of CAFOs. For many CAFOs, controlling discharges to surface waters is largely associated with controlling runoff and controlling overflows from manure storage structures. CAFO runoff can be highly intermittent and is usually characterized by very high flows occurring over relatively short time intervals. Whether the runoff or overflow will lead to a discharge, as well as the volume of any discharge that does occur and the nature of the pollutants present in the discharge, can vary substantially depending on the operating practices and physical characteristics of the operation (*e.g.*, paved vs unpaved surfaces, manure handling practices, climate, amount of area exposed to the precipitation).

EPA believes the production area BMPs included in this rule are necessary to ensure proper maintenance of the production area and prevent discharges except whenever precipitation causes an overflow of process wastewater from a facility designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. There are numerous reports of operations discharging pollutants from the production area during dry weather, discharges from CAFOs that failed to maintain the required storage capacity to contain the 25-year, 24-hour rainfall, and instances of leakage and catastrophic failure of lagoons and other manure storage structures. Information in the record for this rule indicates that many of the discharges could have been avoided if CAFOs had practiced the BMPs in this rule frequently enough to detect and correct discrepancies before they led to discharges.

For today's rule, EPA has determined that the cost to retrofit the many manure storage structures with covers, or to convert wet manure systems to dry manure systems, or to install other control techniques to achieve total containment of manure, litter, and other process wastewaters is not economically achievable for this subcategory. According to EPA's cost and economic impact analyses, requiring existing Large CAFOs subject to Part 412, Subpart D to comply with requirements for total containment (with no allowance for overflows) would result in facility closures at 11 percent of the CAFOs in Subpart D. (*See* the *Economic Analysis*.) EPA disagrees, however, with the comments that lagoon covers are technologically infeasible. EPA does agree that retrofitting existing lagoon systems with covers can pose substantial design challenges and some existing lagoons might need to be redesigned to accommodate a cover, substantially increasing the retrofit cost for existing sources. In spite of these design challenges and the operational challenges that covering lagoons can pose, EPA believes the record information on the demonstration status of impermeable lagoon covers adequately addresses these feasibility concerns. EPA has data from several

vendors; one such vendor has developed more than a dozen such systems ranging in size from 3 acres to almost 20 acres. Covered lagoon systems have been successfully implemented in areas with cold climates such as northern Illinois, South Dakota, and Wisconsin, and in high-rainfall areas such as South Carolina, North Carolina, and Georgia. These systems are routinely exposed to and resist freezing, high winds, and other extreme weather events. EPA believes the information in the record demonstrates the technological feasibility of covering lagoons, but is rejecting BPT/BCT/BAT requirements based on such technology because they are not economically achievable.

EPA is not including ground water controls and monitoring requirements, or surface water monitoring requirements for Subpart D facilities for the same reasons described in Section IV.C.2.c for beef and dairy operations. EPA also rejected basing the effluent guidelines for swine operations on anaerobic digesters for the same reasons given above for dairies, and as discussed in the preamble for the proposed rule.

(2) New Large swine, poultry and veal CAFOs. In today's rule, EPA is establishing effluent guidelines for new swine, poultry, and veal operations based on zero discharge from CAFO production areas, subject to the provision that if a new source's waste management and storage facilities are designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 100-year, 24-hour rainfall event, it will satisfy the requirements of the NSPS. In addition, today's rule requires Large CAFOs to comply with certain BMPs described above in Section IV.C.2.c for the reasons given in Section IV.C. The NSPS requirements are being established for the reasons discussed in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

What did EPA propose? EPA proposed to establish production area requirements for new sources that would have required zero discharge, and that would also have required all new Large swine, poultry, and veal CAFOs with a direct hydrologic connection to surface waters to prevent discharges to the ground water beneath the production area (animal confinement areas, manure stockpiles, and impoundments).

What were the key comments? Most comments received focused on the technological feasibility of total containment and the appropriateness of establishing ground water controls as part of the effluent guidelines. EPA received numerous comments in opposition to the proposed ground water requirements, stating that EPA lacks the authority to regulate ground water contamination in this rule and that the cost to comply with the proposed requirements would threaten the viability of these operations. The commenters also felt that EPA would need to define the term ''direct hydrologic connection to surface water'' if ground water requirements were to be implemented. EPA also received comments supporting the inclusion of ground water requirements in this rule, arguing that individual State programs are not always protective of these types of discharges.

Many commenters were also opposed to the proposed requirement that eliminates the allowance for overflows for swine, poultry, and veal CAFOs. Many commenters argued that the cost to comply with these requirements would threaten the viability of their operations. Some stakeholders felt impermeable lagoon covers in particular posed a number of operational challenges: Freezing, biogas collection, clean storm water management, wind shear, cover repair, and disposal of spent covers. For these reasons, these stakeholders concluded the proposed zero discharge standard was technologically infeasible.

Rationale. EPA has determined that the NSPS requirements included in this rule for the production area at new swine, poultry, and veal sources are technologically feasible and will not pose a barrier to entry, for the reasons discussed below and in the Technical Development Document.

A number of the comments opposed to establishing zero discharge limitations (with no allowance for the discharge of overflows) were related to concerns that unforeseeable events could eventually lead to a discharge from a facility and result, in the commenters' view, in a situation of noncompliance that the CAFO would be unable to prevent. EPA disagrees with these comments and believes the NPDES permitting regulations already address this concern. Consistent with existing provisions included in the NPDES regulations at 40 CFR 122.41, upset and bypass provisions are included as standard conditions in NPDES permits to address the potential for unforeseen circumstances and provide CAFOs with a reasonable defense. In other words, even though the NSPS for Subpart D operations prohibits discharges from the production area, a CAFO can claim an upset/bypass defense for events that are beyond reasonable control, including extreme weather events as well as other uncontrollable or unforeseen conditions.

An upset is an unintentional noncompliance event occurring for reasons beyond the reasonable control of the permittee. The upset provision in the NPDES permit operates as an affirmative defense to prosecution for violation of technology-based effluent limitations, provided certain specified criteria are met. *See* 40 CFR 122.41(n). For example, flood damage or other severe weather damage to containment structures that cannot reasonably be avoided or controlled by the permittee could be a basis for an affirmative defense for an upset. A bypass, on the other hand, is an act of intentional noncompliance during which waste treatment facilities are circumvented under certain specified circumstances, including emergency situations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage where there are no feasible alternatives to the bypass and where the permitting authority is properly notified. *See* 40 CFR 122.41(m).

EPA has added a reference at 40 CFR 412.46(3) to the existing regulatory provisions at 40 CFR 122.41(m) and (n) for upset and bypass. The upset and bypass provisions apply by existing regulation to all NPDES permits. In light of the more stringent requirements for new sources subject to Subpart D, EPA added this cross-reference to ensure that CAFO operators and permit writers were aware that the upset and bypass provisions are available. Upset and bypass conditions are applicable to all NPDES permits, for new and existing sources.

EPA has determined that total containment for the production area for new swine, poultry, and veal sources is technologically feasible and should not pose a barrier to entry for new sources subject to Subpart D. It is common for new poultry, veal, and swine operations to construct facilities that keep the animals in total confinement (covered housing) that is not exposed to rainfall or storm water runoff. In addition, many new operations are based on manure handling systems that greatly reduce or eliminate water use, such as hog and poultry high-rise houses, or that contain manure in covered or indoor facilities, such as underhouse pit storage systems and litter storage sheds. Other new facilities may choose flush systems with

lagoons that are covered or sited and designed to achieve total containment.

EPA recognizes that CAFOs may use different technologies to meet the zero discharge standard and that these technologies may have slightly different vulnerabilities to extreme weather events. Therefore, EPA is clarifying in today's rule that a CAFO may meet the zero discharge standard by designing, constructing, operating, and maintaining its waste management and storage facilities to contain all manure, litter, and process wastewater including the direct precipitation and runoff from a 100-year, 24-hour rainfall event.

By definition, a 100-year, 24-hour storm is an event which occurs on average once every 100 years. EPA believes that the 100-year, 24-hour rainfall event criteria provides the protection of the resource that the Agency intended under the zero discharge limitation, while providing clarity for the regulated community. The principle of tying regulatory or program requirements to precipitation-related events that happen with a frequency of once every 100 years is also used in other federal programs. For example, the Federal Emergency Management Agency uses the 100-year flood as the standard for floodplain management and to determine the need for flood insurance in the National Flood Insurance Program. The USDA Natural Resources Conservation Service (NRCS) uses the 100-year design criteria for flood protection structures. For instance, if the potential failure of a water control structure is likely to cause loss of life or extensive high value crop or property damage, NRCS uses the 100-year frequency storm as the basis for design.

CAFOs may choose to meet the zero discharge requirement through any technology designed to achieve this threshold. If a facility is designed, constructed, operated, and maintained to meet the 100-year, 24-hour rainfall criterion, and it nonetheless has a discharge due to extreme weather, this would not be considered a violation of its permit conditions. This provision is separate from an upset defense discussed above.

EPA has carefully evaluated the concerns raised in comments regarding the technical feasibility of total containment at swine, poultry, and veal operations. The concerns raised by commenters are primarily associated with operational factors and the effect of climate on the use of lagoon covers. Although the effluent guideline does not require the use of any specific technology, EPA concludes that the total containment requirements of this rule could be met at new sources through the use of lagoon covers or other appropriate technologies. New sources will avoid the design challenges and retrofit costs that existing sources would face with the use of lagoon covers, should they choose that technology to comply. Based on the information in the record, and as discussed above in this section, EPA has received data to demonstrate that each of these factors has been successfully handled at CAFOs and other facilities. Furthermore, by retaining all manure, litter, and other process wastewaters within the building (for example, by using underhouse pits) and not using an outdoor liquid impoundment, or by using other appropriate technologies, such as a lagoon designed to contain the precipitation and runoff from a 100-year, 24-hour rainfall event, new sources can avoid the operational challenges posed by covers.

In many instances, CAFOs are expected to construct swine and poultry housing that maintains the manure in dry form and stores the dry manure under cover until it is hauled off-site or land applied. Dry manures are generally more marketable and easier to transport, important considerations for facilities with insufficient land for agronomic use of the manures. The majority of poultry operations use total confinement housing practices, generating a dry manure that is collected within the poultry houses. The manure/litter is removed periodically from the poultry houses and is either taken directly to the land application area, transported to off-site fields or centralized processing facilities (*e.g.*, pelletizing operations), stored on-site within a roofed facility, or stored in temporary field stacks which can be covered and configured to prevent contact with precipitation. There has also been a great deal of interest in dry manure systems for swine operations in recent years, as evidenced by the current use of hoop structures and other designs described in the Technical Development Document. Dry manure systems are widely used at swine operations in Europe and are also being used at some operations in Canada. Some operations in the U.S. already use dry manure systems and EPA expects that the U.S. swine industry will choose to construct dry manure systems at new operations with greater frequency as they gain greater experience with these designs.

In other instances, new swine operations will likely choose underhouse deep pit systems to comply. Contrary to standard practice 30 years ago, closed buildings with underhouse deep pits are currently the predominant production technology used at swine operations. By 1995, approximately half of all large swine operations were using under floor pits with slotted floors. In 2000, more than 2,200 large swine operations nationwide utilized under floor pits, with several hundred additional operations using slurry storage. EPA has learned through site visits, as supported by meetings with the National Pork Producers Council (a trade association) that, because of further technological advancements, newly constructed systems rarely include lagoons, and that closed buildings with under floor pits are now the predominant production technology. Given the widespread use of this design, EPA anticipates that a number of new operations constructed in the next five to ten years will choose to use deep pit systems.

Some new swine operations may choose to use lagoon-based or other wet systems, depending on the factors specific to their situation. For example, some new operations may choose to rely on covered lagoon systems (with gas flaring or energy recovery). Another alternative technology that may be selected would be to install an anaerobic digester followed by a covered lagoon for storing the digester effluent. Benefits to operators using anaerobic digesters include the cost savings (or even revenue, in some cases) from electricity generation, a better-stabilized waste, significant odor reduction, and improved marketability of the digester solids. During site visits conducted during the rulemaking EPA has observed the use of aboveground fiberglass-lined steel tanks to store swine wastes. When configured to exclude direct precipitation or to contain all direct precipitation and runoff from a 100-year, 24-hour rainfall event, these tanks are able to meet the zero discharge requirement. As noted below in section IV.C.2.e, in order to provide appropriate flexibility to CAFOs, alternative technologies that achieve overall environmental performance across all media equal or superior to the reductions that would be achieved under the zero discharge standard may also be authorized by the Director.

EPA is aware of some interest by the swine industry in achieving total containment by using uncovered lagoons that would not be expected to discharge to surface waters based upon siting and lagoon design. For example, by providing additional freeboard in the design, a facility with sufficient containment to retain all manure, litter, and process wastewater plus the direct precipitation and runoff from a 100-year, 24-hour rainfall event would

be able to demonstrate that it complies with the rule requirements, assuming proper operation and management. Such facilities would be considered to achieve zero discharge. As discussed above, an upset defense could also apply when unforeseen and uncontrollable conditions result in a discharge.

The production area BMPs established today for Large swine, poultry, and veal CAFOs are necessary to ensure proper operation and maintenance of the production area and provide effective control of discharges of manure, litter, and other process wastewaters to surface water. There are numerous reports of operations discharging pollutants from the production area during dry weather, discharges from CAFOs that failed to maintain the required storage capacity, and instances of leakage and catastrophic failure of lagoons and other manure storage structures. CAFOs should actively operate and maintain the manure storage structure, including solids removal or dewatering when appropriate, to retain the capacity to accommodate continued generation of process wastewater. Information in the record for this rule indicates that many of the discharges could have been avoided if CAFOs had practiced the BMPs in this rule frequently enough to detect and correct discrepancies before they led to discharges.

EPA is not including ground water controls and monitoring requirements, or surface water monitoring requirements for Subpart D facilities for the same reasons described in Section IV.C.2.c for beef and dairy operations. EPA also rejected basing the effluent guidelines for swine operations on anaerobic digesters for the same reasons described above for dairies, and as discussed in the preamble for the proposed rule.

e. Voluntary alternative performance standards to encourage innovative technologies. EPA's long-term environmental vision for CAFOs includes continuing research and progress toward environmental improvement. The Agency believes that certain individual CAFOs will voluntarily develop and install new technologies and management practices equal to or better than those required by baseline technology-based effluent guidelines (BPT, BCT, and BAT) and standards (NSPS) promulgated in today's rule. Furthermore, EPA recognizes that some CAFOs, as well as land grant universities, State agencies, equipment vendors, and agricultural organizations, are working to develop new technologies that achieve reductions in nutrient and pathogen losses to surface water, ammonia and other air emissions, and ground water contamination. The development of new technologies offers the potential to match or surpass the pollutant reduction that would be achieved by compliance with the baseline production area effluent guidelines and standards (discussed above in Section IV.C.2.c for Large CAFOs subject to Part 412, Subpart C, and Section IV.C.2.d for Large CAFOs subject to Part 412, Subpart D). The term ''baseline effluent guidelines'' as used here is defined below in the following section of this preamble.

In addition to the production area effluent guidelines promulgated by today's rule (the ''baseline effluent guidelines''), EPA is establishing provisions for the development of alternative performance standards for discharges from the production area of Large CAFOs. The effluent guidelines promulgated today also establish BMPs that apply to the production area and land application areas at Large CAFOs. These BMP requirements are applicable to all Large CAFOs (both existing and new sources), regardless of whether their NPDES permit limitations are based on the baseline effluent guidelines or the alternative performance standards.

In establishing the ELG provisions for alternative performance standards, this rule creates a framework that enables new and existing Large CAFOs in Subpart C and existing Large CAFOs in Subpart D to develop and implement new technologies and management practices that perform as well as or better than the baseline effluent guidelines at reducing pollutant discharges to surface waters from the production area. For new Large CAFOs in Subpart D, the rule allows for alternative permit limitations based upon site-specific innovative technologies that achieve environmental performance across all media which is equal or superior to the baseline standards. An added benefit of providing for alternative performance standards is the potential for new or alternative technologies and practices to help address the multimedia environmental issues confronting CAFOs. A key tenet of these programs is that CAFOs will now have the option to either accept NPDES permit limitations based on the baseline effluent guidelines or voluntarily request the permitting authority to establish an alternative BPT/BCT/BAT/NSPS performance standard as the basis for their technology-based NPDES permit limits (*e.g.*, inclusion of effluent limitations in their NPDES permits that are different from those based on the baseline effluent guidelines).

EPA received suggestions from a number of stakeholders on the merits of creating a framework for alternative performance standards. Several stakeholders believe that the effluent guidelines established by the 1974 ELG regulation, as well as the baseline effluent guidelines promulgated in today's rule, discourage the use of innovative treatment and pollution prevention technologies because they are based on containment rather than treating the wastes to particular targets of effluent quality. A number of commenters expressed support for alternative wastewater treatment technologies that are equivalent to or better than baseline effluent guidelines, and they specifically requested that EPA establish provisions in the rule to allow CAFOs to discharge treated process wastewater generated from the production area of the CAFO.

Commenters also suggested that EPA's regulatory framework should provide incentives encouraging CAFOs to use technologies that would protect all environmental media, including air, ground water, and surface water. Commenters suggested that adding flexibility in the rule to allow for the discharge of treated process wastewater could lead to better approaches for addressing multimedia environmental concerns. On a related note, a number of stakeholders commented that EPA should include controls for pathogens or antibiotics, as well as atmospheric emissions of ammonia, methane, and hydrogen sulfide.

In view of these comments and recognizing the potential environmental gains presented by the ongoing research and development of new treatment technologies for CAFO wastes, today's rule establishes provisions providing for the development of alternative performance standards for discharges from Large CAFOs. As noted above, CAFOs retain the option to either accept NPDES permit limitations based on the baseline effluent guidelines or voluntarily request the permitting authority to establish an alternative performance standard as the basis for their technology-based NPDES permit limits. The specific requirements imposed by the alternative performance standard would be established by the NPDES permitting authority based on the technical analysis and other information submitted by the CAFO, as required under the alternative performance standards provisions included in Part 412. CAFOs would not be required to enter the alternative

performance standards program. A Large CAFO choosing not to participate in the alternative performance standards program would instead be subject to the baseline effluent guidelines discussed above in Section IV.C.2.c (for Subpart C) or Section IV.C.2.d (for Subpart D). EPA previously used a similar approach in establishing the effluent guidelines regulations for the Pesticide Formulating, Packaging, and Repackaging (PFPR) industry. In that rule, PFPR facilities are subject to effluent guidelines requirements that prohibit all discharges, but they may voluntarily elect to instead adopt certain regulatory requirements (mandatory BMPs and treatment of discharged wastes) and be allowed to discharge a ''pollution prevention allowable discharge.'' (*See* 40 CFR Part 455. *See also* 61 FR 57518; November 6, 1996.) In another rulemaking, EPA established effluent guidelines for the pulp, paper, and paperboard (Pulp & Paper) industry that provide incentives for mills to voluntarily implement advanced process technologies. For the Pulp & Paper effluent guidelines, mills accepting more stringent NPDES permit limitations based on the performance of the advanced technologies and other process improvements are granted incentives such as public recognition and substantially extended compliance periods. (*See* 40 CFR Part 430. *Also see* 63 FR 18504, 18593–18611; April 15, 1998).

(1) Baseline effluent guidelines. The effluent guidelines regulations promulgated in today's rule for all existing Large CAFOs, and for new source Large beef, dairy and heifer CAFOs, prohibit the discharge of process wastewaters, except when rainfall events cause an overflow from a facility designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. These limitations are based on the use of storage ponds and lagoons to contain the process wastes and runoff, although they do not preclude CAFOs from using alternative technologies. The NSPS requirements for new source Large swine, poultry, and veal CAFOs require zero discharge from the production area, subject to a provision that compliance with the standard can be met if the waste management and storage facilities are designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 100-year, 24-hour rainfall event. The ELGs were established on the basis of factors specified in CWA sections 304(b) and 306, including the cost of achieving the effluent reductions and any non-water quality environmental impacts. These limitations are referred to in this preamble as the ''baseline effluent guidelines'' for the purpose of clarifying which effluent guidelines requirements may be replaced by the alternative performance standards provisions included in today's rule.

The effluent guidelines promulgated today also establish BMPs that apply to the production area and land application areas at Large CAFOs. These BMP requirements are applicable to all Large CAFOs (both existing and new sources), regardless of whether their NPDES permit limitations are based on the baseline effluent guidelines or the alternative performance standards. As discussed in Sections IV.C.2.c and IV.C.2.d, the production area BMPs are necessary to ensure that manure storage structures and other production area components associated with controlling process wastewaters (*e.g.*, storm water diversions) are properly designed, operated, and maintained to prevent overflows or catastrophic failure of the system.

(2) Voluntary alternative performance standards for all Large beef/dairy/heifer CAFOs and existing Large swine/poultry/veal CAFOs. The alternative performance standards promulgated today for new and existing sources in Subpart C and existing sources in Subpart D, apply to discharges of manure, litter, and other process wastewaters from the CAFO production area. Under the provisions included in the final rule, these Large CAFOs will be allowed to discharge process wastewater that has been treated by technologies that the CAFO demonstrates will result in equivalent or better pollutant removals than would otherwise be achieved by the baseline effluent guidelines. These regulatory provisions are targeted toward the CAFO's wastewater discharges, but EPA encourages operations electing to participate in the alternative performance standards program to consider environmental releases holistically, including opportunities for achieving improvement in multiple environmental media.

As discussed above, the baseline effluent guidelines, though nominally zero discharge, allow for untreated overflow discharges if the system is designed, constructed, and operated to contain manure, litter, and process wastewater plus the runoff from a 25-year, 24-hour rainfall. (Large swine, poultry, and veal CAFOs that are new sources are subject to a different performance standard.) To demonstrate that an alternative control technology would achieve equivalent or better pollutant reductions than the baseline effluent guidelines, the CAFO must submit a technical analysis, which includes calculating the pollutant reductions based on the site-specific modeled performance of a system designed to comply with the baseline effluent guidelines (*e.g.*, a storage lagoon designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event). For many pollutants (*e.g.*, nitrogen, phosphorus, BOD, metals), the mass of pollutants discharged will usually be the most appropriate measure for assessing treatment system performance and determining whether the alternative control technology will achieve equal or better pollutant reductions. For some pollutants such as pathogens, however, pollutant mass may not be the most appropriate measure of pollutant reductions and alternative measures will need to be used.

One approach for making such a demonstration is to use a computer simulation model to evaluate site-specific or region-specific climate data, along with wastewater characterization data, to determine the pollutant discharge that would be projected for a system designed, constructed, and operated to achieve compliance with the baseline effluent guidelines. The model would evaluate the daily inputs to the storage system, including all process wastes, direct precipitation, and runoff. It would also evaluate the daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of wastewater for use on cropland at the CAFO or transport off site. The model would be used to predict the overflow from the storage system that would occur over a 25-year period, and these overflow predictions would be used to determine the median annual predicted overflow over the 25 years evaluated by the model.

Precipitation patterns for a given location are inherently variable from year-to-year. As a result, the volume of water entering the storage system, either through direct precipitation or as collected runoff, will vary substantially from one year to another. The potential for the storage system to overflow and the volume of the overflow is a function of site-specific variables, including the rate and total volume of wastes entering and leaving the storage system. To enable the development of alternative performance standards that achieve pollutant reductions comparable to those that would be achieved by the

baseline effluent guidelines, CAFOs must perform a technical analysis that includes a prediction of the volume of overflows from the storage system. If the technical analysis were to be performed using climate data from a period of unusually high precipitation, then the CAFO's analysis would tend to overestimate the overflow volume and result in alternative performance standards that do not achieve pollutant reductions equal to the baseline effluent guidelines. Conversely, if the technical analysis were to be performed using climate data from a period of unusually low precipitation (*e.g.*, drought periods), then the CAFO's analysis would tend to underestimate the overflow volume. By requiring the CAFO to use precipitation data for a 25-year period, the technical analysis will minimize the bias introduced by short-term variations in climate patterns.

The site-specific or other appropriate pollutant characterization data for the wastewater from the waste storage system (*i.e.*, the overflow) would be coupled with the overflow volume output from the model described above to predict the quantity of pollutant discharge that would occur from a system designed to comply with the baseline effluent guidelines. CAFOs would be required to meet NPDES permit conditions that result in equivalent or improved pollutant reductions, as compared to the predicted quantity of pollutant discharge from overflow of the baseline system. If a CAFO elected to use this approach, it would be meeting the same limitations as a CAFO under the baseline effluent guidelines, but expressed in a different fashion (*e.g.*, numeric limits on a continuous discharge versus a limit of zero discharge with an allowance for discontinuous overflows). To illustrate this type of analysis, EPA prepared an example evaluation using model farm characteristics. This example is available in the *Technical Development Document* and in section 19.6.2 of the rulemaking record.

(3) *Voluntary superior environmental performance standards for new Large swine/poultry/veal CAFOs.* The NSPS requirements that apply to production area discharges at new Large swine, poultry, and veal CAFOs are more stringent than the NSPS established for other new sources and the BAT requirements for existing sources. EPA is endeavoring to ensure that this rule does not inadvertently discourage approaches that are superior from a multimedia environmental perspective. Therefore, for new sources subject to Subpart D (Large swine, poultry, and veal CAFOs), EPA is establishing alternative performance standards that provide additional compliance flexibilities specifically designed to encourage CAFOs to adopt innovative technologies for managing and/or treating manure, litter, and process wastewater. Specifically, the NSPS includes a provision that allows for the CAFO to request the Director to establish alternative NPDES permit limitations based upon a demonstration that site-specific innovative technologies will achieve overall environmental performance across all media which is equal to or superior to the reductions achieved by baseline standards. The quantity of pollutants discharged from the production area must be accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media from the production area (*e.g.*, air emissions from housing and storage), the land application areas for all manure, litter, and process wastewater at on-site and off-site locations, or both. In making the demonstration that the innovative technologies will achieve an equivalent or greater reduction, the comparison of quantity of pollutants is to be made on a mass basis where appropriate.

In general, EPA expects CAFOs will conduct a whole-farm audit to evaluate releases that occur at the point of generation to minimize or eliminate waste production and air emissions, followed by an evaluation of the waste handling and management systems, and ending with an evaluation of land application and off-site transfer operations. The specific technologies that CAFOs will select and adopt to achieve the pollutant reductions are expected to be most effective for the particular operation. As part of the demonstration the CAFO will need to present information that describes how the innovative technologies will generate improvement across multiple environmental media. The Director has the discretion to request additional supporting information to supplement such a request where necessary. Such information could include criteria and data that demonstrate effective performance of the technologies and that could be used to establish the alternative NPDES permit limitations.

(4) *Process and incentives for participating in alternative performance standards.* CAFOs interested in pursuing the alternative performance standards should have a good compliance history, *e.g.*, no ongoing violations of existing permit performance standards or history of significant noncompliance. These facilities must conduct an analysis of their operation (as described above in Sections IV.C.2.e.(2) and IV.C.2.e.(3)) and prepare a proposed alternative program plan including the results of the analysis; the proposed method for implementing new technologies and practices, including an approach for monitoring performance; and the results demonstrating that these technologies and practices perform equivalent to or better than the baseline effluent guidelines. This plan must be included with the CAFO's NPDES permit application or renewal, and it will be incorporated into the permit upon approval by the permitting authority.

CAFOs are expected to derive substantial benefits from participation in the alternative standards approach, through greater flexibility in operation, increased good will of neighbors, reduced odor emissions, and potentially lower costs. EPA is considering future opportunities for other possible incentives to encourage participation in this program.

f. How did EPA consider the Clean Water Act statutory factors in establishing the ELGs? (1) BPT. In establishing BPT effluent guidelines for an industry category, EPA looks at a number of factors in determining the appropriate effluent limits for conventional, toxic, and non-conventional pollutants. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate. 33 U.S.C. 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. EPA's consideration of these factors and how they affected this rulemaking is presented in the *Technical Development Document.*

One way that EPA takes these factors into account is by breaking down categories of industries into separate classes of similar characteristics. The division of a point source category into groups called ''subcategories'' provides a mechanism for addressing variations among products, raw materials, processes, and other parameters that can result in distinct effluent characteristics. This provides each subcategory with a uniform set of ELGs that take into account technology achievability and

economic impacts unique to that subcategory. In this rule, EPA has addressed such considerations by establishing two new subcategories, codified at Subpart C (beef, dairy, and heifers) and Subpart D (swine, poultry, and veal) of 40 CFR 412. *See* Section IV.C.2.a of the preamble for a discussion of these subcategories.

The requirements established in this rule for BPT effluent guidelines reflect consideration of the total cost of applying these technologies (including BMPs) in relation to the effluent reduction benefits that will be achieved. The ELGs promulgated today are expected to cost Large CAFOs $283 million per year (pre-tax). The ELGs will reduce discharges of sediment by 2.1 billion pounds, nutrients by 155 million pounds, and metals by one million pounds annually. This results in an overall ratio of $0.12 per pound of pollutant removed (using reductions of sediment, nutrients, and metals). Excluding sediment reductions, the rule achieves an overall ratio of $1.75 per pound of pollutant removed (nutrients and metals).

The technologies upon which BPT is based are ones that are readily applicable to all CAFOs and will provide effective control of discharges of manure, litter, and other process wastewaters to surface water. These requirements are widely demonstrated as achievable and represent the level of control achieved by the majority of Large CAFOs. The containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs, and most existing lagoons and other containment structures are built to these standards. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which containment structures should be constructed.

As described in Section IV.C.2.b of this preamble, the land application requirements included in this rule represent practices that will ensure that CAFOs apply manure, litter, and other process wastewaters at a rate and in a manner consistent with the appropriate agricultural utilization of nutrients. Limits on the rate at which manure can be applied and certain other constraints on application practices, such as setbacks and vegetated buffers, are widely demonstrated as achievable and have been imposed by a number of States and through NPDES permits.

(2) BCT. In evaluating the possible BCT standards in this rulemaking, EPA first considered whether there are any candidate technologies (*i.e.*, technology options) that are technologically feasible and achieve greater reductions in conventional pollutants than are achieved by the BPT requirements promulgated today. (Conventional pollutants are defined as TSS, BOD, pH, fecal coliform, and oil and grease.) EPA's analyses of pollutant reductions that can be achieved by the candidate options (including the BPT, BAT, and NSPS options) has focused largely on the control of nutrients, sediments, metals, and pathogens, but to the extent possible have also assessed the effectiveness of the control options at reducing discharges of conventional pollutants. Although animal wastes contain BOD because of the organic material present in these wastes, the data available for estimating reductions of BOD from application of the candidate technologies are limited. Therefore, EPA based its estimates of conventional pollutant reductions on TSS, using estimated reductions in sediment discharges as a surrogate for TSS. Following this approach, EPA identified no BCT technology option that achieves greater TSS removals than the BPT requirements promulgated today, and EPA does not believe the candidate BCT options would substantially reduce discharges of BOD. EPA therefore concluded that there are no candidate BCT technologies for establishing limits on conventional pollutants that are more stringent than BPT, and is establishing BCT requirements in this rule equal to BPT. If EPA had identified technology options appropriate for a national rule that achieve greater reductions of conventional pollutants than are achieved by BPT, then EPA would have performed the two-part BCT cost test. (*See* 51 FR 24974 for a description of the methodology EPA employs when setting BCT standards.)

(3) BAT. In general, BAT represents the best available economically achievable performance of direct discharging facilities in the industrial subcategory or category. The Clean Water Act requires EPA to consider a number of different factors when developing ELGs that represent the BAT level of control for discharges of toxic and nonconventional pollutants by a particular industry category. These factors include the cost of achieving effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and other factors as the Administrator deems appropriate. EPA's consideration of these factors and how they affected this rulemaking is presented in the *Technical Development Document.*

An additional statutory factor considered in setting the BAT requirements is economic achievability. Generally, the achievability is determined on the basis of the total cost to the industrial subcategory and the overall effect of the rule on the industry's financial health. The BAT requirements promulgated today are economically achievable and represent the best available technology for Large CAFOs. As was discussed above for BPT, EPA estimates the cost for Large CAFOs to comply with the ELGs at $283 million per year (pre-tax, $2001). The ELGs will reduce discharges of sediment by 2.1 billion pounds, nutrients by 155 million pounds, and metals by one million pounds annually. (These costs and pollutant reductions are not additional costs beyond that of BPT. Because the BPT and BAT requirements promulgated today are identical, the costs and pollutant reductions for each level of control are presented incremental to the baseline of current practices and current regulatory requirements.)

The technologies upon which BAT is based are ones that are readily applicable to all CAFOs and will provide effective control of discharges of manure, litter, and other process wastewaters to surface water. The containment requirements, in conjunction with the production area BMPs included in this rule, are widely demonstrated as achievable and represent the level of control demonstrated to be achievable by well-performing Large CAFOs. The containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs, and most existing lagoons and other containment structures are built to these standards. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which storage structures should be constructed.

As described in Section IV.C.2.b of this preamble, the land application requirements included in this rule are consistent with appropriate agricultural utilization of nutrients and will ensure that CAFOs apply manure, litter, and other process wastewaters at a rate and in a manner necessary to meet the requirements of the crops grown and not exceed the ability of the soil and crop to absorb nutrients. Limits on the rate at which manure can be applied and certain other constraints on application practices, such as setbacks and vegetated buffers, are widely

demonstrated as achievable and have been imposed by a number of States and through NPDES permits.

To determine economic achievability, EPA analyzed how many facilities affected by this rule would experience financial stress severe enough to make them vulnerable to closure. As explained in more detail in Section VIII of this preamble and in the *Economic Analysis,* the number of facilities experiencing stress might indicate whether certain regulatory options considered during the rulemaking are economically achievable, subject to other considerations.

For the veal, dairy, turkey, and egg laying sectors, the final regulations are not expected to result in any CAFO-level business closures. In the beef cattle, heifer, swine and broiler sectors, however, the final rule is expected to cause some existing CAFOs to experience financial stress. These operations may be vulnerable to closure as a result of complying with the final rule. Across all sectors, an estimated 285 existing Large CAFOs may be vulnerable to facility closure. This accounts for approximately 3 percent of all Large CAFOs. By sector, EPA estimates that 49 beef operations (3 percent of affected beef CAFOs), 204 hog operations (5 percent of affected hog CAFOs), 10 broiler operations (1 percent), and 22 heifer operations (9 percent) may close as a result of complying with the final rule.

(3) NSPS. NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS represents the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements. In addition, EPA evaluates whether the requirements would impose a barrier to entry to new operations.

The technologies upon which the production area NSPS for Large beef, dairy, and heifer CAFOs are ones that are readily applicable to all CAFOs in that subcategory and will provide effective control of discharges of manure, litter, and other process wastewaters to surface water. The containment requirements, in conjunction with the production area BMPs included in this rule, are widely demonstrated as achievable and represent the level of control demonstrated to be achievable by well-performing Large CAFOs covered by Part 412, Subpart C. The containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs, and most existing lagoons and other containment structures are built to these standards. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which containment structures should be constructed.

EPA has determined that total containment (with a compliance option to design, operate, and maintain the facility to contain the runoff from a 100-year, 24-hour rainfall event) for the production area for new swine, poultry, and veal sources (and the production area BMPs) is technologically feasible and will not pose a barrier to entry for new sources subject to Subpart D. It is common for new poultry, veal, and swine operations to construct facilities that keep the animals in total confinement. In addition, many new operations are based on manure handling systems that greatly reduce or eliminate water use, such as hog and poultry high-rise houses, or that contain manure in covered or indoor facilities, such as underpit storage systems and litter storage sheds. EPA has carefully evaluated the concerns raised in comments regarding the technical feasibility of total containment at swine, poultry, and veal operations. The concerns raised by commenters are primarily associated with operational factors and the effect of climate on the use of lagoon covers. New sources will avoid the design challenges and retrofit costs that existing sources would face with these requirements. Based on the information in the record, and as discussed above, EPA has received data to demonstrate that each of these factors has been successfully handled at CAFOs and other facilities. Therefore, EPA concludes that the total containment requirements of this rule could be met through the use of lagoon covers if facilities choose to do so. However, by retaining all manure and process wastewater within the building (for example, by using underhouse pits) and not using an outdoor liquid impoundment, these operations will avoid the operational challenges posed by covers. Additional compliance flexibility is provided by the provision that allows the zero discharge standard to be met by designing, constructing, operating, and maintaining waste management and storage facilities to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 100-year, 24-hour rainfall event.

The land application requirements included in this rule for all Large CAFOs that are new sources are identical to those established under BAT for existing sources and are consistent with appropriate agricultural utilization of nutrients. These land application requirements will ensure that CAFOs apply manure, litter, and other process wastewaters at a rate and in the manner necessary to meet the requirements of the crops grown and not exceed the ability of the soil and crop to absorb nutrients. Limits on the rate at which manure can be applied and certain other constraints on application practices, such as setbacks and vegetated buffers, are widely demonstrated as achievable and as the best available demonstrated control technology, and have been imposed by a number of States and through NPDES permits.

EPA evaluated economic impacts to new source CAFOs by comparing the costs borne by new source CAFOs to those estimated for existing sources. That is, if the expected cost to new sources is similar to or less than the expected cost borne by existing sources (and that cost was considered economically achievable for existing sources), then EPA considers the regulations for new sources do not impose requirements that might grant existing operators a cost advantage over new CAFO operators and further determines that the NSPS is affordable and does not present a barrier to entry for new facilities. In general, costs to new sources for complying with a given set of regulatory requirements are lower than the costs for existing sources to comply with the same requirements since new sources are able to apply control technologies more efficiently than existing sources that may incur high retrofit cost. New source CAFOs will be able to avoid the retrofit costs that will be incurred by existing sources. For example, the cost of a model total containment system for swine that would meet the no discharge requirement (*e.g.*, incremental cost of deep pit swine house, including land application) typically is less than the cost for an existing source to retrofit water intensive lagoon-based systems that are exposed to precipitation. Among the primary reasons for the capital cost difference for a new source with total containment is that it does not include an impoundment lagoon,

and it experiences reduced operating costs because it handles less waste with substantially lower water and higher solids content than a water-intensive lagoon-based system. New sources may be able to avoid many of the other control costs facing some existing producers through careful site selection, such as choosing to locate at a site with sufficient available land nearby for applying manure. Furthermore, other technologies are available to new sources, that have been implemented by existing sources, that are also capable of achieving the no discharge standard. *See* section IV C above for further discussion of other technologies. Since the new source requirements for Subpart C are the same as the corresponding existing source requirements, EPA concludes that the NSPS requirements promulgated today do not present a barrier to entry for new facilities. For Subpart D facilities, where the new source requirements are more stringent than the existing source requirements, EPA concludes that the NSPS requirements do not pose a barrier to entry because of the currently widespread use of animal confinement practices and waste management technologies that can comply with the zero discharge standard, and because these total containment technologies and practices are less costly to implement than water-intensive systems (*e.g.*, such as water flush waste management) that are exposed to precipitation. EPA costed for zero discharge technologies and showed that these would pose no barrier to entry. Now that operations can choose an alternative option that might be cheaper to implement, EPA believes that there is even less likelihood that there is a barrier to entry. More information is provided in the *Technical Development Document* and the *Economic Analysis* supporting the final regulations.

3. What Technology-Based Limitations Apply to Small and Medium CAFOs?

In today's final rule, small and medium-size AFOs that have been defined or designated as CAFOs by the permitting authority would not be subject to the effluent limitations guidelines and standards specified in part 412. (Refer to section IV.C.2.a. of this preamble for a discussion of the key public comments and EPA's final analysis for applying the effluent limitations guidelines only to Large CAFOs.) Rather, for Small and Medium CAFOs the permit writer would use BPJ to establish, case by case, the appropriate technology-based requirements for each permit. The technology-based requirements must address the production area and the land application area(s). Establishing permit limits for these facilities on a BPJ basis, using 40 CFR 125.3 as a guide for the types of factors to consider, allows for the establishment of permit conditions that are tailored to and more directly address the site-specific conditions that led to the facility being defined or designated as a CAFO. In instances where technology-based requirements are not protective of water quality, the permit writer will also establish water quality-based effluent limits.

For the production area, the permitting authority must establish the technology-based limitations on the discharge of manure, litter, and process wastewater, including limitations where applicable based on the minimum duration and intensity rainfall event for which the CAFO can design and construct a system to contain all manure, litter, and process wastewater and storm water. Technical references from USDA and the American Society of Agricultural Engineers should be consulted for appropriate design factors to consider for containment structures. Typical design factors are: (1) Sludge volume, (2) treatment volume, (3) volume of manure and wastewater between drawdown events, (4) total volume for runoff and precipitation, and (5) the minimum duration and intensity rainfall event portion of (4).

For the land application area, the permitting authority must consider permit requirements that place technology-based limits on discharges resulting from the application of manure, litter, and process wastewater to land under the control of the CAFO owner or operator, including restrictions on the rates of application to ensure appropriate agricultural utilization of nutrients. In today's final rule, all CAFOs must develop and implement a nutrient management plan (as described in the next section).

4. Will CAFOs Be Required To Develop and Implement a Nutrient Management Plan?

Under today's final rule, NPDES permits for all CAFOs will require the development and implementation of a nutrient management plan. At a minimum, a nutrient management plan must include BMPs and procedures necessary to achieve effluent limitations and standards. The plan must, to the extent applicable, address the following minimum elements:

- Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- Ensure proper management of animal mortalities (*i.e.*, dead animals) to ensure that they are not disposed of in any liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- Ensure that clean water is diverted, as appropriate, from the production area;
- Prevent direct contact of confined animals with waters of the United States;
- Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, or process wastewater, or storm water storage or treatment system, unless specifically designed to treat such chemicals and other contaminants;
- Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and
- Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

For Large CAFOs these minimum elements of a nutrient management plan must also meet the more detailed requirements in the part 412 effluent guidelines. For Small and Medium CAFOs, or other operations not otherwise subject to part 412 requirements for land application, the minimum elements of a nutrient management plan will be further specified in the permit, on a site specific basis, based on the best professional judgment of the permitting authority.

What did EPA propose? In the proposed rule, EPA introduced the concept of a ''Permit Nutrient Plan'' (''PNP''), and proposed that permits for all CAFOs would require the development and implementation of a PNP. For CAFOs not subject to the ELGs, the proposal called for the permitting authority to consider the need for a PNP.

The concept of a PNP, as opposed to the use of the term CNMP, was used by EPA to identify those specific aspects of a CNMP that would be required under

the proposed regulatory program. In the proposal EPA included a discussion documenting the relationship between a CNMP and a PNP. EPA also prepared, and made available for public review as a supporting document, a draft guidance document entitled *Managing Manure Nutrients at Concentrated Animal Feeding Operations* which provided information concerning the content of a PNP. The PNP was considered to be the subset of activities in a USDA defined CNMP that relate to compliance with the effluent discharge limitations and other requirements of the NPDES permit. EPA also proposed that it be developed, or reviewed and modified, by a certified specialist. The proposal would have required the PNP to be developed within 3 months of submitting either *an* NOI for coverage under an NPDES general permit or an application for *an* NPDES individual permit. CAFO operators would be required to notify the permitting authority when the PNP had been developed. EPA's position was that the content of a PNP was consistent with that of a CNMP and could be addressed in a single plan for a given operation.

What were the key comments? In general, commenters supported the concept of requiring the development and implementation of nutrient management plans by CAFOs. Although commenters generally supported the overall concept, many did not endorse the specific approach taken by EPA in the proposed rule. There was significant comment from stakeholders that the PNP would require the development of a separate plan in addition to a CNMP. Although EPA had intended the PNP to be a subset of information contained within a typical CNMP, not an independent or separate plan, a number of commenters misunderstood that point, and otherwise felt that the proposal would result in confusion in the regulated community.

The SBAR Panel noted the concerns of some small business representatives regarding the practical difficulties of ensuring that manure is always applied at agronomic rates. The Panel recommended that EPA continue to work with USDA to explore ways to limit permitting requirements to the minimum necessary to deal with such threats and to define what is ''appropriate'' land application consistent with the agricultural storm water exemption. The Panel agreed that if manure and wastewater are applied to land at agronomic rates and a facility is designed to contain the discharge from a 25-year, 24-hour storm, that facility would have minimal potential to discharge or adversely affect water quality. However, it is also possible that an operation might land apply in excess of agronomic rates but still not discharge, depending on such factors as annual rainfall, local topography, and distance to the nearest stream. The Panel recommended that EPA consider such factors as it develops requirements related to land application.

The SBAR Panel also raised concerns related to the development and implementation of CNMPs, as well as specific requirements for applying nutrients at a phosphorous-based rather than a nitrogen-based rate in certain circumstances. Small business representatives expressed concerns about application of manure at phosphorus-based rates. The Panel noted the high cost of phosphorus-based application relative to nitrogen-based application and supported EPA's intent to require the use of phosphorus-based application rates only where necessary to protect water quality, if at all, keeping in mind its legal obligations under the Clean Water Act. If the soil is not phosphorus-limited, nitrogen-based application should be allowed. The Panel recommended that EPA consider leaving the determination of whether to require the use of phosphorus-based rates to BPJ, and continue to work with USDA in exploring such an option.

Rationale. In the March 1999 USDA/EPA *Unified National Strategy for Animal Feeding Operations* EPA and USDA endorsed the concept of CNMPs for all AFOs. The Strategy acknowledged that the vast majority of these plans would be developed under voluntary programs while a limited number would be prepared under the regulatory program. In today's final rule, CAFOs, which represent only a small proportion of all AFOs, are required to have a nutrient management plan, and the nutrient management plan represents a subset of activities within a CNMP that are necessary for CWA regulatory purposes. EPA believes that this approach is consistent with the concepts in the Strategy.

EPA explained in section IV.C.2.b above that the BMPs specified in today's regulation, including the requirement to develop and implement a nutrient management plan, represent the minimum elements of an effective BMP program and are necessary to control the discharges of pollutants to surface waters. As discussed there, non-numeric effluent limitations consisting of BMPs are particularly suited to the regulation of CAFOs. In particular, EPA believes that it is generally infeasible to establish a numeric effluent limitation for discharges of land-applied CAFO waste. The factors that make a numeric limitation infeasible include, among other things, that storm water discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose nature and extent vary according to geography and local land use. Accordingly, the final regulations at section 122.42(e) specify the need for a nutrient management plan for all CAFOs and the general elements that the plan must address.

For Large CAFOs, EPA has specified the need for a nutrient management plan as a non-numeric effluent limitation in the form of a BMP requirement under the final ELGs. For Small and Medium CAFOs, and other operations that are not subject to the CAFO effluent guidelines, authority to require a nutrient management plan exists under Clean Water Act sections 402(a)(1) and (2) and 40 CFR 122.44(k). EPA believes that a nutrient management plan requirement for the Small and Medium CAFOs is necessary in order to appropriately control discharges of pollutants and otherwise carry out the purposes and intent of the CWA. For these operations, EPA found it was appropriate for the final rule to specify, on a national basis, the requirement for a nutrient management plan and the general elements that the plan must address. In turn, the final rule allows the permitting authority to include, on a best professional judgment basis in light of more localized factors, more specific nutrient management plan requirements as necessary to ensure appropriate agricultural utilization of nutrients at the operation.

EPA has addressed the SBAR panel concerns by defining the scope of a nutrient management plan with reference to those elements necessary to ensure that manure is managed effectively insofar as they are related to possible discharges to surface water. Further, today's final rule requires land application rates based on the site-specific technical standards established by the Director.

EPA agrees that the use of the term PNP created unintended confusion. While EPA remains a strong advocate of the development of CNMPs the Agency recognized the need to address this confusion. In response to comments, EPA is relying on the more generic term, ''nutrient management plan'' in today's rule. By way of clarification, the nutrient management plan is a separate and distinct term that applies to the subset of activities in a USDA-defined CNMP that are required by the CAFO effluent guidelines or NPDES permit regulations. These requirements are

defined in today's rule as the minimum elements that all nutrient management plans, developed as a special condition of an NPDES permit, must meet. EPA expects that many CAFOs will satisfy the requirement to develop a nutrient management plan by developing a full CNMP, although a full CNMP is not required in today's regulations. The minimum measures of a nutrient management plan in today's final rule are consistent with the content of both the PNP as proposed by EPA and the CNMP as defined by USDA. EPA's position remains that the development and implementation of a full CNMP is one of the most effective methods for a permitted operation to demonstrate compliance with the nutrient management plan requirements required by this rule.

In today's rule, EPA is requiring all CAFOs to develop and implement a nutrient management plan by December 31, 2006, except that CAFOs seeking to obtain coverage under a permit subsequent to that date must have a nutrient management plan developed and implemented upon the date of permit coverage. This is consistent with the dates being established for the ELG. As discussed in section IV.C.2.b of this preamble, the ELGs promulgated today require Large CAFOs that are existing sources to implement the land application requirements at 40 CFR 412.4(c) by December 31, 2006 because that is the date when EPA is assured that the required planning is in fact available to the great number of regulated sources. For Large CAFOs that are new sources (*i.e.*, those commencing construction after the effective date of this rule), the land application requirements at 40 CFR 412.4(c) apply immediately.

EPA has similarly concluded that Small and Medium CAFOs subject to the NPDES provisions for nutrient management plans also, in general, will be unable to develop and implement a nutrient management plan by the date they will need to seek permit coverage under the requirements of this rule, for reasons of insufficient infrastructure. Therefore, EPA is requiring Small and Medium CAFOs to develop and implement NMP plans by December 31, 2006. As discussed in section IV.C.2.b, among other things, this time frame allows reasonable time for States to update their NPDES programs and issue permits to reflect the nutrient management plan requirements of today's rule and provides flexibility for permit authorities to establish permit schedules based on specific circumstances, including prioritization of nutrient management plan development and implementation based on site-specific water quality risks and the available infrastructure for development of nutrient management plans. Refer to section IV.C.2.b for additional discussion on the time frame by which CAFOs must implement the land application requirements of 40 CFR 412.4(c).

Through the permit application process (every five years), a nutrient management plan will have to be reviewed and updated by the CAFO owner or operator. EPA recognizes that the nutrient management plan will be a dynamic document that might require updates more frequently than every five years. A site-specific nutrient management plan that reflects the current CAFO operation must be maintained on-site by the CAFO owner/operator. The most obvious factor that would necessitate an update to the nutrient management plan is a substantial change in the number of animals at the CAFO. A substantial increase in animal numbers (for example an increase of greater than 20 percent) would significantly increase the volume of manure and total nitrogen and phosphorus produced on the CAFO. As a result, the CAFO would need to reevaluate animal waste storage facilities to ensure adequate capacity and may need to reexamine the land application sites and rates. Another example of a reason for updating the nutrient management plan is a change in a CAFO's cropping program, which could significantly alter land application of animal waste. Changes in crop rotation or crop acreage, for instance, could significantly alter land application rates for fields receiving animal waste.

5. Does EPA Require Nutrient Management Plans To Be Developed or Reviewed by a Certified Planner?

Although EPA promotes and supports the use of certified specialists to help ensure the quality of nutrient management plans, the Agency is not requiring such plans to be developed or reviewed by a certified planner as part of this final rule.

What did EPA propose? EPA proposed the Permit Nutrient Plans be developed, or reviewed and modified, by a certified specialist. A certified planner was defined as someone who has been certified to prepare CNMPs by USDA or a USDA sanctioned organization.

What were the key comments? EPA received a number of comments on this provision. Many States support a State certification program where they would have the flexibility to develop their own program. Some producers and environmental groups supported certified plans as outlined in the proposal. Many comments related to the cost of having a specialist develop or review a plan and whether there are enough specialists across the country to handle the volume of work. Some said that a certified plan would not achieve the goal of improved water quality. Others said that operators should be able to develop their own plan, noting that USDA tools and other resources are available to operators and a specialist is not needed. There was also concern that EPA was limiting the type of specialist by listing, in the proposal, examples of who might be a specialist.

Rationale. EPA agrees that certification programs are more appropriately developed by USDA or at the State level. State resources, coordination with local stakeholders, and State requirements relating to nutrient management are some of the factors that may influence State specific certification programs. EPA shares the concerns regarding the current capacity to develop up to 15,500 certified plans for CAFOs and meet the demands from a universe of 222,000 other AFOs requesting CNMPs through USDA's voluntary program. Currently, EPA does not have a reliable estimate on the number of certified specialists available for developing and implementing nutrient management plans. However, EPA recognizes that some States already have certification programs in place for nutrient management planning, and expects that the USDA and EPA guidance for AFOs and CAFOs will provide additional impetus for new and improved State certification programs. These programs provide an excellent foundation for producing qualified specialists for nutrient management planning. When all of these State certification programs are in place, EPA expects that there will be sufficient capacity to develop and implement the required nutrient management plans by the required regulation implementation date of December 31, 2006.

Although not required, EPA encourages CAFOs to make use of certified specialists with the expertise to develop high quality nutrient management plans. The purpose of using certified specialists is to ensure that effective nutrient management plans are developed and/or reviewed and modified by persons who have the requisite knowledge and expertise to develop nutrient management plans that meet the regulatory requirements and that are appropriately tailored to the site-specific needs and conditions at each CAFO. Interested parties should

consult with USDA, State Agricultural Departments, and their NPDES permitting authority regarding the availability of certified specialists and opportunities to be certified.

Under today's final rule operators may develop and implement their own nutrient management plan, and may themselves become certified nutrient management planners. In fact, EPA indicated in the SBAR Panel Report that it expected that many operators could become certified through USDA or land grant universities to prepare their own nutrient management plans. While no definitive number is currently available, results from preliminary draft studies indicate that the average CNMP cost per farm was $7,276 per year. The list of sources in the proposal of who can provide CNMP certified specialists is there only as a sample list. It in no way precludes or prevents an operator from obtaining a CNMP from an alternate source.

6. What Are the Special Conditions Applicable to All NPDES CAFO Permits?

In today's rule EPA is defining two special conditions that are to be required in all NPDES CAFO permits: (1) CAFO owners or operators must develop and implement a nutrient management plan that addresses specific minimum elements and (2) the CAFO owner or operator must maintain permit coverage for the CAFO until there is no remaining potential for a discharge of manure, litter, or associated process wastewater other than agricultural storm water from land application areas, that was generated while the operation was a CAFO (*i.e.* proper closure). The special conditions in an NPDES permit are used primarily to supplement effluent limitations and ensure compliance with the Clean Water Act.

A discussion of the specific nutrient management plan requirements of today's rule, the key public comments and EPA rationale for requiring nutrient management plans is included in section IV.C.4 of this preamble.

In today's rule, EPA is adopting as final the proposal to require permitted CAFOs that lose their status as CAFOs (*e.g.*, they cease operations, or reduce their number of animals below the regulatory thresholds) to retain an NPDES permit until there is no remaining potential for a CAFO-generated discharge other than agricultural storm water from the land application areas. Should the facility's permit expire, the owner/operator would be required to reapply for an NPDES permit if the facility has not been properly closed (*i.e.*, the facility still has a potential to discharge). Proper facility closure includes but is not limited to removal of water from lagoons and proper disposal or reuse of manure removed from storage areas such as pens, lagoons, and stockpiles. For CAFO facilities that down-size to become AFOs, proper closure of the CAFO is achieved when there is no longer a potential to discharge any manure, litter, or process wastewater generated while the operation was a CAFO.

What did EPA propose? In the proposal, the Agency discussed a variety of options for ensuring proper closure of CAFOs, including applying financial instruments, preparing closure plans, and, as adopted today, retaining an NPDES permit until the facility is properly closed.

EPA proposed two additional special conditions that are not being included in today's final rule. EPA proposed that the permit writer must consider whether to include special conditions to address (1) Timing restrictions on land application of manure or litter and wastewater to frozen, snow-covered, or saturated ground, and (2) conditions to control discharges to ground water with a direct hydrologic connection to surface water. Although today's rule does not include a national requirement for either of these issues to be regulated in the permit, the permitting authority may impose permit terms and conditions that address either of these issues on a case-by-case basis as appropriate. See section IV.C.2.b above for a discussion of the key comments on these two issues and EPA's reasons for not including either of them as national requirements in today's rule.

What were the key comments? Industry comments largely supported the proposal to require facilities to retain an NPDES permit until properly closed. Some environmental groups, U.S. Fish and Wildlife Service, some States and citizens preferred a closure plan with financial assurance, expressing concern that taxpayers end up paying to clean up abandoned lagoons, whereas this should be the responsibility of the CAFO operator. Some commenters opposed the closure requirement, stating that it was inconsistent with and more restrictive than NPDES requirements for other industry sectors. Others questioned the practical meaning of closure, as well as the practical ability of permit authorities to track such closed facilities.

Rationale. EPA's establishment of a minimum national standard for closure will help ensure the environmental risks associated with CAFO manure and wastewater are minimized upon closure. Although EPA is not establishing financial surety measures, States may want to implement them as appropriate under their own authorities to prevent the environmental damage caused by facilities that are no longer in business. EPA concluded that requiring retention of an NPDES permit provides a far more effective tool for environmental protection than would simply requiring a closure plan that might, or might not, be effectively implemented.

In practical terms, how clean a facility must be to meet closure requirements that the operation no longer has a potential to discharge will be left to the permitting authority. EPA is not requiring CAFO facilities to post bonds to obtain an NPDES permit, nor does EPA calculate that closure costs are necessarily high. EPA assumes that disposal methods normal to the operation will be used to close out the facility.

The need to maintain NPDES coverage until proper closure of the CAFO is a result of the unique nature of CAFO facilities. As a part of their normal operation CAFOs may, among other things, have manure and litter storage structures, lagoons, and feed storage areas. The abandonment of any one of these has the potential for catastrophic environmental damage to waters of the U.S. As a result, to protect against unauthorized discharges, there is a need to maintain coverage of the facility under the NPDES permit until the facility is properly closed. Upon verification of the proper closure of the facility by the permitting authority there will be no need to retain the NPDES permit. The NPDES permit can then be terminated and there would be no longer any need to track the facility. EPA expects that the State permitting authority will cease to issue a permit based on evidence that the facility is properly closed. It is not expected that this will be a major burden to the States.

7. Standard Conditions Applicable to All NPDES CAFO Permits

Standard conditions in an NPDES permit are preestablished conditions that apply to all NPDES permits, as specified in 40 CFR 122.41. They include Duty to Comply, Duty to Reapply, Need to Halt or Reduce Activity Not a Defense, Duty to Mitigate, Proper Operation and Maintenance, Permit Actions, Property Rights, Duty to Provide Information, Inspection and Entry, Monitoring and Records, Signatory Requirement, Reporting Requirements, Bypass and Upset. Today's action does not make any changes to the standard permit

conditions, with respect to NPDES permits issued to CAFOs.

D. What Records and Reports Must Be Kept On-Site or Submitted?

Today's rule specifies the types of records to be kept on-site at the CAFO in accordance with the recordkeeping requirements section of the permit. Today's rule also specifies the types of monitoring to be performed, the frequencies for collecting samples or data, and how to record, maintain, and transmit the data and information to the permitting authority in accordance with the monitoring and reporting section of the permit.

The specific recordkeeping, monitoring, and reporting requirements in today's rule balance the need for information documenting permit compliance and minimizing the burden on the permittee to collect and record data. State permit authorities have the option to include more stringent requirements if they find such an action necessary. The minimum recordkeeping, monitoring, and reporting requirements that must be included in each NPDES permit are as follows:

Recordkeeping requirements. All CAFO operators must maintain a copy of the site specific nutrient management plan on site, and records documenting the implementation of the best management practices and procedures identified in the nutrient management plan.

In addition, Large CAFOs must maintain operation and maintenance records that document (a) visual inspections, inspection findings, and preventive maintenance needed or undertaken in response to the findings; (b) the date, rate, location, and methods used to apply manure or litter and wastewater to land under the control of the CAFO operator; (c) the results of annual manure or litter and wastewater sampling and analysis to determine the nutrient content; and (d) the results of representative soil sampling and analyses conducted at least every five years to determine nutrient content.

Large CAFOs must also maintain records of manure transferred to other persons that demonstrate the amount of manure and/or wastewater that leaves the operation and record the date, name, and address of the recipient(s);

Today's rule requires all CAFOs to submit an annual report that includes the following information:

- Number and type of animals confined (open confinement and housed under roof).
- Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
- Total number of acres for land application covered by the nutrient management plan;
- Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
- Summary of all manure and wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
- A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

What did EPA propose? EPA proposed requirements to keep, maintain for five years, and make available to the Director or the Regional Administrator, records of inspections and manure sampling and analysis, records related to the development and implementation of a PNP, and records of off-site transfers of manure. EPA proposed that CAFO operators maintain records of off-site transfer and provide the recipient with a brochure on proper land application practices. EPA also proposed a small quantity exemption limit below which an operator would not have to keep records of manure transfers. EPA proposed operators submit a cover sheet and executive summary of their permit nutrient plans to the permitting authority. In addition, the Agency proposed to require operators to submit a written notification to the permitting authority, signed by a certified planner, that the PNP has been developed or amended and is being implemented. The proposal required annual review of the PNP and re-submission of the executive summary if there were any changes to the PNP.

Today's final rule changes the recordkeeping and reporting requirements that were proposed in the following ways: EPA is not requiring the CAFO owner or operator to provide the recipient of the manure with a brochure that describes the recipient's responsibilities for appropriate manure management, and EPA is not adopting the proposal to set a minimum quantity exemption, such that records of manure transfer would not be required below a certain quantity. In addition, EPA is no longer requiring CAFO operators to submit with the NOI a copy of the cover sheet and executive summary of the CAFO operator's current Permit Nutrient Plan (PNP).

What were the key comments? EPA received a number of comments on the proposed recordkeeping, monitoring, and reporting requirements. The operators commented that monitoring and reporting programs are difficult to establish, expensive, and burdensome on the operator. They also claimed that these requirements would necessitate a significant amount of operator time and labor, and would provide opportunities for ''technical'' permit violations, with no benefit to water quality. Environmental groups and a majority of citizen commenters stated that these provisions are long overdue and any records submitted should be made available for public review.

The SBAR Panel recommended that EPA give careful consideration to all proposed recordkeeping requirements and explore options to streamline these requirements for small entities. Regarding the requirement to provide nutrient content information to manure recipients, the Panel believed that this would be minimally burdensome if analysis of this content is already required as part of the CNMP to ensure proper land application. The Panel suggested that EPA consider limiting any requirement to provide nutrient content analysis to situations where such analysis is required as part of the CNMP to ensure proper on-site land application, or possibly where the operator transfers manure to multiple recipients. Finally, the Panel noted that under the Paperwork Reduction Act and its implementing regulations, all reporting and recordkeeping requirements must be certified by the issuing agency to have practical utility and to reduce, to the extent practicable and appropriate, the burden on those required to comply, including small entities (5 CFR 1320.9).

Rationale. The recordkeeping, reporting, and monitoring requirements adopted today are necessary to demonstrate compliance with the requirements of today's rule and assure protection of water quality.

EPA is not requiring Small and Medium CAFOs to maintain records of the of the manure transferred off-site, or provide the recipient with an analysis of the nutrient content of the manure. As a result, these categories of CAFOs are relieved of the burden of keeping records of off-site transfer. EPA chose to provide regulatory relief for the Medium CAFOs by not requiring them to keep records of their manure transferred to third parties. EPA believes these CAFOs have more land and therefore ship less

manure off-site. EPA's goal is to track the majority of the manure that is transferred to third parties. This information kept by the large operations is sufficient for EPA needs.

EPA decided not to include a small quantity exemption for off-site transfer of manure in the final rule. The reason for the proposed exemption was to provide record keeping relief to small operators. However, EPA determined that effective implementation of the small-quantity exemption would itself have required considerable recordkeeping by the operator. Practically, then, including this exemption would not have significantly reduced the record keeping burden to small operators.

The annual report, which includes seven elements that are readily available to the CAFO owner/operator in the nutrient management plan, is being required in today's rule rather than the proposed PNP written notification, cover sheet and executive summary. The annual report gives the permitting authority information on the number of overflows occurring in a year (in order to verify compliance with the production area design requirements), the amount of manure generated, the amount of manure transferred off-site, and the number of acres available for land application. The annual report also provides information, such as the degree to which CAFOs are expanding and accounting for increased manure production, which is important to evaluate changes that might be needed to comply with permitting requirements. The final rule requires the permittee to indicate whether its plan was either written or reviewed by a certified CNMP planner. EPA is not requiring that a certified planner be used to develop or review the plan required under this rule. However, EPA believes that certified planners provide a valuable service in plan development such as consistency and improved plan quality. Knowledge of which plans were developed by a certified planner will help EPA focus its compliance assistance efforts and help States determine level of permit review needed for each facility. EPA has concluded that the annual report is a more effective method for ensuring permitting authorities and EPA have basic information documenting CAFO performance relative to permit requirements.

EPA disagrees with the public comments suggesting that the monitoring and reporting requirements do not provide any benefit to water quality. Monitoring and reporting provide the basis for CAFO operators and permitting authorities to evaluate compliance with the requirements of today's rule and the associated environmental implications. Monitoring provides valuable benchmark information and subsequent data that a permittee can use to adjust its activities, better comply with the requirements of the permit, and thereby better control its runoff or potential runoff. Monitoring also provides documentation of the operation's activities, which is essential to determine whether regulatory requirements are being implemented effectively and the success of those activities in protecting water quality. Monitoring allows the permittee and the permitting authority to know what, if any, contribution the permittee is making to the degradation of water quality. Such information is also helpful in determining the improvements in water quality as a result of permit compliance activities.

In this final rule, EPA has made great efforts to reduce burden beyond what is noted above. EPA has eliminated all certifications that were proposed, which include middle category certification that a facility is not a CAFO, certification of off-site manure recipients, and the use of certified CNMP planners. In addition, EPA is not including a national requirement for operators to document that there is no direct hydrological connection from groundwater beneath their production area to surface waters (or add controls where there is such a connection).

V. States' Roles and Responsibilities

A. What Are the Key Roles of the States?

State regulatory agencies with authorized NPDES programs are principally responsible for implementing and enforcing today's rule. This final rule obligates NPDES permit authorities to revise their NPDES programs expeditiously and to issue new or revised NPDES permits to include the revised effluent guidelines and other permit requirements adopted today. In authorized States, their role would also include determinations for no potential to discharge (*see* section IV.B.2 of this preamble) and CAFO designation (*see* section IV.A.7 of this preamble) of AFOs as CAFOs.

Various State organizations, such as environmental agencies, agricultural agencies, conservation districts, play a central role in implementing voluntary and other programs (*e.g.*, technical assistance, funding, public involvement, legal access to information, and setting protocols) that support the goal of protecting water quality through proper management of animal manure. EPA fully expects and promotes effective cooperation between voluntary and regulatory programs to achieve this goal. In designing this final rule, EPA has placed the principal emphasis on Large CAFOs which are part of the base NPDES program. With this in mind, EPA is promoting and encouraging States to use the full range of voluntary and regulatory tools to address medium and small operations.

B. Who Will Implement These New Regulations?

The requirements of today's rule will be implemented by issuing NPDES permits. Today's rule will be implemented by States with authorized NPDES permit programs for CAFOs. As of the date of this final rule, there are 45 States and 1 Territory with authorized NPDES permit programs for CAFOs. In States without an authorized NPDES program for CAFOs and in Indian Country, EPA will implement the rule.

C. When and How Must a State Revise Its NPDES Permit Program?

NPDES regulations require State NPDES permitting programs to be revised to reflect today's changes within one year of the date of promulgation of final changes to the Federal CAFO regulations (*see* 40 CFR 123.62(e)). In cases where a State must amend or enact a statute to conform with the revised CAFO requirements, such revisions must take place within two years of promulgation of today's regulations. States that do not have an existing authorized NPDES permitting program but who seek NPDES authorization after these CAFO regulatory provisions are promulgated must have authorities that meet or exceed the revised federal CAFO regulations at the time authorization is requested.

Today's regulation requires States to have technical standards for nutrient management consistent with 40 CFR 412.4(c)(3). If the State already has nutrient management standards in place, it is sufficient to provide those to EPA along with the State's submission of regulatory revisions to conform to today's changes. If the State has not already established technical standards for nutrient management, the Director shall establish such standards by the date specified in § 123.62(e) and provide those to EPA along with the State's submission of regulatory revisions.

The NPDES program modification process is described at 40 CFR 123.62. Opportunities for public input into the process of review and approval of State program revisions and approvals is

described in section V.C of this preamble.

D. When Must States Issue New CAFO NPDES Permits?

EPA does not typically establish requirements for when States must develop and issue NPDES permits. However, today's regulations require CAFOs to seek NPDES permit coverage under general permits within certain time frames, and CAFOs may not discharge any pollutants to waters of the United States without a permit. Thus, it is in States' interests to issue new or revised NPDES permits in a timely manner. It is EPA's expectation that new general permits will be available no later than the date on which CAFOs have a duty to apply for an NPDES permit. *See* section IV.B.3 for a full description of when CAFOs must seek permit coverage.

E. What Types of NPDES Permits Are Appropriate for CAFOs?

The NPDES regulations provide the permitting authority with the discretion to determine the most appropriate type of permit for a CAFO. The two basic types of NPDES permits are individual and general permits. An individual permit is a permit specifically tailored for a specific facility, while a general permit is developed and issued by a permitting authority to cover multiple facilities with similar characteristics.

EPA recognizes that most CAFOs will likely be covered by NPDES general permits; however, there are some circumstances where an individual permit might be appropriate (*e.g.*, exceptionally large facilities, facilities that have a history of noncompliance, or facilities applying for approval to use an alternative performance standard in lieu of baseline technology-based effluent guidelines). The decision whether to issue a general or individual permit lies with the NPDES permitting authority. Section VI of the preamble discusses opportunity for public involvement in the NPDES permitting process.

As permit authorities explore innovative permitting approaches, the use of ''watershed-based NPDES permits'' might become more prevalent. For example, a watershed-based permit could be issued to CAFOs within a specific watershed. EPA is currently promoting pilot projects to help evaluate the benefits of watershed-based permitting and encourages States to use such a flexible tool to address the varied needs of specific watersheds.

F. What Flexibility Exists for States To Use Other Programs To Support the Achievement of the Goals of This Regulation?

In designing this final rule, EPA has striven to maximize the flexibility for States to implement appropriate and effective programs to protect water quality and public health by ensuring proper management of manure and related wastewater. This rule establishes binding legal requirements for Large CAFOs and maintains substantial flexibility for States to set other site-specific requirements for CAFOs as needed to achieve State program objectives. EPA encourages States to maximize use of voluntary and other non-NPDES programs to support efforts by medium and small operations to implement appropriate measures and correct problems that might otherwise cause them to be defined or designated as a CAFO. EPA encourages States to use the flexibility available under the rule so that their State non-NPDES programs complement the required regulatory program. The following examples can illustrate opportunities for this State flexibility:

- States are encouraged to work with State agriculture agencies, conservation districts, USDA and other stakeholders to create proactive programs to fix the problems of small and medium operations in advance of compelling the facilities to apply for NPDES permits.
- Where a small or medium facility has been covered by an NPDES permit, the permitting authority may allow the facility to exit the permit program at the end of the 5-year permit term if the problems that caused the facility to be defined or designated as a CAFO have been corrected to the satisfaction of the permitting authority.
- A small or medium AFO might be taking early voluntary action in good faith to develop and implement a comprehensive nutrient management plan, yet might have an unexpected situation that could be the basis for the facility's being defined or designated as a CAFO. EPA encourages the permitting authority to provide an opportunity to address the cause of the discharge before defining or designating the operation a CAFO.

These examples are intended to illustrate the flexibility that EPA is promoting with regard to medium and small operations. They are not applicable to Large CAFOs.

What did EPA propose? EPA's proposed rule included an option to expand substantially the criteria for when medium and small AFOs could be defined or designated as CAFOs. The effect of these proposed changes to the structure and definition of a CAFO was to require a substantially larger number of medium and small operations to be brought into the NPDES regulatory program. EPA estimated that as many as 30,000 medium and small AFOs could be brought into the regulatory program under this option. Another option presented in the proposal was to structure the permitting requirements to build in inherent flexibility for the medium facilities. In addition, the proposal and the subsequent 2001 Notice introduced a variety of more specific options for State flexibility, including one under which a State with an effective non-NPDES program could request to operate under a simplified permitting structure.

What were the key comments? The proposed expansion of the NPDES program for medium and small operations caused great concern, particularly among the States. Many comments from both States and facility operators centered on the desire that EPA recognize the effectiveness of existing State CAFO programs. More specifically, many States wanted EPA to allow effective State non-NPDES programs to operate in lieu of a State-run NPDES program, particularly in the event that EPA in the final rule expanded the criteria for defining medium facilities as CAFOs.

In general, comments from environmental groups expressed opposition to most types of flexibility because of concerns regarding potential loss of accountability at facilities and reduced public participation. Industry commenters generally supported State flexibility as necessary to address factors such as soil, climate, and site and regional characteristics that vary within and among States. Commenters maintained that State flexibility promotes those program elements States have found to be most effective and allows States and industry to achieve workable solutions to water quality issues. States also supported maintaining a high degree of flexibility both to accommodate State-specific characteristics and priorities and to preserve their investment in existing good quality programs. Some State and industry commenters asserted that EPA's options for flexibility were too limited.

Rationale. EPA recognizes that EPA's proposed expansion of the criteria for when medium and small AFOs would be defined or designated as CAFOs would have had the effect of eliminating the flexibility for States to use voluntary and other programs. EPA is also aware that many of the States authorized to

implement the NPDES program supplement their NPDES CAFO requirements with additional State requirements. Some States currently regulate or manage CAFOs predominantly under State non-NPDES programs, or in conjunction with other water quality protection programs through participation in the CWA section 401 certification process (for permits) as well as through other means (*e.g.*, development of water quality standards, development of TMDLs, and coordination with EPA). Several States have effective alternative or voluntary programs that are intended to help small and medium operations fix potential problems that could cause them to be defined or designated as a CAFO.

EPA is encouraging States to use their non-NPDES programs to help small and medium AFOs to reduce water quality impacts and to ensure that they do not become point sources under this regulation. To the extent the voluntary program eliminates the practice that results in the AFO's being defined or designated a CAFO, the AFO may not be required to obtain NPDES permit coverage. Given that EPA has not expanded the criteria for when AFOs would be defined as CAFOs, the Agency believes that States will have the flexibility necessary to leverage effective non-NPDES programs for medium and small AFOs. EPA has also offered specific examples of flexibility that permitting authorities can exercise.

Once a facility is determined to be a CAFO, however, coverage under a permit issued by a non-NPDES program will not satisfy the NPDES permit requirement. EPA is committed to work with States to modify existing non-NPDES State programs that currently regulate CAFOs to gain EPA's approval as NPDES-authorized programs. Such a change would require a formal modification of the State's authorized NPDES program, and the State would have to demonstrate that its program meets all of the minimum criteria specified in 40 CFR part 123, Subpart B, for substantive and procedural regulations. Among other things, these criteria include the restriction that permit terms may not exceed five years, procedures for public participation, and provisions for enforcement, including third party lawsuits and federal enforceability.

VI. Public Role and Involvement

The public has an important role in the entire implementation of the NPDES Program, including the implementation of NPDES permitting of CAFOs. The NPDES regulations in 40 CFR parts 122, 123, and 124 establish public participation in EPA and State permit issuance, in enforcement, and in the approval and modification of State NPDES Programs. The purpose of this section is to provide a brief review of the key areas where the public has opportunities for substantial involvement. These opportunities for public involvement are long-standing elements of the NPDES Program. Nothing in today's final rule is intended to inhibit public involvement in the NPDES Program.

A. How Can the Public Get Involved in the Revision and Approval of State NPDES Programs?

Sections 123.61 and 123.62 of the NPDES regulations specify procedures for review and approval of State NPDES Programs. In the case of State authorization or a substantial program modification, EPA is required to issue a public notice, provide an opportunity for public comment, and provide for a public hearing if there is deemed to be significant public interest. To the extent that these final regulations require a substantial modification to a State's existing NPDES Program authorization, the public will have an opportunity to comment on the proposed modifications.

B. How Can the Public Get Involved if a State Fails To Implement Its CAFO NPDES Permit Program?

Section 123.64 of the NPDES regulations provides that any individual or organization having an interest may petition EPA to withdraw a State NPDES Program for alleged failure of the State to implement the NPDES permit program, including failure to implement the CAFO permit program.

C. How Can the Public Get Involved in NPDES Permitting of CAFOs?

Section 124.10 establishes public notice requirements for NPDES permits, including those issued to CAFOs. Under these existing regulations, the public may submit comments on draft individual and general permits and may request a public hearing on such a permit. Various sections of part 122 and § 124.52 allow the Director to determine on a case-by-case basis that certain operations may be required to obtain an individual permit rather than coverage under a general permit. Section 124.52 specifically lists CAFOs as an example point source where such a decision may be made. Furthermore, § 122.28(b)(3) authorizes any interested person to petition the Director to require an entity authorized by a general permit to apply for and obtain an individual permit. Section 122.28(b)(3) also provides example cases where an individual permit may be required, including where the discharge is a significant contributor of pollutants. See § 122.23(f)(3) for opportunities for public involvement in the process for making a ''no potential to discharge'' determination (refer to section IV.B.2 of this preamble for further discussion). Nothing in today's final rule is intended to change these provisions.

D. What Information About CAFOs Is Available to the Public?

Today's rule requires that all CAFOs, Large, Medium, and Small, and whether covered by a general or an individual permit, report annually to the permitting authority the following information:

- The number and type of animals, whether in open confinement or housed under roof;
- The estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months;
- The estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months;
- The total number of acres for land application covered by the nutrient management plan;
- The total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- A summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
- A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

EPA expects that the permitting authority will make this information available to the public upon request. This should foster public confidence that CAFOs are complying with the requirements of the rule. In particular, the information in the annual report will confirm that CAFOs have obtained coverage under an NPDES permit, are appropriately controlling discharges from the production area, and have developed and are implementing a nutrient management plan. The annual report will also provide summary information on discharges from the production area and the extent of manure production and available land application area. This will help foster public confidence that the manure is being land applied at rates that ensure

appropriate agricultural utilization of nutrients.

Today's rule makes no changes to the existing regulations concerning how CAFOs may make Confidential Business Information (CBI) claims with respect to information they must submit to the permitting authority and how those claims will be evaluated. Under the existing regulations at 40 CFR Part 2, Subpart B, a facility may make a claim of confidentiality for information it must submit and EPA must evaluate this claim if it receives a request for the information from the public. Among the factors that EPA considers in evaluating such a claim are:

- Must the information be legally provided to the public under the Clean Water Act, its implementing regulations, or other authorities? If so, a claim of confidentiality will be denied.
- Has the facility adequately shown that the information satisfies the requirements for treatment as CBI? If yes, the claim of confidentiality will be upheld.

Claims of confidentiality with respect to information submitted to the State will be processed and evaluated under State regulations.

What was proposed? In the proposal, EPA discussed submission of the PNP to the permitting authority and its availability to the public. The proposed regulations would have required the cover sheet and executive summary of each CAFO's PNP to be made publicly available. EPA proposed that the information contained in these items could not be claimed as CBI. The proposed regulations indicated that anything else in the PNP could be claimed as confidential by the CAFO, and any such claim would be subject to EPA's normal CBI procedures in 40 CFR Part 2. *See* § 122.23(l) of the proposal.

Key comments. Industry commenters claimed that the PNP would contain proprietary information. They stated that EPA should protect these plans as CBI where requested by the CAFO. They claimed that making the PNP publicly available would discourage innovation in developing waste management technologies and could make CAFOs vulnerable to unwarranted lawsuits. Environmental groups stated that the PNP must be publicly available, or citizens would have no way of ensuring that CAFOs are adequately developing and implementing the PNPs. They also expressed concerns about the burden of traveling to the permitting authority's offices to gain access to the plans. They stated that the plans should be made more accessible to them by the permitting authority, either by mail or by posting on the internet.

Rationale. The final CAFO regulations require that various types of information on the operation and waste management practices of the facility be made available to the permitting authority, either routinely or upon request. The permitting authority has discretion, subject to applicable regulations, to determine how much of this information to make available to the public and in what manner. The Annual Report that all CAFOs must submit is designed to provide the permitting authority with summary information about the implementation of the nutrient management plan. EPA believes that the information the public is most interested in seeing is contained in the Annual Reports.

With respect to the contents of the nutrient management plan, specifically, today's rule requires that the nutrient management plan be maintained on-site at the CAFO and submitted only at the request of the permitting authority. Upon submission of the nutrient management plan to the permitting authority, the CAFO operator can assert a confidential business information claim over the plan, in accordance with applicable regulations. If the permitting authority receives a request for the information, it will determine the validity of the claim and provide the requester with information in accordance with the findings of the determination and applicable regulations.

As noted, today's rule makes no changes to the existing regulations concerning how facilities may make CBI claims with respect to information they must submit to the permitting authority and how those claims will be evaluated. Any changes to how the Agency handles the issue of confidential business information are beyond the scope of today's rule and would have broad implications across a number of EPA programs. Instead EPA will evaluate future CBI claims based on the applicable laws and regulations (*see, e.g.*, CWA Section 402(j), 40 CFR Part 2, Subpart B, and 40 CFR 122.7.

VII. Environmental Benefits of the Final Rule

A. Summary of the Environmental Benefits

This section presents EPA's estimates of the environmental and human health benefits, including pollutant reductions, that will occur from this rule. Table 7.1 shows the annualized benefits EPA projects will result from the revised ELG requirements for Large CAFOs. (Monetized values for benefits associated with the revised NPDES requirements for Small and Medium CAFOs are not included in the table.) The total monetized benefits associated with the ELG requirements for Large CAFOs range from $204 to $355 million annually. The values presented in the range represent those benefits for which EPA is able to quantify and determine an economic value. These benefit value estimates reflect only those pollutant reductions and water quality improvements attributable to Large CAFOs. EPA also developed estimates of the pollutant reductions that will occur due to the revised requirements for Small and Medium CAFOs, but analysis of the monetized value of the associated water quality improvements was not completed in time for benefits estimates to be presented here. As discussed later in this section, EPA has also identified additional environmental benefits that will result from this rule but is unable to attribute a specific economic value to these additional nonmonetized or nonquantified benefits.

Detailed information on the estimated pollutant reductions is provided in the *Technical Development Document,* which is in the docket for today's rule. EPA's detailed assessment of the environmental benefits that will be gained by this rule, as well as the benefits estimates for other regulatory options considered during this rulemaking, is presented in the *Benefits Analysis,* which is also available in the rulemaking docket.

TABLE 7.1.—ANNUALIZED BENEFITS OF ELG REQUIREMENTS FOR LARGE CAFOS

[Millions of 2001$]

Types of benefits	Total for all CAFOs
Recreational and non-use benefits from improved water quality in freshwater rivers, streams, and lakes.	$166.2 to $298.6.
Reduced fish kills	$0.1.
Improved shellfish harvests	$0.3 to $3.4.

TABLE 7.1.—ANNUALIZED BENEFITS OF ELG REQUIREMENTS FOR LARGE CAFOS—Continued

[Millions of 2001$]

Types of benefits	Total for all CAFOs
Reduced nitrate contamination of private wells	$30.9 to $45.7.
Reduced eutrophication & pathogen contamination of coastal & estuarine waters (Case study of potential fishing benefits to the Albemarle-Pamlico estuary).	Not monetized [$0.2].
Reduced public water treatment costs	$1.1 to $1.7.
Reduced livestock mortality from nitrate and pathogen contamination of livestock drinking water	$5.3.
Reduced pathogen contamination of private & public underground sources of drinking water	Not monetized.
Reduced human & ecological risks from antibiotics, hormones, metals, salts	Not monetized.
Improved soil properties	Not monetized.
Reduced cost of commercial fertilizers for non-CAFO operations	Not monetized.
Total benefits	$204.1 + [B] to $355.0 + [B].

[B] represents non-monetized benefits of the rule.

B. What Pollutants Are Present in Manure and Other CAFO Wastes, and How Do They Affect Human Health and the Environment?

1. What Pollutants Are Present in Animal Waste?

The primary pollutants associated with animal wastes are nutrients (particularly nitrogen and phosphorus), organic matter, solids, pathogens, and odorous/volatile compounds. Animal waste is also a source of salts and trace elements and, to a lesser extent, antibiotics, pesticides, and hormones. The composition of manure at a particular operation depends on the animal species, size, maturity, and health, as well as on the composition (*e.g.*, protein content) of animal feed. The sections below introduce the main constituents in animal manure and include information from the *National Water Quality Inventory: 2000 Report* (hereinafter the *''2000 Inventory''*). This report is prepared every 2 years under section 305(b) of the Clean Water Act, and it summarizes State reports of impairment to their water bodies and the suspected sources of those impairments.

a. Nutrients. Animal wastes contain significant quantities of nutrients, particularly nitrogen and phosphorus. The *2000 Inventory* lists nutrients as the leading stressor of impaired lakes, ponds, and reservoirs. Nutrients are also ranked as the fifth leading stressor for impaired rivers and streams, are among the top 10 stressors of impaired estuaries, and are the second leading stressor reported for the Great Lakes. Manure nitrogen occurs in several forms, including ammonia and nitrate. Ammonia and nitrate have fertilizer value for crop growth, but these forms of nitrogen can also produce adverse environmental impacts when they are transported in excess quantities to the environment. Ammonia is of environmental concern because it is toxic to aquatic life and it exerts a direct BOD on the receiving water, thereby reducing dissolved oxygen levels and the ability of a water body to support aquatic life. Excessive amounts of ammonia can lead to eutrophication, or nutrient overenrichment, of surface waters. Nitrate is a valuable fertilizer because it is biologically available to plants. Excessive levels of nitrate in drinking water, however, can produce adverse human health impacts.

Phosphorus is of concern in surface waters because it is a nutrient that can lead to eutrophication and the resulting adverse impacts—fish kills, reduced biodiversity, objectionable tastes and odors, increased drinking water treatment costs, and growth of toxic organisms. At concentrations greater than 1.0 milligrams per liter, phosphorus can interfere with the coagulation process in drinking water treatment plants thus reducing treatment efficiency. Phosphorus is of particular concern in fresh waters, where plant growth is typically limited by phosphorus levels. Under high pollutant loads, however, fresh water may become nitrogen-limited. Thus, both nitrogen and phosphorus loads can contribute to eutrophication.

b. Organic matter. Livestock manures contain many carbon-based, biodegradable compounds. Once these compounds reach surface water, they are decomposed by aquatic bacteria and other microorganisms. During this process dissolved oxygen is consumed, which in turn reduces the amount of oxygen available for aquatic animals. The *2000 Inventory* indicates that low dissolved oxygen levels caused by organic enrichment (oxygen-depleting substances) are the third leading stressor in impaired estuaries. They are the fourth greatest stressor in impaired rivers and streams, and the fifth leading stressor in impaired lakes, ponds, and reservoirs. Severe reductions in dissolved oxygen levels can lead to fish kills. Even moderate decreases in oxygen levels can adversely affect water bodies through decreases in biodiversity characterized by the loss of fish and other aquatic animal populations, and a dominance of species that can tolerate low levels of dissolved oxygen.

c. Solids. The *2000 Inventory* indicates that dissolved solids are the fourth leading stressor in impaired lakes, ponds, and reservoirs. Solids from animal manure include the manure itself and any other elements that have been mixed with it. These elements can include spilled feed, bedding and litter materials, hair, and feathers. In general, the impacts of solids include increasing the turbidity of surface waters, physically hindering the functioning of aquatic plants and animals, and providing a protected environment for pathogens. Increased turbidity reduces penetration of light through the water column, thereby limiting the growth of desirable aquatic plants that serve as a critical habitat for fish, shellfish, and other aquatic organisms. Solids that settle out as bottom deposits can alter or destroy habitat for fish and benthic organisms. Solids also provide a medium for the accumulation, transport, and storage of other pollutants, including nutrients, pathogens, and trace elements.

d. Pathogens. Pathogens are defined as disease-causing microorganisms. A subset of microorganisms, including species of bacteria, viruses, and parasites, can cause sickness and disease in humans and are known as human pathogens. The *2000 Inventory* indicates that pathogens (specifically bacteria) are the leading stressor in impaired rivers and streams and the fourth leading stressor in impaired estuaries. Livestock manure may contain a variety of microorganism species, some of which are human pathogens. Multiple species of pathogens can be transmitted directly from a host animal's manure to surface

water, and pathogens already in surface water can increase in number because of loadings of animal manure nutrients and organic matter.

More than 150 pathogens found in livestock manure are associated with risks to humans, including the six human pathogens that account for more than 90% of food and waterborne diseases in humans. These organisms are: *Campylobacter spp., Salmonella spp.* (non-typhoid), *Listeria monocytogenes, Escherichia coli* O157:H7, *Cryptosporidium parvum,* and *Giardia lamblia.* All of these organisms may be rapidly transmitted from one animal to another in CAFO settings. An important feature relating to the potential for disease transmission for each of these organisms is the relatively low infectious dose in humans. The protozoan species *Cryptosporidium parvum* and *Giardia lamblia* are frequently found in animal manure. Bacteria such as *Escherichia coli* O157:H7 and *Salmonella spp.* are also often found in livestock manure and have been associated with waterborne disease. The bacteria *Listeria monocytogenes* is ubiquitous in nature and is commonly found in the intestines of wild and domestic animals.

e. Other potential contaminants. Animal wastes can contain other chemical constituents that could adversely affect the environment. These constituents include salts, trace elements, and pharmaceuticals, including antibiotics and hormones. Although salts are usually present in waste regardless of animal or feed type, trace elements and pharmaceuticals are typically the result of feed additives to help prevent disease or promote growth. Accordingly, concentrations of these constituents vary with operation type and from facility to facility. The other constituents present in animal wastes are summarized below. Additional information on animal wastes is presented in the preamble for the proposed rule (*see* 66 FR 2976–2979) and the *Technical Development Document.*

Salts. The salinity of animal manure is directly related to the presence of dissolved mineral salts. In particular, significant concentrations of soluble salts containing sodium and potassium remain from undigested feed that passes unabsorbed through animals. Other major constituents contributing to manure salinity are calcium, magnesium, chloride, sulfate, bicarbonate, carbonate, and nitrate. Salt buildup may deteriorate soil structure, reduce permeability, contaminate ground water, and reduce crop yields. In fresh waters, increasing salinity can disrupt the balance of the ecosystem, making it difficult for resident species to remain. Salts may also contribute to degradation of drinking water supplies.

Trace elements. The *2000 Inventory* indicates that metals are the leading stressor in impaired estuaries and the second leading stressor in impaired lakes. Trace elements in manure that are of environmental concern include arsenic, copper, selenium, zinc, cadmium, molybdenum, nickel, lead, iron, manganese, aluminum, and boron. Of these, arsenic, copper, selenium, and zinc are often added to animal feed as growth stimulants or biocides. Trace elements can also end up in manure through use of pesticides, which are applied to livestock to suppress houseflies and other pests. Trace elements have been found in manure lagoons and in drainage ditches, agricultural drainage wells, and tile line inlets and outlets. They have also been found in rivers adjacent to hog and cattle operations. Trace elements in agronomically applied manures are generally expected to pose little risk to human health and the environment. However, repeated application of manures above agronomic rates could result in cumulative metal loadings to levels that potentially affect human health and the environment. There is some evidence that this is happening. For example, in 1995, zinc and copper were found building to potentially harmful levels on the fields of a hog farm in North Carolina.

Antibiotics. Antibiotics are used in AFOs and can be expected to appear in animal wastes. Antibiotics are used both to treat illness and as feed additives to promote growth or to improve feed conversion efficiency. Between 60 and 80 percent of all livestock and poultry receive antibiotics during their productive lifespan. The primary mechanisms of elimination are in urine and bile, so essentially all of an antibiotic administered is eventually excreted, whether unchanged or in metabolite form. Little information is available regarding the concentrations of antibiotics in animal wastes, or on their fate and transport in the environment. One concern regarding the widespread use of antibiotics in animal manure is the development of antibiotic-resistant pathogens. Use of antibiotics, especially broad-spectrum antibiotics, in raising animals is increasing. This could be contributing to the emergence of more strains of antibiotic-resistant pathogens, along with strains that are growing more resistant.

Pesticides and hormones. Pesticides and hormones are compounds used at AFOs and they can be expected to appear in animal wastes. These types of pollutants may be linked with endocrine disruption. The *2000 Inventory* indicates that pesticides are the second leading stressor in impaired estuaries. Pesticides are applied to livestock to suppress houseflies and other pests. There has been very little research on losses of pesticides in runoff from manured lands. A 1994 study showed that losses of cyromazine (used to control flies in poultry litter) in runoff increased with the rate of poultry manure and litter applied and the intensity of rainfall. Specific hormones are used to increase productivity in the beef and dairy industries. Several studies have shown hormones are present in animal manures. Poultry manure has been shown to contain both estrogen and testosterone. Runoff from fields with land-applied manure has been reported to contain estrogens, estradiol, progesterone, and testosterone, as well as their synthetic counterparts. In 1995, an irrigation pond and three streams in the Conestoga River watershed near the Chesapeake Bay had both estrogen and testosterone present. All of these sites were affected by fields receiving poultry litter.

2. How Do These Pollutants Reach Surface Waters?

Pollutants in animal waste and manure can enter the environment through a number of pathways, including surface runoff and erosion, direct discharges to surface water, spills and other dry-weather discharges, leaching into soil and ground water, and volatilization of compounds (*e.g.*, ammonia) and subsequent redeposition to the landscape. These discharges of manure pollutants can originate from animal confinement areas, manure handling and containment systems, manure stockpiles, and cropland where manure is spread.

Runoff and erosion occur during rainfall when rainwater fails to be absorbed into the ground and when the soil surface is worn away by water or wind. Runoff of animal wastes is more likely when rainfall occurs soon after application (particularly if the manure was not injected or incorporated) and when manure is overapplied or misapplied. Erosion can be a significant transport mechanism for land applied pollutants, such as phosphorus, that are strongly bonded to soils.

Pollutants are directly discharged to surface water when animals are allowed access to water bodies and when manure storage areas overflow. Dry weather discharges to surface waters associated with CAFOs have been reported to occur through spills or other

accidental discharges from lagoons and irrigation systems, or through intentional releases. Other reported causes of discharge to surface waters are overflows from containment systems following rainfall, catastrophic spills from failure of manure containment systems, and washouts from floodwaters when lagoons are sited on floodplains or from equipment malfunction, such as pump or irrigation gun failure, and breakage of pipes or retaining walls.

It is well established that in many agricultural areas shallow ground water can become contaminated with manure pollutants. This occurs as a result of water traveling through the soil to the ground water and taking with it pollutants such as nitrate from livestock and poultry wastes on the surface. Leaking lagoons are also a potential source of manure pollutants in ground water, based on findings reported in the scientific and technical literature.

Pollutants from CAFO wastes are released to air through volatilization of manure constituents and the products of manure decomposition. Other ways that manure pollutants can enter the air is from spray irrigation systems and as wind-borne particulates in dust. Once airborne, these pollutants can find their way into nearby streams, rivers, and lakes as they are subsequently redeposited on the landscape. More detailed information on the transport of animal wastes is presented in the *Benefits Analysis* and the record.

3. How Is Water Quality Impaired by Animal Wastes?

EPA has made significant progress in implementing Clean Water Act programs and in reducing water pollution. Despite such progress, however, serious water quality problems persist throughout the country. Sources of information on these problems include reports from States to EPA, documented in the *2000 Inventory,* and the U.S. Geological Survey's National Water Quality Assessment (NAWQA) Program.

a. EPA's national water quality inventory. Agricultural operations, including CAFOs, are a significant contributor to the remaining water pollution problems in the United States, as reported by the *2000 Inventory.* EPA's *2000 Inventory* data indicate that the agricultural sector—including crop production, pasture and range grazing, concentrated and confined animal feeding operations, and aquaculture—is the leading contributor to identified water quality impairments in the nation's rivers and streams, lakes, ponds, and reservoirs. Agriculture is also identified as the fifth leading contributor to identified water quality impairments in the nation's estuaries. While the *2000 Inventory* does not generally separate effects of CAFOs from agriculture generally, EPA's data indicate that water quality concerns tend to be greatest in regions where crops are intensively cultivated and where livestock operations are concentrated.

The *2000 Inventory* data indicate that the agricultural sector contributes to the impairment of at least 129,000 river miles, 3.2 million lake acres, and more than 2,800 estuarine square miles. Forty-eight States and tribes identified agricultural sector activities contributing to water quality impacts on rivers; 40 States identified such impacts to lakes, ponds, and reservoirs; and 14 States reported such impacts on estuaries. AFOs are only a subset of the agriculture category, but 29 States specifically identified them as contributing to water quality impairment.

The leading pollutants impairing surface water quality in the United States as identified in the *2000 Inventory* data include nutrients, pathogens, sediment/siltation, and oxygen-depleting substances. These pollutants can originate from various sources, including the animal production industry. Animal production facilities may also discharge other pollutants, such as metals and pesticides, and can contribute to the growth of noxious aquatic plants due to the discharge of excess nutrients.

These data provide a general indication of national surface water quality, highlighting the magnitude of water quality impairment from agriculture and the relative contribution compared to other sources. Moreover, the findings of this report are corroborated by numerous reports and studies conducted by government and independent researchers that identify agriculture's predominance as an important contributor of surface water pollution, as summarized in the *Environmental Assessment of Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations,* which is available in EPA's rulemaking record.

b. Other documented impacts on water quality. Data collected by NAWQA also identify agriculture among the leading contributor of nutrients to U.S. watersheds. A national water quality assessment program conducted by the U.S. Geologic Survey found that agricultural use of fertilizers, manure, and pesticides has degraded stream and shallow ground water quality in agricultural areas and has resulted in high concentrations of nitrogen. Subsequent measurements in specific major river basins suggest that animal feeding operations may play a significant role in observed water quality degradation in those basins (*e.g.*, Kalkhoff *et al.*, 2000; Groschen *et al.*, 2000). Finally, a 1997 study by Smith *et al.* characterizing spatial and temporal patterns in water quality identified animal waste as a significant source of in-stream nutrient concentrations in many watershed outlets, relative to other local sources, particularly in the central and eastern United States. The findings of this report suggest that livestock waste contributes more than commercial fertilizer use to local total phosphorus yield, whereas the use of commercial fertilizer is the leading source of local total nitrogen yield.

Numerous local, regional, and national evaluations also indicate that animal manure can be a significant source of pollutants that contribute to water quality degradation. A literature survey conducted for the proposed rule identified more than 150 reports of discharges to surface waters from hog, poultry, dairy, and cattle operations. Over 30 separate incidents of discharges from swine operations between the years 1992 and 1997 in Iowa alone were reported by that State's Department of Natural Resources. The incidents resulted in fish kills ranging from about 500 to more than 500,000 fish killed per event. Fish kills or other environmental impacts have also been reported by agencies in other States, including Nebraska, Maryland, Ohio, Michigan, and North Carolina.

Runoff of nutrients and other contaminants in animal manure and wastewater also contributes to degradation of U.S. waters. For example, nutrients originating from livestock and poultry operations in the Mississippi River Basin have been identified as contributing to the largest hypoxic zone in U.S. coastal waters in the northern Gulf of Mexico. (Hypoxia is the condition in which dissolved oxygen is below the level necessary to sustain most animal life.) According to a report conducted by the National Science and Technology Council in 2000, adverse impacts of eutrophication might be of concern for ecologically and commercially important species in the Gulf, whose fishery resources generate $2.8 billion annually. Animal manure also contributes to eutrophication, or nutrient overenrichment, which is also a serious concern for the Nation's coastal and estuarine resources.

More detailed information is presented in the 2001 proposal (66 FR

2972–2974) and in the record for this rulemaking.

4. What Ecological and Human Health Impacts Have Been Caused by CAFO Wastes?

Among the reported environmental problems associated with animal manure are surface and ground water quality degradation, adverse effects on estuarine water quality and resources in coastal areas, and effects on soil and air quality. The scientific literature, which spans more than 30 years, documents how these problems can contribute to increased risk to aquatic and wildlife ecosystems, for example, the large number of fish kills in recent years. Human health might also be affected, for example, by high nitrate levels in drinking water and exposure to waterborne human pathogens and other pollutants in manure. The record for this rule provides more detailed information on the scientific and technical research to support these findings.

a. Ecological impacts. Manure pollutants in surface waters contribute to eutrophication, the disruption of a water body due to overenrichment. Eutrophication is the most documented impact of nutrient pollution and is a serious concern for coastal and estuarine resources. Another negative impact generated by excess nutrients in surface water is algae blooms, which also result from overenrichment from nutrients. Such blooms depress oxygen levels and contribute further to eutrophication. Many lake and coastal problems are linked to eutrophication, including red tides, fish kills, outbreaks of shellfish poisonings, loss of habitat, coral reef destruction, and hypoxia.

Many of the constituents in manure, especially organic matter, also decrease the oxygen concentrations in surface waters, sometimes below the levels fish and invertebrates require to survive. Nitrites and pathogens in manure can also pose risks to aquatic life. If sediments are enriched by nutrients, the concentrations of nitrites in the overlying water may be raised enough to cause nitrite poisoning in fish. There is substantial information in the record for this rule that describes local, regional, and national evaluations indicating that animal manure is a significant source of pollutants that contribute to water quality degradation. Many of these evaluations note a high incidence of fish kills. EPA's analysis shows that between 1981 and 1999, 19 States reported 4 million fish killed from both runoff and spills at CAFOs.

In addition, excess nitrogen can contribute to water quality decline by increasing the acidity of surface waters. Pathogens can accumulate in fish and shellfish, resulting in a pathway for transmission to higher trophic organisms; they can also contribute to avian botulism and avian cholera. Additional information on fish kills and other adverse impacts is presented in the 2001 proposal (66 FR 2972–2974) and in the record for this rulemaking.

b. Human health impacts from affected drinking water. Pollution originating from an animal production facility can have multiple impacts on drinking water. Nitrogen in manure is easily transformed into the nitrate form, which can be transported to drinking water sources and present a range of health risks. These health risks include methemoglobinemia in infants, spontaneous abortions, and increased incidence of stomach and esophageal cancers. Nitrate is not removed by conventional drinking water treatment processes but requires additional, relatively expensive treatment units. California's Chino Basin estimates a cost of more than $1 million per year to remove nitrates from drinking water due to loadings from local dairies. Generally, people drawing water from domestic wells are at greater risk of nitrate poisoning than those drawing from public water sources, because domestic wells are typically shallower and not subject to wellhead protection monitoring or treatment requirements.

Salts in animal wastes can also pose a health hazard. At low levels, salts can increase blood pressure in salt-sensitive individuals, increasing their risk of stroke and heart attacks. The salt load into the Chino Basin from local dairies is more than 1,500 tons per year, which costs the drinking water treatment system between $320 and $690 per ton to remove.

To the extent that nutrients contribute to algae blooms in surface water through accelerated eutrophication, algae can affect drinking water by clogging treatment plant intakes, producing objectionable tastes and odors, and increasing production of harmful chlorinated by-products (*e.g.*, trihalomethanes) by reacting with chlorine used to disinfect drinking water. In Wisconsin, the City of Oshkosh has spent an extra $30,000 per year on copper sulfate treatment to kill the algae in the waters from Lake Winnebago, which is attributed to excess nutrients from animal manure, commercial fertilizers, and soil. In Tulsa, Oklahoma, excessive algae growth in Lake Eucha, associated with poultry farming, costs the city $100,000 per year to address taste and odor problems in the drinking water.

c. Other human health impacts. In addition to threats to human health through drinking water exposures, pathogens from animal manure can also threaten human health through shellfish consumption and recreational contact such as swimming in contaminated waters. Relatively low-dose exposures to *Cryptosporidium parvum* and *Giardia spp.* can cause infection in humans. Other bacteria found in livestock manure have also been associated with waterborne disease. Pathogens from animal wastes can readily enter water sources, resulting in contamination of surface waters. Some pathogens are able to survive and remain infectious in the environment for relatively long periods of time. U.S. federal agencies and other independent researchers have recognized the potential public health risks from pathogens originating from CAFOs. At this time, however, the magnitude of the human health risk from pathogenic organisms that directly originate from CAFOs and are transported through U.S. waters has not been established.

According to a United Nations report, the use of antibiotics in food-producing animals has the potential to affect human health because of the presence of drug residues in foods and also because of the selection of resistant bacteria in animals. However, the impact of antimicrobial metabolic products and nonmetabolized drugs in animal wastes that are released into the environment remains unclear. The emergence of resistant bacteria is of particular concern because such infections are more difficult to treat and require drugs that are often less readily available, more expensive, and more toxic. In the U.S., pilot studies coordinated by EPA, USDA, and the Centers for Disease Control have been initiated to assess the extent of environmental contamination by antimicrobial drug residues and drug-resistant organisms that enter the soil or water from human and animal waste.

C. How Will Water Quality and Human Health Be Improved by This Rule?

1. What Reductions in Pollutant Discharges Will Result From This Rule?

EPA's pollutant reductions for this rule focus to a large degree on estimating the amount of pollutants in the runoff from land where manure has been applied. These estimates of pollutant discharges, referred to as the ''edge-of-field'' loadings, were made for nutrients, metals, pathogens, and sediment for both pre-rule conditions (baseline) and post-rule conditions. The reductions in pollutant discharges were

estimated using an environmental model (Groundwater Loading Effects of Agricultural Management Systems, or GLEAMS) that simulates hydrologic transport, erosion, and biochemical processes such as chemical transformation and plant uptake. The GLEAMS model uses information on soil characteristics and climate, along with characteristics of the applied manure and commercial fertilizers, to model losses of nutrients, metals, pathogens, and sediment in surface runoff, sediment, and ground water leachate. EPA's analysis also developed estimates of changes in pollutant discharges occurring at the production area.

The pollutant reduction estimates were developed for each type of model farm included in EPA's cost models. The model farms were developed to represent the various animal types, farm sizes, and geographic regions. Model farms were developed for each animal type across a range of size classes, and model farms were located in each geographic region. The pollutant estimates for the model farms were combined with published data from USDA's *1997 Census of Agriculture* and then refined into national, regional, State, and county level pollutant loading estimates that were used to determine in-stream surface water and ground water concentrations. These values were then used in the water quality models and other environmental benefits assessment models to estimate the human health and environmental benefits accruing from this rule.

EPA quantified the reduction of nitrogen and phosphorus loads associated with this rule. Reductions of discharges of the metals zinc, copper, cadmium, nickel, lead, and arsenic were also analyzed for the final rule. Fecal coliform and fecal streptococcus were used as surrogates to estimate pathogen reductions that would be achieved by this rule. Other pathogens would likely be reduced to a similar degree. Table 7.2 presents the pollutant reductions expected to result from this rule.

TABLE 7.2.—POLLUTANT REDUCTIONS: COMBINED TOTAL FOR ALL ANIMAL SECTORS

Parameter	Baseline pollutant loading (Pre-regulation)	Post-regulation pollutant loading	Pollutant reduction
Large CAFOs:			
Nutrients (million lb)	658	503	155 (24%)
Metals (million lb)	20	19	1 (5%)
Pathogens (10^{19} cfu)	5,784	3,129	2,655 (46%)
Sediment (million lb)	35,493	33,434	2,059 (6%)
Medium CAFOs:			
Nutrients (million lb)	65	54	11 (17%)
Metals (million lb)	2.0	1.9	0.1 (5%)
Pathogens (10^{19} cfu)	1,456	779	677 (46%)
Sediment (million lb)	3,119	3,015	104 (3%)

2. Approach for Determining the Benefits of This Rule

EPA has analyzed the water quality improvements expected to result from the new requirements being promulgated today and has estimated the environmental and human health benefits of the pollutant reductions that will result. The benefits described in this section are primarily associated with direct improvements in water quality (both surface water and ground water), but this new rule will also create certain non-water quality environmental effects, such as improved soil conditions, changes in energy consumption, and changes in emissions of air pollutants.

For this rule, EPA conducted seven benefit studies to estimate the impacts of reductions in pollutant discharges from CAFOs. The first study used a national water quality model (National Water Pollution Control Assessment Model, or NWPCAM) that estimates runoff from land application areas to rivers, streams, and, to a lesser extent, lakes in the U.S. This study estimated the value society places on improvements in surface water quality associated with today's rule. The second study examined the expected improvements in shellfish harvesting resulting from the new CAFO rule. A third study looked at incidences of fish kills that are attributed to AFOs and estimated the cost of replacing the lost fish stocks. The fourth study estimated the benefits associated with reduced ground water contamination. Reduced public water treatment costs were evaluated in the fifth study, and reduced livestock mortality from nitrate and pathogen contamination of livestock drinking water was evaluated in the sixth study. In the seventh study, a case study of potential fishing benefits for the Albemarle-Pamlico estuary is presented to provide some insight to the potential benefits for estuaries and coastal waters. Each of the seven studies, as well as benefits results, are briefly described in the following sections. Benefits results associated with reduced pollutant discharges from Large CAFOs are also summarized in Table 7.1. The benefit value estimates presented in this section reflect only those pollutant reductions and water quality improvements attributable to Large CAFOs. EPA also developed estimates of the pollutant reductions that will occur due to the revised requirements for Small and Medium CAFOs, but analysis of the monetized value of the associated water quality improvements was not completed in time for benefits estimates to be presented here.

In this analysis, EPA estimates the effect of pollutant reductions and other environmental improvements on human health and the ecosystem and assigns a monetary value to these benefits to the extent possible. In some cases, EPA was able to identify certain types of improvements that will result from this rule, but was unable to either estimate the monetary value of the improvement or quantify the amount of improvement that will occur. These non-monetized and non-quantified benefits are included in the discussion below. Given the limitations in assigning monetary values to some of the improvements, the economic benefit values described below and in the *Benefits Analysis* should be considered a subset of the total benefits of this rule. These monetized benefits should be evaluated along with descriptive qualitative assessments of the non-monetized benefits. For example, the economic valuation used for this rule assigns monetary values to the water quality improvements due to reductions of the

most significant pollutants originating from CAFOs (*e.g.*, nitrogen, phosphorus, pathogens, and sediment), but it does not include values for potential water quality improvements expected due to reduced discharges of certain other pollutants discharged in lesser amounts, such as metals or hormones.

Research documented in the record and summarized in the *Benefits Analysis* shows that CAFO wastes may affect the environment and human health in a variety of ways beyond those for which benefits have been monetized. The following are examples of other types of potential impacts or potential benefits:

- Human health and ecological effects of metals, antibiotics, hormones, salts, and other pollutants associated with CAFO manure.
- Eutrophication of coastal and estuarine waters due to both nutrients in runoff and deposition of ammonia volatilized from CAFOs.
- Reduced human illness due to pathogen exposure during recreational activities in estuaries and coastal waters.
- Improvements to soil properties due to reduced overapplication of manure, together with increased acreage receiving manure applications at agronomic rates.
- Reduced pathogen contamination in private drinking water wells.
- Reduced cost of commercial fertilizers for non-CAFO operations.

EPA's *Benefits Analysis* does not include monetary values for these other areas of environmental improvements because data limitations preclude quantifiable estimates of the magnitude of improvement or it is difficult to ascribe an economic value to these benefits. Nevertheless, these environmental benefits may result in improved ecological conditions and reduced risk to human health.

3. Benefits From Improved Surface Water Quality

a. Freshwater recreational benefits. EPA used NWPCAM to estimate the national economic benefits to surface water quality that will result as CAFOs implement the requirements of this rule. NWPCAM is a national-scale water quality model that simulates the water quality and benefits for various water pollution control approaches. NWPCAM is designed to characterize water quality for the Nation's network of rivers and streams, and, to a more limited extent, its lakes. NWPCAM can translate spatially varying water quality changes (improvements or degradation) resulting from different pollution control policies into terms that reflect the value individuals place on water quality improvements. In this way, NWPCAM is able to derive the economic benefit of the water quality improvements that will result from reducing CAFO discharges.

For this rule, EPA used NWPCAM to simulate impacts due to reductions in pollutant loadings from Large CAFOs (nitrogen, phosphorus, pathogen indicators, BOD5, and TSS) on water quality in the Nation's surface waters. NWPCAM's national-scale framework allows hydraulic transport, routing, and connectivity of surface waters to be simulated for the entire continental United States with the exception of coastal and estuarine waters. Pollutant loadings from the CAFOs were used as inputs to NWPCAM. The CAFO loadings were processed through the NWPCAM water quality modeling system to estimate in-stream pollutant concentrations on a detailed spatial scale to provide estimates of changes in water quality that will result as CAFOs implement this new rule. The NWPCAM modeling output, simulating the improved water quality in the Nation's surface waters, was used as the basis for monetizing improvements to water quality, and as input to several of the other benefits analyses described later in this section.

The monetary value of the benefits associated with the changes in water quality are estimated using two valuation techniques. The first technique relates water quality changes to changes in the category of use the water quality can support (*e.g.*, boatable uses versus fishable uses, or fishable uses versus swimmable uses), also referred to as the ''water quality ladder'' approach, and also considers the size of population benefitting from the changes in the types of use the water quality can support. The second method is similar to the first, but it uses a composite measure of water quality that is calculated from six water quality parameters (referred to as the ''water quality index'' approach). A key difference in the two approaches is that the water quality ladder approach assesses improvements using a step-function that attributes a monetary value to the water quality improvement only when changing from one use category to another (*e.g.*, a change from boatable use to fishable use), while the water quality index method assigns values along a continuum of water quality improvement (*e.g.*, the water use may remain designated as ''boatable use,'' but improvements within that use category are assigned a monetary value). For both valuation approaches, the monetary value assigned to the benefits is based on what the public is willing to pay for improvements to water quality.

Based on the NWPCAM analysis using the water quality ladder approach, the benefits of improved surface water quality resulting from reduced pollutant discharges from Large CAFOs are estimated to be $166 million annually (2001 dollars). Using the water quality index approach, the benefits of improved surface water quality are estimated at $298 million annually (2001 dollars).

b. Shellfish beds. Pathogen contamination of coastal waters is a leading cause of shellfish bed harvest restrictions and closures. Sources of pathogens include runoff from agricultural land and activities. Using *The 1995 National Shellfish Register of Classified Growing Waters* published by the National Oceanic and Atmospheric Administration, EPA estimated the improvements to shellfish bed harvesting that will result as CAFO discharges of pathogens are reduced by this rule. These data were used to determine the average per-acre yield of shellfish from harvested waters and to estimate the area of shellfish-growing waters that are currently unharvested as a result of pollution from AFOs. By combining the per-acre yield data with estimates of the acreage of currently unharvested shellfish beds that will become available for harvesting as discharges of pathogens from Large CAFOs are reduced, EPA calculates the value of improved shellfish harvests at $0.3 to $3.4 million annually.

c. Fish kills. Episodic fish kill events resulting from spills, manure runoff, and other discharges of manure from AFOs continue to remain a serious problem in the United States. The impacts from these incidents range from immediate and dramatic kill events to less dramatic but more widespread events. Manure dumped into and along the West Branch of the Pecatonica River in Wisconsin resulted in a complete kill of smallmouth bass, catfish, forage fish, and all but the hardiest insects in a 13-mile stretch of the river. Less immediate, but equally important, catastrophic impacts on water quality from manure runoff are increased algae growth or algae blooms, which remove oxygen from the water and can result in the death of fish. Manure runoff into a shallow lake in Arkansas resulted in a heavy algae bloom that depleted the lake of oxygen, killing many fish.

While the modeled estimates of surface water quality improvements have been used to monetize benefits associated with freshwater bodies, water quality modeling (*i.e.*, NWPCAM) does

not include estuaries, coastal areas or other marine water bodies, and fish kills are noted to occur in these areas as well. Parts of the Eastern Shore of the United States have been plagued with problems related to *Pfiesteria,* a dinoflagellate algae that exist in rivers at all times, but is known to cause fish kills in estuarine and coastal environments under certain conditions. Fish attacked by *Pfiesteria* have lesions or large, gaping holes on them as their skin tissue is broken down; the lesions often result in death. The conditions under which *Pfiesteria* can harm fish are believed to be related to high levels of nutrients. Fish kills related to *Pfiesteria* in the Neuse River in North Carolina have been blamed on the booming hog industry and the associated waste spills and runoff from the hog farms. Preliminary evidence suggests that human health problems might also be associated with exposure to *Pfiesteria.* As a result, people most likely would limit or avoid recreational activities in coastal waters with *Pfiesteria*-related fish kills. The town of New Bern, a popular summer vacation spot along the Neuse River in North Carolina, experienced several major fish kills in the summer of 1995. During this event, people became ill after swimming and fishing in the impacted areas, and there were reports that people swimming in the waters reported welts and sores on their bodies. Summer camps canceled boating classes, children were urged to stay out of the water, and warnings were issued about swimming and eating fish that were diseased. Many blame the heavy rainfall, which pumped pollutants from overflowing sewage plants and hog lagoons into the river, creating algae blooms, low oxygen, and *Pfiesteria* outbreaks as the cause of the fish kills.

EPA obtained reports on fish kill events in the United States, with data for nineteen States showing historical and current fish kills. Using these data, EPA estimates the benefits of reducing fish kills through implementation of the ELG requirements in today's rule for Large CAFOs at $0.1 million annually.

d. Reduced public water treatment costs. Total suspended solids (TSS) entering the surface waters from CAFOs can hinder effective drinking water treatment by interfering with coagulation, filtration, and disinfection processes. EPA used the NWPCAM model to predict how pollutant reductions from Large CAFOs would affect the ambient concentration of TSS in the source waters of public water supply systems. To measure the value of reductions in TSS concentrations, EPA estimated the extent to which lower TSS concentrations reduce the operation and maintenance (O&M) costs associated with the conventional treatment technique of gravity filtration. EPA estimates reduced drinking water treatment costs of $1.1 to $1.7 million annually due to reduced discharges of pollutants at Large CAFOs.

4. Benefits From Improved Ground Water Quality

a. Human health benefits. CAFO wastes can contaminate ground water and thereby cause health risks and welfare losses to people relying on ground water sources for their potable supplies or other uses. Of particular concern are nitrogen and other constituents that leach through the soils and the unsaturated zone and ultimately reach ground waters. Nitrogen loadings convert to elevated nitrate concentrations at household and community system wells, and elevated nitrate levels in turn pose a risk to human health in households with private wells. (Nitrate levels in community wells are regulated to protect human health.)

This rule is expected to reduce nitrate levels in private drinking wells by reducing the rate at which manure is spread on cropland, thus reducing the rate at which pollutants will leach through soils and reach ground water. The federal health-based National Primary Drinking Water Standard for nitrate is 10 milligrams per liter (mg/L), and this Maximum Contaminant Level (MCL) applies to all community water supply systems. Households relying on private wells are not subject to the federal MCL for nitrate, but levels above 10 mg/L are considered unsafe for sensitive subpopulations (*e.g.*, infants). Several economic studies indicate a considerable willingness-to-pay by households to reduce the likelihood of nitrate levels exceeding 10 mg/L, and to reduce nitrate levels even when baseline concentrations are considerably below the MCL.

EPA used U.S. Geological Survey data on nitrate levels in wells throughout the country to predict how nitrate concentrations in private drinking wells would be reduced by this rule. Based on these data, EPA estimates that 9.2 percent of households that currently rely on private wells with nitrate concentrations exceeding the MCL will have these concentrations reduced to levels below the MCL because of the ELG requirements for Large CAFOs. EPA estimates the value of these reductions based on willingness-to-pay studies to be $583 annually per household (2001$) resulting in benefit estimates of $30.2 to $44.6 million nationally on an annual basis for this component of ground water improvements. Another 5.8 million households that currently have nitrate levels in their private wells below the MCL will experience further reductions in nitrate levels because of the ELG requirements for Large CAFOs. Studies also show that people are willing to pay $2.09 per mg/L reduced annually (2001$) to get these additional reductions once they are already below the MCL for nitrate. This gives benefits estimates of $0.7 million to $1.1 million annually for the nation for this component of ground water improvements. The total benefits of reduced nitrate contamination of private drinking wells as a result of reducing pollutant discharges at Large CAFOs are estimated to range from approximately $30.9 to $45.7 million annually (2001$).

Research documented in the record and summarized in the *Benefits Analysis* shows that CAFO wastes affect the environment and human health in ways beyond those for which benefits have been monetized. Additional ground water benefits that may result from this rule include reduced pathogen contamination of private drinking water wells and community drinking water supplies. EPA's *Benefits Analysis* does not include monetary values for these additional ground water improvements because data limitations preclude quantifiable estimates of the magnitude of improvement or because it is difficult to ascribe an economic value to these benefits. EPA also recognizes that CAFO operators have strong private incentives to avoid contaminating their own private drinking water sources.

b. Animal health benefits. Land application of manure can result in leaching of nitrates and enteric pathogens to ground water, which in many cases is used as the source of drinking water for livestock in rural communities. Excessive nitrate in livestock watering sources, particularly in conjunction with feeds containing nitrogen such as alfalfa, can contribute to increased morbidity and mortality due to acute and chronic nitrate poisoning in cattle which would have the ability to convert nitrate to toxic nitrite. In addition, studies have found that nearly 20% of rural water wells are contaminated with enteric pathogens such as fecal coliform and fecal streptococcus, common indicators of enteric pathogens, at ratios which suggest the source of contamination may be animal waste. Consumption of water by livestock contaminated with enteric pathogens could result in increased morbidity and mortality due to waterborne illness, particularly gastrointestinal disorders.

EPA used data from scientific literature, USDA data on beef and dairy mortality from poisoning and gastrointestinal illness, EPA data on rural groundwater quality, and published recommendations for livestock drinking water quality, to estimate the potential to reduce on-farm beef and dairy cattle mortality associated with pathogens and nitrates in ground water. From this, EPA estimated the avoided cost of replacing cattle mortalities. The ELG requirements are expected to reduce nitrate and pathogen contamination of ground water at Large CAFOs and, as a result, reduce annual cattle mortality from nitrate poisoning and pathogens at Large CAFOs by approximately 4,300 mature cattle and 3,900 calves. Using a replacement value of $1,185 for mature cattle and $54 for day-old calves (2002 dollars), the monetary benefit of reduced on-farm beef and dairy cattle mortality at Large CAFOs is estimated at $5.3 million annually.

D. Other (Non-Water Quality) Environmental Impacts and Benefits

In analyzing the effects of this rule, EPA also considered how the requirements promulgated today would affect the amount and form of compounds released to air, as well as the energy that is required to operate the CAFO. In addition to the water quality impacts and benefits discussed above, EPA's analyses for this rule have also evaluated these other types of environmental impacts, often referred to as non-water quality environmental impacts. These non-water quality environmental impacts include changes in air emissions from CAFO production areas and land where CAFO-generated manure is spread, changes in energy use, and improvements in soil properties. EPA's estimates of changes in air emissions and energy use are described in more detail in the *Technical Development Document.*

To assess the potential changes in air emissions resulting from this rule, EPA quantified the releases from the production area, including animal housing and animal waste storage and treatment areas; land application activities; and emissions from vehicles, including the off-site transport of waste and on-site composting operations.

EPA projects increased emissions of criteria air pollutants (particulate matter, volatile organic compounds, nitrogen oxides, and carbon monoxide) related to increased fuel consumption as excess manure is transported away from the CAFO. The contribution of these projected increases is limited compared to the national criteria pollutant inventory. For example, for the year 2000, the total national inventory for nitrogen oxides was 25 million tons. The contribution of the projected increase in CAFO emissions of nitrogen oxides is less than 0.01 percent of that amount. The national inventory values for other criteria pollutants are also much larger than the projected changes in emissions from CAFOs.

CAFOs are a source of ammonia, which is a contributor to the formation of fine particulate matter. This rule is not expected to significantly alter ammonia emissions from CAFOs. During the rulemaking, EPA evaluated a number of regulatory options and, as part of those analyses, considered the potential air quality benefits associated with changes in ammonia emissions. For further discussion of those analyses, refer to Chapter 13 of the *Technical Development Document* and Section 22 of the rulemaking record.

CAFOs are also a source of hydrogen sulfide emissions. EPA's calculations indicate that today's rule will reduce hydrogen sulfide emissions from Large CAFOs by 12 percent nationally. Reductions in hydrogen sulfide emissions are expected to lead to human health benefits, but EPA has not been able to calculate the economic value of these reductions.

Finally, CAFOs are a source of greenhouse gases. Emissions of nitrous oxide at CAFOs arise mainly from the feedlot area during denitrification of nitrogen compounds during waste storage on the drylot and from fields where animal wastes are land applied. Emissions of methane also mainly arise during waste storage, created during the anaerobic decomposition of carbon compounds. CAFOs currently contribute approximately 3 percent of all U.S. nitrous oxide emissions and a similar percentage of U.S. methane emissions. EPA estimates that emissions of nitrous oxide at Large CAFOs will increase by 4 percent as the requirements of today's rule are implemented, and emissions of methane will decrease by 11 percent.

EPA also expects that the properties of the soil at a number of land application areas might improve because of reduced overapplication of manure. The soil properties of cropland that does not currently receive manure, but becomes a recipient as additional manure is hauled away from CAFOs that have excess manure are also expected to benefit from the organic matter content (improving tilth) and the micronutrients present in manure.

VIII. Costs and Economic Impacts

This section presents EPA's estimate of the total annual costs and the economic impacts that would be incurred by the livestock and poultry industry as a result of today's rule. This section also discusses EPA's estimated effects on small businesses and presents the results of the Agency's cost-effectiveness and cost-benefit analysis. All costs presented in this section are reported in pre-tax 2001 dollars (unless otherwise indicated).

EPA estimates the total monetized social costs of the final regulations at about $335 million annually. These costs include compliance costs borne by CAFOs and also administrative costs to federal and State governments. EPA estimates the total compliance cost for Large CAFOs at $283 million per year (pre-tax, $2001). Costs to Medium CAFOs are estimated at $39 million per year. Costs to Medium and Small operations that are designated as CAFOs are estimated at $4 million per year. EPA estimates that the administrative cost to federal and State governments to implement this rule is $9 million per year.

For the veal, dairy, turkey, and egg laying sectors, the final regulations are not expected to result in any CAFO level business closures. In the beef cattle, heifer, hog, and broiler sectors, however, the final rule is expected to cause some existing CAFOs to experience financial stress. These operations might be vulnerable to closure as a result of complying with the final regulations. Across all sectors, an estimated 285 existing Large CAFOs might be vulnerable to facility closure. This accounts for approximately 3 percent of all Large CAFOs. By sector, EPA estimates that 49 beef operations (3 percent of affected beef CAFOs), 22 heifer operations (9 percent), 204 hog operations (5 percent of affected hog CAFOs), and 10 broiler operations (1 percent) might close as a result of complying with the final regulations. These results are based on an analysis that does not consider the longer-term effects on market adjustment and also available cost share assistance from federal and State governments.

Detailed information on estimated compliance costs are provided in the *Technical Development Document* and the *Cost Support Document,* which are in the administrative record for today's rule. EPA's detailed economic assessment can be found in *Economic Analysis* which is also in the administrative record.

A. Costs of the Final Rule

1. Method for Estimating the Costs of This Rule

For the purpose of estimating the total costs and economic impacts CAFOs will bear in complying with this rule, EPA estimated costs associated with four broad cost components: nutrient management planning, facility upgrades, land application, and technologies for balancing on-farm nutrients. Nutrient management planning costs include manure and soil testing, record-keeping, and plan development. Facility upgrades reflect costs for additional or improved manure storage, mortality handling, runoff controls, reduction of fresh water use where appropriate, and additional farm management practices. Land application costs address agricultural application of nutrients, including hauling of excess manure off-site and adjusting for changes in commercial fertilizer needs, and reflect differences among operations based on cropland availability for manure application.

EPA evaluated compliance costs using a representative facility approach based on approximately 1,600 farm level cost models to depict conditions and to evaluate compliance costs for select representative CAFOs. The major factors used to differentiate individual model CAFOs include the commodity sector, the farm production region, and the facility size (based on herd or flock size or the number of animals on-site). EPA's model CAFOs primarily reflect the major animal sector groups, including beef cattle, dairy, hog, broiler, turkey, and egg laying operations. Practices at other subsector operations are also reflected in the cost models, such as replacement heifer operations, veal operations, flushed-cage layers, and hog grow-finish and farrow-finish facilities.

Another key distinguishing factor incorporated into EPA's cost models is information on the availability of cropland and pastureland for land application of manure nutrients. For this analysis, nitrogen and phosphorus rates of land application were evaluated for three categories of cropland availability: (1) CAFOs with sufficient cropland for all manure generated on-site; (2) CAFOs with some, but not enough, cropland to accommodate all of the manure produced at the facility; and (3) CAFOs with no cropland. EPA used USDA data to determine the number of CAFOs within each of these categories. This information takes into account which nutrient (nitrogen or phosphorus) is used as the basis to assess land application and nutrient management costs.

The data and information used to develop EPA's cost estimates were compiled with the assistance of USDA, in combination with other information collected by EPA from extensive literature searches, more than 100 farm site visits, and numerous consultations with industry, universities, and agricultural extension agencies. Additional detailed information on the data and assumptions used to develop EPA's cost estimates is provided in the *Technical Development Document.* Refer to the preamble for the proposed rule for a summary of EPA's data collection activities and the sources of data that the Agency used to estimate compliance costs (66 FR 3079–3080).

For the purpose of estimating costs and financial effects to Medium CAFOs, EPA assumes that costs that will be incurred by those sized operations to comply with BPJ-based limitations under the revised NPDES regulations are similar to the estimated costs that would be incurred if Medium CAFOs had to comply with the ELG.

2. Estimated Annual Costs of the Final CAFO Regulations

a. *Costs borne by CAFOs.* Table 8.1 summarizes the total annualized compliance costs to CAFOs. The table shows these costs broken out by sector and broad facility size category. As shown in the table, EPA estimates the total cost of the final rule to CAFOs at $326 million annually. (Total monetized estimated social costs of the rule include an additional $9 million to federal and State governments.) Roughly one-half of this cost is incurred by the dairy sector, with another roughly 30 percent incurred within the cattle sectors (including the beef, veal, and heifer sectors).

Of this total, EPA estimates that Large CAFOs will incur costs of $283 million per year. Total annualized costs to facilities defined as Medium CAFOs are estimated at $39 million annually. Table 8.1 also shows estimated total cost to Small and Medium AFOs that might incur costs if designated as CAFOs, which EPA estimates at about $4 million annually. More information on these costs and how they were calculated is provided in the *Economic Analysis.*

EPA has estimated the cost of land application based on nitrogen-based application rates, except in those instances where EPA believes that phosphorus-based rates are likely to be appropriate. The final rule specifies that the determination of application rates is to be based on the technical standards established by the Director and EPA expects that these standards will require phosphorus-based application, where appropriate. The rule also provides for these standards to include appropriate flexibilities in the use of phosphorus-based rates, such as multi-year phosphorus application, but the potential costs savings resulting from these flexibilities are not reflected in the analysis. As a result, the cost and economic impacts of this rule may have been overestimated.

TABLE 8.1.—ANNUAL PRE-TAX COST OF THE RULE, $2001

Sector	No. operations		Aggregate incremental costs			
	Large CAFOs	Medium CAFOs	Total	Large CAFOs	Medium CAFOs	Designated CAFOs
	(number)		($2001, millions, pre-tax)			
Fed Cattle	1,766	174	$88.2	$85.8	$1.9	$0.5
Veal	12	230	0.0	<0.1	<0.1	0.0
Heifer	242	7	6.3	3.8	2.4	0.1
Dairy	1,450	1,949	151.1	128.2	22.0	0.9
Hogs	3,924	1,485	34.8	24.9	9.5	0.4
Broilers	1,632	520	20.5	16.8	2.4	1.3
Layers: Dry [1]	729	26	7.5	7.2	0.1	0.2
Layers: Wet [1]	383	24	8.9	8.4	0.5	<0.1
Turkeys	388	37	8.7	8.1	0.3	0.3

TABLE 8.1.—ANNUAL PRE-TAX COST OF THE RULE, $2001—Continued

Sector	No. operations		Aggregate incremental costs			
	Large CAFOs	Medium CAFOs	Total	Large CAFOs	Medium CAFOs	Designated CAFOs
Total	10,526	4,452	326.0	283.2	39.1	3.8

Source: USEPA. May not add due to rounding. Number of operations do not include designated facilities. Assumes that the estimated costs for Medium CAFOs to comply with BPJ-based limitations under the revised NPDES regulations are similar to the costs that would be incurred by those sized operations if they had to comply with the ELG.

[1] ''Layers: dry'' are operations with dry manure systems. ''Layers: wet'' are operations with liquid manure systems.

b. Costs to the NPDES permitting authority. The NPDES permitting authority will incur additional costs to alter existing State programs and obtain EPA approval to develop new permits, review new permit applications, and issue revised permits that meet the final regulatory requirements. EPA expects that NPDES permitting authorities will incur administrative costs related to the development, issuance, and tracking of general or individual permits.

State and federal administrative costs to issue a general permit include costs for permit development, public notice and response to comments, and public hearings. States and EPA may also incur costs each time a facility operator applies for coverage under a general permit due to the expenses associated with a NOI. These per-facility administrative costs include initial facility inspections and annual record-keeping expenses associated with tracking NOIs. Administrative costs for an individual permit include application review by a permit writer, public notice, and response to comments. An initial facility inspection might also be necessary.

EPA assumes that under the final regulations an estimated 15,500 CAFOs would be permitted. This estimate consists of about 15,000 CAFOs covered by State permits and about 500 CAFOs covered by federal permits. Administrative costs incurred by State permitting authorities are expected to be $8.7 million. EPA permitting authorities will incur the remaining $0.3 million. EPA has expressed these costs in 2001 dollars, annualized over the 5-year permit term using a 7 percent discount rate. A summary of this analysis is available in section X.D of this preamble. More detailed information is in the *Technical Development Document.*

B. Economic Effects

1. Effects on the CAFO Operation

To estimate the impacts of the final regulations, EPA examined the economic effects on regulated CAFOs and national markets. This section presents EPA's analysis of financial impacts on both existing and new CAFOs that will be affected by the final regulations. Results presented here focus on economic effects from the CAFO regulations affecting Large CAFOs because only large facilities will be subject to the effluent guidelines and NSPS. This section also presents EPA's analysis of the economic effects on existing operations that are small businesses. More detailed information on those effects are presented in the *Economic Analysis.*

The preamble to the proposed rule summarizes EPA's data collection activities and the sources of data that the Agency used to estimate economic effects for the final regulations (66 FR 3079–3080). Both the 2001 Notice (66 FR 58556) and the 2002 Notice (67 FR 48099) describe the public comments received by EPA on the baseline financial data and the methodological approach developed by the Agency to evaluate financial effects. More detailed information on these comments and how EPA addressed them is in section 2 of the final *Economic Analysis.* EPA's detailed responses to these public comments, and the comments themselves, are contained in the *Comment Response Document* in the administrative record for today's rule. Both Notices also present new data received following proposal that EPA used in conducting its final analysis.

a. *Methodology used to assess impacts to the CAFO operation.* EPA assessed financial effects on regulated CAFOs based on predicted changes to select financial criteria. The economic model that EPA used to evaluate financial impacts on CAFOs uses a representative farm approach. Under this general framework, EPA constructed a series of model facilities (''model CAFOs'') that reflect EPA's estimated compliance costs and readily available financial data. EPA used these model CAFOs to develop an average characterization for a group of operations based on certain distinguishing characteristics for each sector, such as facility size and production region, that can be shared across a broad range of facilities.

EPA evaluated the economic achievability of the rule at existing operations based on changes in representative financial conditions across three financial criteria: (1) An initial screening comparing incremental post-tax costs to total gross revenue (''sales test''), (2) projected post-compliance cash flow over a 10-year period (''discounted cash flow analysis''), and (3) an assessment of an operation's debt-to-asset ratio under a post-compliance scenario (''debt-asset test''). EPA notes that its discounted cash flow analysis likely understates impacts because it does not include any allowance for depreciation or replacement of capital in its definition of cash flow. However, EPA has conducted a sensitivity analysis that shows that the number of estimated CAFO closures would not be different if allowances for replacement of capital are made (*see* section 3.3 of the Economic Analysis).

EPA used the results from these analyses to divide affected CAFOs into three financial impact categories: Affordable, Moderate, and Stress. CAFOs experiencing affordable or moderate impacts are considered to have some financial impact on operations, but EPA does not expect the costs of complying with this rule to make these operations vulnerable to closure. EPA considers that for CAFOs in both the ''Affordable'' and ''Moderate'' impact categories the final requirements are likely to be economically achievable. Operations experiencing financial stress, however, are considered to be vulnerable to closure because of the costs of this rule. EPA considers that for CAFOs in the ''Stress'' impact category, the final requirements are likely not economically achievable. EPA notes, as discussed below, that there may be mitigating factors that could reduce the number of facilities experiencing financial stress, such as the availability of cost-share assistance and long-run market adjustment.

EPA conducted its analysis first at the farm level based on data reflecting financial conditions for the entire farm

operation (*e.g.,* reflecting income and cost information spanning the entire operation, thus considering the operation's primary livestock production, along with other income sources such as secondary livestock and crop production, government payments, and other farm-related income). Based on the farm level results, EPA also assessed the financial effects on CAFOs at the enterprise level (*e.g.,* limiting the scope of the assessment to the operation's livestock or poultry enterprise, and excluding other non CAFO-related sources of income from the analysis). By evaluating the financial criteria at both the farm level and the enterprise level, EPA's analyses address comments expressed by many commenters, including FAPRI, other land grant university researchers, and industry, as well as USDA.

Starting with the farm level analysis, EPA considers the regulations to be economically achievable for a representative model CAFO if the average operation has a post-compliance sales test estimate within an acceptable range, a positive post-compliance cash flow over a 10-year period, and a post-compliance debt-to-asset ratio not exceeding a benchmark value. Specifically, if the sales test shows that compliance costs are less than 3 percent of sales, or if post-compliance cash flow is positive and the post-compliance debt-to-asset ratio does not exceed a benchmark (depending on the baseline data) and compliance costs are less than 5 percent of sales, EPA considers the options to be ''Affordable'' for the representative CAFO group. (Although a sales test result of less than 3 percent does indicate ''Affordable'' in the farm level analysis, further analysis is conducted to determine the effects at the operation's livestock or poultry enterprise.) The benchmark values assumed for the debt-asset test are sector-specific. EPA assumes a 70 percent benchmark value for the debt-asset test to indicate financial stress in the hog and dairy sectors, and an 80 percent benchmark for the debt-asset test to indicate financial stress in the beef cattle sector. These benchmark values address public comment received and alternative debt and asset data submitted for the livestock sectors. For the poultry sectors, however, EPA did not obtain alternative debt and asset data and continues to evaluate data used for proposal against a 40 percent benchmark value. *See* the Economic Analysis and EPA response to comment on this issue for more information.

A sales test of greater than 5 percent but less than 10 percent of sales with positive cash flow and a debt-to-asset ratio of less than these sector-specific debt-asset benchmark values is considered indicative of some impact at the CAFO level, but at a level not as severe as those indicative of financial distress or vulnerability to closure. These impacts are labeled ''Moderate'' for the representative CAFO group. EPA considers both the ''Affordable'' and ''Moderate'' impact categories to be economically achievable by the CAFO, subject to the enterprise analysis (*see* below). If, with a sales test of greater than 3 percent, post-compliance cash flow is negative or the post-compliance debt-to-asset ratio exceeds these sector-specific debt-asset benchmarks, or if the sales test shows costs equal to or exceeding 10 percent of sales, EPA considers the final regulations to be associated with potential financial stress for the entire representative CAFO group. In such cases, each of the operations represented by that group might be vulnerable to closure. For operations that are determined to experience financial ''Stress'' at the farm level, the final requirements are likely not economically achievable.

The enterprise level analysis builds on the farm level analysis, evaluating effects at a farm's livestock or poultry enterprise. If the farm level analysis shows that the regulations impose ''Affordable'' or ''Moderate'' effects on the operation, the enterprise level analysis is conducted to determine whether the enterprise's cash flow is able to cover the cost of regulations. This analysis uses a discounted cash flow approach similar to that used to assess the farm level effects, in which the net present value of cash flow is compared to the net present value of the total cost of the regulatory options over the 10-year time frame of the analysis. Over the analysis period, if an operation's livestock or poultry enterprise maintains a cash flow stream that both exceeds the cash costs of the rule (operating and maintenance costs plus interest) and covers the net present value of the principal payments on the capital, EPA concludes that the enterprise will likely not close because of the CAFO rule. This analysis is conducted on a pass/fail basis. If the net present value of cash flow minus the net present value of the rule's costs is greater than zero, the enterprise passes the test and the enterprise is assumed to continue to operate. EPA considers these results to indicate that the final requirements are economically achievable. If the net present value of cash flow is not sufficient to cover the net present value of the cost of the rule, EPA assumes that the CAFO operator would consider shutting down the livestock or poultry enterprise. That is, if an operation fails the enterprise level analysis, these operations are determined to experience financial ''Stress'' and the final requirements are likely not economically achievable.

In response to comments, EPA conducted additional supplemental analysis to determine the effects of the regulation under two different scenarios. One scenario takes into consideration the effects of long-run market adjustment following implementation of the final regulations. This analysis is conducted using simulated changes in producer revenue given changes in market prices as depicted by EPA's market model, which uses estimates of price and quantity response in these markets. A second scenario takes into consideration potential cost share assistance under federal and State conservation programs, assuming that a portion of costs are covered by cost sharing subject to programmatic constraints. Given the uncertainty of whether CAFO income will rise in response to long-run market adjustment or whether available cost share dollars will effectively offset compliance costs at regulated CAFOs, EPA's analysis to determine whether the regulation is ''economically achievable'' does not rely on such assumptions as part of its regulatory analysis and therefore reflects the highest level of impacts projected. However, EPA presents the results of this analysis assuming both some degree of cost passthrough and no cost passthrough, as well as some degree of cost share assistance and no cost share assistance, along with the results of its lead analysis. Additional detailed information on this decision framework is provided in section 2 of the *Economic Analysis.*

b. Economic effects on existing CAFOs affected by the Effluent Guidelines. Table 8.2 presents the results of EPA's analysis of the estimated CAFO financial effects in terms of the number of operations that will experience affordable, moderate, or stress impact because of this rule. Results are shown by sector for Large CAFOs.

EPA's analysis indicates that, for all Large CAFOs in the veal, dairy, turkey, and egg laying sectors, the impacts due to this rule are characterized as ''Affordable'' or ''Moderate'' and no facility closures are projected for these facilities. Therefore, EPA determined the rule being promulgated today is economically achievable for existing facilities in these animal sectors. In the beef cattle, heifer, hog and broiler sectors, however, EPA's analysis

indicates that the final rule will cause some existing CAFOs to experience financial stress, making these operations vulnerable to facility closure. Across all sectors, an estimated 285 existing Large CAFOs might be vulnerable to facility closure. This accounts for approximately 3 percent of all Large CAFOs. By sector, EPA estimates that 49 beef operations (3 percent of affected beef CAFOs), 22 heifer operations (9 percent), 204 hog operations (5 percent of affected hog CAFOs), and 10 broiler operations (1 percent) might close as a result of complying with the final regulations. These estimates of the number of potential CAFO closures are cumulative and reflect the results of both the farm level analysis and the enterprise level analysis. These estimated closure rates are generally consistent with the findings of economic achievability of previous effluent guidelines for other industrial point source categories. Based on the results of this analysis, EPA concludes that the final rule is economically achievable for existing CAFOs. More detailed information is provided in the *Economic Analysis.*

The results described above do not reflect long-run market adjustment and cost share assistance through federal and State conservation programs due to uncertainties associated with these considerations, for reasons discussed in the *Economic Analysis.* Although EPA concluded, based on the results in Table 8.2, that the final regulation is economically achievable, the *Economic Analysis* presents the results of alternative analyses under varying assumptions of long-run market adjustment and potential cost share assistance. Under assumptions of long run market adjustment, as reflected in eventual increases in CAFO revenue and producer prices, the number of potential facility closures is reduced from 285 closures to a single facility closure in the beef sector. All operations in the heifer, hog, and broiler sectors are expected to be able to absorb the estimated compliance costs under an assumption that incorporates long run market adjustment. Under assumptions of partial cost share assistance, assumed for this analysis to cover 50 percent of the capital expenditure to comply with the revised regulations, the number of potential closures is reduced only somewhat from 285 closures to 261 closures (comprised of 43 beef, 11 heifer, 204 hog, and 3 broiler operations). EPA conducted these analyses only for the beef, heifer, hog and broiler sectors since all Large CAFOs in the other sectors are estimated to be able to absorb costs associated with the final rule.

TABLE 8.2.—FINANCIAL EFFECTS ON LARGE CAFOS: FINAL REGULATIONS

Sector	Number large CAFOs	Number			Percent of total operations		
		Affordable	Moderate	Stress	Affordable	Moderate	Stress
Fed Cattle	1,766	1,717	.....	49	97	0	3
Veal	12	12	0	0	100	0	0
Heifer	242	220	0	22	91	0	9
Dairy	1,450	1,019	431	0	70	30	0
Hogs	3,924	3,249	470	204	83	12	5
Broilers	1,632	1,032	590	10	63	36	1
Layers: Dry [1]	729	729	0	0	100	0	0
Layers: Wet [1]	383	383	0	0	100	0	0
Turkeys	388	388	0	0	100	0	0
Total	10,526	8,749	1,491	285	83	14	3

Source: USEPA. See *Economic Analysis.* May not add due to rounding.
[1] ''Layers: dry'' are operations with dry manure systems. ''Layers: wet'' are operations with liquid manure systems.

c. Economic effects to existing CAFOs that are small businesses. (1) Number of affected small businesses. This section presents EPA's analysis of the economic effects on CAFOs that are small businesses. It summarizes the estimated number of small entities to which the rule will apply and describes the potential effects of the final rule on these businesses.

The SBA defines a ''small business'' in the livestock and poultry sectors in terms of average annual receipts (or gross revenue). SBA size standards for these industries define a ''small business'' as one with average annual revenues over a 3-year period of less than $0.75 million for dairy, hog, broiler, and turkey operations; $1.5 million for beef feedlots; and $9.0 million for egg operations. EPA defines a ''small'' egg laying operation for purposes of its regulatory flexibility assessments as an operation that generates less than $1.5 million in annual revenue. EPA consulted with SBA on the use of this alternative definition. A summary of EPA's rationale and supporting analyses pertaining to this alternative definition is provided in the administrative record and in Section 4 of the *Economic Analysis.*

Given these considerations, EPA defines a ''small business'' for this rule as an operation that houses or confines less than 1,400 fed beef cattle (includes fed beef, veal, and heifers); 300 mature dairy cattle; 2,100 market hogs; 37,500 turkeys; 61,000 layers; or 375,000 broilers. The approach used to derive these estimates is described in the *Economic Analysis* and the administrative record.

EPA estimates that of the approximately 238,000 animal confinement facilities in 1997, roughly 95 percent are small businesses. Not all of these operations will be affected by the final rule. Table 8.3 shows EPA's estimates of the number of ''small business CAFOs that are expected to be affected by this rule. For this analysis, EPA estimates that about 6,200 affected CAFOs across all size categories are small businesses, accounting for more than 40 percent of the estimated 14,515 affected facilities. EPA estimates that among Large CAFOs about 2,330 operations are small businesses (accounting for about one-fourth of all Large CAFOs). Most affected small businesses are in the broiler sector. Among Medium CAFOs, EPA estimates about 3,870 operations are small businesses (accounting for the majority of operations in this size category), and most of the affected small businesses are in the hog, dairy, and broiler sectors.

For reasons noted in the administrative record, EPA believes that the number of small broiler operations

is overestimated and might actually include a number of medium and large broiler operations that should not be considered small businesses.

(2) Estimated financial effects on small businesses. For the 2001 proposal, EPA conducted a preliminary assessment of the potential impacts on small business CAFOs based on the results of a costs-to-sales test (66 FR 3101). This screen test indicated the need for additional analysis to characterize the nature and extent of impacts on small entities. Based on the results of this initial assessment, EPA projected that it would likely not certify that the proposal, if promulgated, would not impose a significant economic impact on a substantial number of entities. Therefore, EPA convened a SBAR Panel and prepared an Initial Regulatory Flexibility Analysis (IRFA) pursuant to sections 609(b) and 603 of the RFA, respectively. The 2001 proposal provides more information on EPA's small business outreach and the Panel activities during the development of this rulemaking (66 FR 3121). Section XI of this preamble presents EPA's Final Regulatory Flexibility Analysis (FRFA), as required under section 604 of the RFA. More detailed information on this analysis is provided in section 4 of the *Economic Analysis.*

In examining the effects on small businesses for the final rule, EPA followed the same approach used to evaluate the impacts on other existing CAFOs, described in section VIII.B.1(a). For the purposes of this analysis, EPA assumes that the costs that will be incurred by those sized operations to comply with BPJ-based limitations under the revised NPDES regulations are similar to the estimated costs that would be incurred if Medium CAFOs had to comply with the ELG.

For past regulations, EPA has often analyzed the potential impacts to small businesses by evaluating the results of a costs-to-sales test, measuring the number of operations that will incur compliance costs at varying threshold levels (including ratios where costs are less than 1 percent, between 1 and 3 percent, and greater than 3 percent of gross income). EPA conducted such an analysis at the time of the 2001 proposal, indicating that about 80 percent of the estimated number of small businesses directly subject to the rule as CAFOs might incur costs in excess of three percent of sales.

EPA believes that its more refined analysis used for its general analysis (presented here) better reflects the potential impacts to regulated small businesses. Using this approach, EPA's analysis indicates that the final rule could cause financial stress to some small businesses, making these businesses vulnerable to closure. Among the estimated 6,200 small businesses, EPA estimates that 262 Large and Medium CAFOs might be vulnerable to facility closure (Table 8.3). Thus, EPA estimates that potential facility closures associated with this rule constitutes about 4 percent of all affected small business CAFOs. Medium CAFOs comprise the majority (about 85 percent) of these estimated number of closures. These results do not consider long-run market adjustment or cost share assistance through federal and State conservation programs. More detailed information is provided in the *Economic Analysis.*

TABLE 8.3.—FINANCIAL EFFECTS ON SMALL BUSINESS CAFOS

Sector	Number of small businesses	Number			Percent of total operations		
		Affordable	Moderate	Stress	Affordable	Moderate	Stress
CAFOs >1,000 AU:							
Fed Cattle	538	522	0	16	97	0	3
Veal	5	5	0	0	100	0	0
Heifer	97	88	0	9	91	0	9
Dairy	0	—	—	—	—	—	—
Hogs	0	—	—	—	—	—	—
Broilers	1,303	763	532	9	58	41	1
Layers: Dry [1]	0	—	—	—	—	—	—
Layers: Wet [1]	383	383	0	0	100	0	0
Turkeys	0	—	—	—	—	—	—
Total	2,326	1,795	532	34	76	23	1
Operations 300–1,000 AU (Defined as CAFOs):							
Fed Cattle	174	7	0	167	4	0	96
Veal	7	7	0	0	100	0	0
Heifer	230	189	0	41	82	0	18
Dairy	1,330	1,306	24	0	98	2	0
Hogs	1,485	1,483	2	0	100	0	0
Broilers	520	263	248	10	51	48	1
Layers: Dry [1]	24	24	0	0	100	0	0
Layers: Wet [1]	24	24	0	0	100	0	0
Turkeys	31	31	0	0	100	0	0
Total	3,825	3,334	274	228	87	7	6

Source: USEPA. See *Economic Analysis.* May not add due to rounding. Assumes that the costs that will be incurred by those sized operations to comply with BPJ-based limitations under the revised NPDES regulations are similar to the estimated costs that would be incurred if Medium CAFOs had to comply with the ELG.

[1] ''Layers: dry'' are operations with dry manure systems. ''Layers: wet'' are operations with liquid manure systems.

d. Economic effects to new CAFOs. EPA evaluated impacts on new source CAFOs by comparing the costs borne by new source CAFOs to those estimated for existing sources. That is, if the expected cost to new sources is similar to or less than the expected cost borne by existing sources (and that cost was considered economically achievable for

existing sources), EPA considers that the regulations for new sources do not impose requirements that might grant existing operators a cost advantage over new CAFO operators and further determines that the NSPS requirements are affordable and do not present a barrier to entry for new facilities. In general, costs to new sources from NSPS requirements are lower than the costs for retrofitting the same technologies at existing sources since new sources are able to apply control technologies more efficiently than existing sources that might incur high retrofit cost. New sources will be able to avoid the retrofit costs that will be incurred by existing sources. Furthermore, new sources might be able to avoid the other various control costs facing some existing producers through careful site selection. The requirements promulgated in today's rule do not give existing operators a cost advantage over new CAFO operators; therefore, the NSPS do not present a barrier to entry for new facilities. Examples of avoided retrofit costs and costs of total containment systems and waste management, including land application, for both existing and new sources are provided in Section IV.C of this preamble. More detailed information is provided in the *Cost Report* and the *Economic Analysis* supporting the final regulations.

2. Market Analysis

EPA's market analysis evaluates the effects of the final regulations on national markets. This analysis uses a linear partial equilibrium model adapted from the COSTBEN model developed by USDA's Economic Research Service. The modified EPA model provides a means to conduct a long-run static analysis to measure the market effects of the final regulations in terms of predicted changes in farm and retail prices and product quantities. Market data used as inputs to this model are from a wide range of USDA data and land grant university research. Once price and quantity changes are predicted by the model, EPA uses national multipliers that relate changes in sales to changes in total direct and indirect employment and also to national economic output. These estimated relationships are based on the Regional Input-Output Modeling System (RIMS II) from the U.S. Department of Commerce. The details of the market analysis are described in the *Economic Analysis.*

a. Commodity prices and quantities. EPA's market model predicts that the final rule will not result in significant industry-level changes in production and prices for most sectors. Predicted changes in animal production might raise producer prices as the market adjusts to the final regulatory requirements. For most sectors, EPA estimates that producer price changes will rise by less than one percent of the pre-regulation baseline price. The exception is in the hog sector, where estimated compliance costs slightly exceed one percent of the baseline price. At the retail level, EPA expects that the final rule will not have a substantial impact on overall production or consumer prices for value-added meat, eggs, and fluid milk and dairy products. EPA estimates that retail price increases resulting from this rule will be less than one percent of baseline prices in all sectors, averaging below the rate of general price inflation for all foods. In terms of retail level price changes, EPA estimates that poultry and red meat prices will rise about one cent per pound. EPA also estimates that egg prices will rise by about one cent per dozen and that milk prices will rise by about one cent per gallon.

b. Aggregate employment and national economic output. EPA does not expect the final rule to cause significant changes in aggregate employment or national economic output, measured in terms of Gross Domestic Product (GDP). EPA expects, however, that there will be losses in employment and economic output associated with decreases in animal production due to rising compliance costs. These losses are estimated throughout the entire economy, using available modeling approaches, and are not attributable to the regulated community only. This analysis also does not adjust for offsetting increases in other parts of the economy and other sector employment that might be stimulated as a result of the final rule, such as the construction and farm services sectors.

Employment losses are measured in full-time equivalents (FTEs) per year, including both direct and indirect employment. EPA estimates that the reduction in total direct employment is about 1,600 FTEs. This projected change is compared to total national employment of about 129.6 million jobs in 1997. More detailed information on these results is presented in the *Economic Analysis.*

c. Regional and community impacts. EPA considered whether the final rule could have community level and/or regional impacts if it substantially altered the competitive position of livestock and poultry production across the nation, or led to growth or reduction in farm production (in- or out-migration) in different regions and communities. Ongoing structural and technological changes in these industries have influenced where farmers operate and have contributed to locational shifts between the traditional production regions and the emergent, nontraditional regions. Production is growing rapidly in the emergent regions because of competitive pressures and because specialized producers tend to have the advantage of lower per-unit costs of production. This is especially true in hog and dairy production.

To evaluate the potential for differential impacts among farm production regions, EPA examined employment impacts by region. EPA also evaluated whether the final requirements could result in substantial changes in volume of production, given predicted facility closures, within a particular production region. EPA concludes from these analyses that regional and community level effects are estimated to be modest, but do tend to be concentrated within the more traditional agricultural regions. This analysis is discussed in the *Economic Analysis.*

EPA does not expect that this rule will have a significant impact on where animals are raised. On one hand, on-site improvements in waste management and disposal, as required by the final rule, could accelerate recent shifts in production to more nontraditional regions as higher-cost producers in some regions exit the market to avoid the relatively high retrofitting costs associated with bringing existing facilities into compliance. On the other hand, the final regulations might favor more traditional production systems where operators grow both livestock and crops, since these operations tend to have available cropland for land application of manure nutrients. These types of operations tend to be more diverse and less specialized and, generally, smaller in size. Long-standing farm services and input supply industries in these areas could likewise benefit from the final rule, given the need to support on-site improvements in manure management and disposal. Local and regional governments, as well as other nonagricultural enterprises, would also benefit.

d. Foreign trade impacts. Foreign trade impacts are difficult to predict because agricultural exports are determined by economic conditions in foreign markets and changes in the international exchange rate for the U.S. dollar. However, EPA predicts that foreign trade impacts as a result of the final rule will be minor given the relatively small projected changes in overall supply and demand for these products and the slight increase in

market prices, as described in section VIII.B.2(a). Measured as potential for changes in traded volumes, such as increases in imports and decreases in exports, EPA estimates that increases in imports and decreases in exports will each total less than 1 percent compared to baseline (pre-regulation) levels in each of the commodity sectors. Based on these results, EPA believes that any quantity and price changes resulting from the final rule will not significantly alter the competitiveness of U.S. export markets for meat, dairy foods, and poultry products.

C. Cost-Benefit and Cost-Effectiveness Analyses

1. Cost-Benefit Analysis

This section presents a comparison of the costs and benefits attributable to the final rule. As Table 8.4 shows, the economic value of the environmental benefits EPA is able to monetize (*i.e.*, evaluate in dollar terms) is comparable to the estimated costs of the rule. As discussed in section VII, EPA estimates that the monetized benefits of the final rule range from $204 million to $355 million annually. Monetized benefit categories are primarily in the areas of improved surface water quality (measured in terms of enhanced recreational value), reduced nitrates in private wells, reduced shellfish bed closures from pathogen contamination, and reduced fish kills from episodic events. As discussed in Section VII of this preamble, EPA also identified a number of benefits categories that could not be monetized. These benefits are described in more detail in Section VII of this preamble and in the *Benefits Analysis* and other supporting documentation provided in the administrative record.

This compares to EPA's estimate of the total social costs of the final regulations of about $335 million annually. These costs cover compliance costs to all CAFOs (Large, Medium, and Small), and administrative costs to States and federal governments. Costs to all CAFOs are estimated at $326 million per year (pre-tax, $2001). EPA estimates the administrative cost to State and federal governments to implement this rule is $9 million per year. There may be additional social costs that have not been monetized. For a detailed discussion of these costs, see the *Technical Development Document* and the *Economic Analysis.* A comparison of the total costs and benefits for other regulatory options considered and analyzed by EPA can be found in the *Economic Analysis.*

TABLE 8.4.—TOTAL ANNUAL MONETIZED SOCIAL COSTS AND BENEFITS

[Millions of 2001 dollars]

Category	Large CAFOs	All CAFOs
Social Costs:		
Industry Compliance Costs (pre-tax)	$298	$352
State/Federal Administrative Costs	6	9
Total	304	360
Benefits (Total for all CAFOs)	$204 to $355	(**)

**Benefits analysis does not reflect monetized benefits for Medium CAFOs. May not add due to rounding. See Table 7.1 for information on benefit categories that EPA was not able to monetize.

2. Cost-Effectiveness Analysis

As part of the process of developing effluent limitations guidelines and standards, EPA typically conducts a cost-effectiveness (C–E) analysis to compare the efficiencies of regulatory options for removing pollutants. This analysis defines cost-effectiveness as the incremental annualized cost of a regulatory control option per incremental pound of pollutant removed annually by that option.

The American Society of Agricultural Engineers reports that the constituents present in livestock and poultry manure include boron, cadmium, calcium, chlorine, copper, iron, lead, magnesium, manganese, molybdenum, nickel, potassium, sodium, sulfur, zinc, nitrogen and phosphorus species, TSS, and pathogens. Of these pollutants, EPA's standard C–E analysis is suitable to analyze only the removals of metals and metallic compounds. EPA's standard C–E analysis does not adequately address removals of nutrients, TSS, and pathogens. To account for the estimated removal of nutrients and sediments under the final rule, the Agency developed an alternative approach to evaluate the pollutant removal effectiveness for nutrients and sediment relative to the cost of these pollutant removals.

The C–E analysis conducted for this rule evaluates the cost-effectiveness of removing select non-conventional and conventional pollutants, including nitrogen, phosphorus, and sediments. For this analysis, sediments are used as a proxy for TSS. This analysis compares the estimated compliance cost per pound of pollutant removed to a recognized benchmark, such as EPA's benchmark for conventional pollutants or other criteria for existing treatment, as reported in available cost-effectiveness studies. The research in this area has mostly been conducted at municipal facilities, including publicly owned treatment works (POTWs) and wastewater treatment plants (WWTPs). Additional information is available based on the effectiveness of various nonpoint source controls and BMPs and other pollutant control technologies that are commonly used to control runoff from agricultural lands. A summary of this literature is provided in the *Economic Analysis*. Benchmark estimates were used to evaluate the efficiency of the final rule in removing a range of pollutants. This approach also allowed for an assessment of the types of management practices that will be implemented to comply with the final regulations.

For this analysis, EPA estimated average cost-effectiveness values that reflect the increment between no revisions to the current regulations and the final regulatory requirements promulgated today. All costs are expressed in pre-tax 2001 dollars. Estimated compliance costs used to calculate the cost-effectiveness of the final regulations include total estimated costs to CAFOs and costs to the permitting authority.

EPA estimates an average cost-effectiveness of nutrient removal at about $3 per pound of nitrogen removed (pre-tax, 2001 dollars). For phosphorus removal, removal costs are estimated at about $7 per pound of phosphorus removed. For nitrogen, EPA used a cost-effectiveness benchmark established by

its Chesapeake Bay Program to assess the costs to WWTPs to implement system retrofits to achieve biological nutrient removal. This nitrogen benchmark estimate is approximately $4 per pound of nitrogen removed, based on a range of costs of $0.80 to $5.90 per pound of nitrogen removed. EPA's estimated cost-effectiveness to remove nitrogen falls within the estimated range of removal costs and is less than this average benchmark value assumed for this rule. For phosphorus, EPA assumed a cost-effectiveness benchmark of roughly $10 per pound based on a review of values reported in the agricultural research of the costs to remove phosphorus using various nonpoint source controls and management practices. EPA's estimated cost-effectiveness to remove phosphorus under this rule also falls below this $10 per pound benchmark value, indicating that the requirements are cost-effective. This is particularly true when compared to the reported cost to remove phosphorus at other industrial point source dischargers, where reported average costs are twice that for agricultural sources and often exceed $100 per pound of phosphorus removed. Based on these results, EPA concludes that these values are cost-effective.

EPA also examined the cost-effectiveness of removing sediments under the regulations. EPA estimates a cost of less than $0.30 per pound of sediment removal in this rule (pre-tax, 2001 dollars). This estimated per-pound removal cost is low compared to EPA's POTW benchmark for conventional pollutants. That benchmark measures the potential costs per pound of TSS and BOD removed for an ''average'' POTW (see 51 FR 24982). Indexed to 2001 dollars, EPA's benchmark costs are about $0.73 per pound of TSS and BOD removed. For information on EPA's cost-effectiveness, see the *Economic Analysis*.

IX. Coordination With Other Federal Programs

A. How Does Today's Rule Function in Relation to Other EPA Programs?

The relationship between animal agriculture and water quality is affected by existing programs other than the CAFO regulations. This section of the preamble presents today's action in the context of some of these other programs.

1. Water Quality Trading

EPA proposed a water quality trading policy on May 15, 2002, for public review and comment. The proposed policy lays out guidelines for States and local governments/municipalities to consider when implementing a water quality trading program to maintain or reduce pollutant loading and achieve the goals of the Clean Water Act. Water quality trading is considered by some to be a more efficient and quicker pollution reduction process to meet water quality standards than conventional Clean Water Act methods. The proposed trading policy encourages currently regulated and nonregulated sources of pollution to interact more and make mutually beneficial agreements to reduce pollutant loading they might otherwise not be motivated to make. CAFOs may find mutually beneficial opportunities for water quality pollutant trading with other point and nonpoint sources in their watershed. For CAFOs interested in more details about Water Quality Trading, please go *http://www.epa.gov/ow*. The trading policy includes a general EPA water quality trading policy statement and identifies elements that define a successful trading program and provisions that should ensure consistency with the Clean Water Act.

2. Total Maximum Daily Load (TMDL)

The TMDL provisions of the Clean Water Act are intended to be the second line of defense for protecting the quality of surface water resources. When technology-based controls on point sources are inadequate for water to meet State water quality standards, section 303(d) of the Clean Water Act requires States to identify those waters and to develop TMDLs. A TMDL study must be conducted for each pollutant that causes a water body to fail to meet State water quality standards. More than 20,000 waters are identified nationally as being impaired and possibly requiring a TMDL. The top impairments in 1998 were sediment, nutrients, and pathogens. AFOs and CAFOs can be sources of all three pollutants.

A TMDL is a calculation of the greatest amount of a pollutant that a water body can receive without exceeding water quality standards. A TMDL allocates the amount of pollution that can be contributed by the pollutant sources. A TMDL study identifies both point and nonpoint sources of each pollutant that cause a water to fail to meet water quality standards. Water quality sampling, biological and habitat monitoring, and computer modeling help the TMDL writer determine how much each pollutant source must reduce its contribution to ensure that the water quality standard is met. Through the TMDL process, pollutant loads are allocated to all sources. Wasteload allocations for point sources are enforced through NPDES discharge permits. Load allocations for nonpoint sources are not federally enforceable, but can be met through voluntary approaches. In some impaired watersheds, AFOs and CAFOs may be affected by TMDLs since improved management practices may be necessary to restore water quality. In the case of CAFOs, any necessary pollutant loading reductions would be achieved through the use of NPDES permits issued in accordance with the requirements contained in today's final rule.

3. Watershed Permitting

Watershed-based permits are NPDES permits that are issued to point sources on a geographic or watershed basis. They focus on watershed goals and consider multiple pollutant sources and stressors, including the level of nonpoint source control needed. A watershed approach provides a framework for addressing all stressors within a hydrologically defined drainage basin instead of viewing individual pollutant sources in isolation. More than 20 States have implemented some form of the watershed approach and manage their resources on a rotating basin cycle.

Because of the recent emphasis on water quality-based permits and development of TMDLs that focus on water quality impacts, EPA is looking at ways to use watershed-based permits to achieve watershed goals. The watershed-based permit is a tool that can assist with implementation of a watershed approach. The utility of this tool relies heavily on a detailed, integrated, and inclusive watershed planning process. Many of the actions necessary for a successful TMDL are also needed for a successful watershed approach. The process and data needs for developing a watershed-based permit and for developing a TMDL are very similar. In places where TMDLs have been developed, watershed permits may be useful tools for implementing TMDLs. For example, North Carolina's nutrient management strategy for the Neuse River Basin includes a watershed-based permit approach for TMDL implementation. The strategy recognizes the need for all groups to work together and includes an approach for permitted dischargers to work collectively to meet a combined nitrogen allocation, rather than be subject to individual allocations. The implementation of the approach is being developed (NC DWQ, 1998, 2002). A watershed permit approach was also used for municipal discharges in Connecticut contributing nutrients to the Long Island Sound (CTDEP, 2001).

An approach similar to those used in North Carolina and Connecticut can be used for permitting CAFOs within a specific watershed.

4. Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)

In the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Congress required States with federally approved coastal zone management programs to develop and implement coastal nonpoint pollution control programs. Thirty-three States and Territories currently have federally-approved Coastal Zone Management programs. Section 6217(g) of CZARA called for EPA, in consultation with other federal agencies, to develop guidance on ''management measures'' for sources of nonpoint source pollution in coastal waters. In January 1993 EPA issued its *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters,* which addresses five major source categories of nonpoint pollution: urban runoff, agriculture runoff, forestry runoff, marinas and recreational boating, and hydromodification. Within the agriculture runoff nonpoint source category, the EPA guidance specifically included management measures applicable to all new and existing ''confined animal facilities.'' The guidance identifies which facilities constitute large and small confined animal facilities based solely on the number of animals confined. The manner of discharge is not considered. Under the CZARA guidance, a large beef feedlot contains 300 head or more, a small feedlot between 50 and 299 head; a large dairy contains 70 head or more, a small dairy between 20 and 69 head; a large layer or broiler contains 15,000 head or more, a small layer or broiler between 5,000 and 14,999 head; a large turkey facility contains 13,750 head or more, a small turkey facility between 5,000 and 13,749 head; and a large swine facility contains 200 head or more, a small swine facility between 100 and 199 head.

The thresholds in the CZARA guidance for identifying large and small confined animal facilities are lower than those established for defining CAFOs under today's rules. Thus, in coastal States the CZARA management measures potentially apply to a greater number of small facilities than today's CAFO definition. Despite the fact that both the CZARA management measures for confined animal facilities and the NPDES CAFO regulations address similar operations, these programs do not overlap or conflict with each other. CZARA applies to nonpoint source dischargers. Any CAFO facility, as defined by 40 CFR Part 122, that has an NPDES CAFO permit, is a point source discharger and thus not subject to CZARA. Similarly, if a facility subject to CZARA management measures is later designated a CAFO by an NPDES permitting authority, the facility is no longer subject to CZARA. With respect to AFOs, some of these facilities may be subject to both NPDES and CZARA requirements, if they have both point and nonpoint source discharges. EPA's CZARA guidance provides that new confined animal facilities and existing large confined animal facilities should limit the discharge of facility wastewater and runoff to surface waters by storing such wastewater and runoff during storms up to and including discharge caused by a 25-year, 24-hour storm. Storage structures should have an earthen or plastic lining, be constructed with concrete, or constitute a tank. All existing small facilities should design and implement systems that will collect solids, reduce contaminant concentrations, and reduce runoff to minimize the discharge of contaminants in both wastewater and in runoff caused by storms up to and including a 25-year, 24-hour storm. Existing small facilities should substantially reduce pollutant loadings to ground water. Both large and small facilities should also manage accumulated solids in an appropriate waste utilization system. In addition to the confined animal facility management measures, the CZARA guidance includes a nutrient management measure intended to be applied by States to activities associated with the application of nutrients to agricultural lands (including the application of manure). The goal of this management measure is to minimize edge-of-field delivery of nutrients and minimize the leaching of nutrients from the root zone. The nutrient management measures also provide for the development, implementation, and periodic updating of a nutrient management plan.

5. Clean Water Act Sec. 319 Program

Congress amended the Clean Water Act in 1987 to establish the section 319 Nonpoint Source Management Program because it recognized the need for greater federal leadership to help focus State and local nonpoint source efforts. Under section 319, States, Territories, and Indian Tribes receive grants to implement their approved management programs for controlling non-point source pollution, which may include a wide variety of activities, including technical assistance, financial assistance, education, training, technology transfer, demonstration projects, and monitoring to assess the success of specific nonpoint source implementation projects. More than 40 percent of section 319 Clean Water Act grants have been used for activities to control and reduce agricultural nonpoint source pollution. Also, several USDA and State-funded programs provide cost-share, technical assistance, and economic incentives to implement NPS pollution management practices.

6. Source Water Protection Program

Although many States, water systems, and localities have established watershed and wellhead protection programs, the 1996 Safe Drinking Water Act Amendments placed a new focus on source water quality. States have been given access to funding and required to develop Source Water Assessment Programs to assess the areas serving as public sources of drinking water in order to identify potential threats and initiate protection efforts.

The Source Water Assessment Programs created by States differ because they are tailored to each State's water resources and drinking water priorities. However, each assessment must include four major elements: delineating (or mapping) the source water assessment area, conducting an inventory of potential sources of contamination in the delineated area, determining the susceptibility of the water supply to those contamination sources, and releasing the results of the determinations to the public.

Although a number of measures are in place to protect and retain the high quality of the Nation's drinking water, drinking water sources are subject to a number of threats, including growing population, chemical use, and animal wastes. Improper disposal of chemicals, animal wastes, pesticides, and human wastes, as well as the persistence of naturally occurring minerals, can contaminate drinking water sources. Like human wastes, animal wastes contain pathogens, such as *E. coli*, that can sicken hundreds of people and kill the very young and old and people with weakened immune systems. These wastes can enter drinking water supplies in runoff from feedlots and pastures.

In addition to these State efforts, EPA is working with a broad spectrum of stakeholders to develop a national strategy to prevent source water contamination. When it is complete, the strategy will reflect what EPA's Water Program can do to further source water contamination prevention nationwide.

7. What Is EPA's Position Regarding Environmental Management Systems?

The Agency supports the voluntary adoption of environmental management systems (EMSs) by CAFOs. On May 15, 2002, the Administrator announced the Agency's Position Statement on Environmental Management Systems. This statement outlines the policy and principles by which the Agency will work with industry to promote the use of EMSs to improve environmental protection. EPA promotes the wide-spread use of EMSs across a range of organizations and settings, with particular emphasis on adoption of EMSs to achieve improved environmental performance and compliance, and pollution prevention through source reduction. The Agency encourages organizations to implement EMSs based on the plan-do-check-act framework, with the goal of continual improvement. An organization's EMS should address its entire environmental footprint (everywhere it interacts with the environment both negatively and positively), including both regulated and unregulated impacts, such as energy and water consumption, dust, noise, and odor. EPA supports EMSs that are appropriate to the needs and characteristics of specific sectors and facilities.

An operation could choose to implement an EMS that could include a CNMP, but would also include policies and practices designed to address other significant environmental problems. EPA, as part of its overall policy on EMSs, supports adoption of these systems in a variety of sectors, including agriculture. EPA has worked with specific agricultural producer groups like the United Egg Producers to develop a voluntary EMS program. USDA is also funding a major effort through the University of Wisconsin called *Partnerships for Livestock Environmental Assessment Management Systems.* This project is designed to provide information and other guidance on ways to use EMSs effectively in a variety of agricultural settings. EPA serves on the Advisory Committee for this effort, along with USDA and other federal agencies.

In the *2001 Notice,* EPA outlined options for how an EMS program may be incorporated into the rule. These options were based on ISO 14000 criteria, an international standard. EPA received a number of comments on these options. Industry was split in support of EMS: some groups thought that use of EMSs in the proposal exceeded authorities provided under the Clean Water Act, whereas others welcomed EMSs as an alternative to co-permitting. Environmental groups were concerned that reliance on EMS constituted a roll-back of rule requirements.

EPA is not including an EMS as an option in this final rule. EPA recognizes, based on comments, that offering an EMS alternative made the rule more complex and was not entirely consistent with the Agency's goal to keep the rule simple, easy to understand and easy to implement. However, EPA supports the use of EMS by States, as appropriate. In today's rule, EPA is requiring that CAFOs develop and implement nutrient management plans that can help CAFOs manage manure and protect water quality. CAFOs may want to consider implementation of nutrient management plans as part of a broader EMS to manage the specific impacts of excess nutrients. The CAFO's EMS would be broader than just a nutrient management plan, however, and would cover all media and both regulated and unregulated aspects.

More information on EPA's EMS policy, along with sector-specific EMS templates and guidance is provided at www.epa.gov/ems.

B. How Is EPA Coordinating With Other Federal Agencies?

EPA and USDA are committed to working together to provide coordinated assistance to animal agriculture for the betterment of animal agriculture and the environment. The agencies are working together to educate farmers, suppliers, USDA field representatives, consultants, and others on these new regulations. Both EPA and USDA believe in the importance of providing education, training and technical assistance to all involved in animal agriculture that can play a role in helping farmers understand the new requirements and how they can meet them. EPA and USDA have different roles and different constituencies. EPA sets the requirements, works toward compliance by industry, and enforces against noncompliance. USDA provides technical assistance, education, and training to farmers, growers, and allied industries. This education, training, and technical assistance will be vitally important to CAFO operators as they work to come into compliance with the new regulations. The Natural Resource Conservation Service and the Cooperative State Research, Education, and Extension Service are the key USDA agencies that will work with farmers to educate them on the requirements of the EPA CAFO rule. USDA will continue to educate EPA personnel on the intricacies of animal agriculture so that the Agency can improve its communication with this vital sector.

There was significant comment on the proposed rule on how EPA and USDA should work together with farmers to implement this rule. Some thought the implementation should be left to USDA NRCS and CSREES. Others thought EPA and USDA should work together in the field in a coordinated effort to educate, regulate and assist AFOs and CAFOs. One commenter suggested that EPA monitor water quality and NRCS provide technical assistance. A few comments asked that EPA join other federal agencies and conduct a comprehensive examination of the problems generated by CAFOs.

EPA and USDA believe that only by working in close partnership will the federal government provide the best service to farmers and the rest of the American public. It is EPA's intent and commitment to communicate and coordinate effectively across Agencies and Departments. Animal agriculture is important to this country, as is a sound, healthy environment. EPA and USDA believe these two goals can be jointly achieved.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a ''significant regulatory action'' under the terms of Executive Order 12866. As such, this action was submitted to OMB for review. Changes

made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0250.

The information collection requirements affect operations that are defined or designated as CAFOs under the final rule and, therefore, are subject to the record keeping, data collection, and reporting requirements associated with applying for and complying with an NPDES permit. They also affect the 43 States with approved NPDES programs that administer NPDES permits for CAFOs (''approved States''). EPA and approved States use the information routinely collected through NPDES permit applications and compliance evaluations in the following ways: to issue NPDES permits with appropriate limitations and conditions that comply with the Clean Water Act; to update information in EPA's databases that permitting authorities use to determine permit conditions; to calculate national permit issuance, backlog, and compliance statistics; to evaluate national water quality; to assist EPA in program management and other activities that ensure national consistency in permitting; to assist EPA in prioritizing permit issuance activities; to assist EPA in policy development and budgeting; to assist EPA in responding to Congressional and public inquiries; and to ensure compliance with the terms and conditions of the permit.

The responses to the information collection requirements are mandatory for CAFOs. CAFOs are defined as point sources under the NPDES program (33 U.S.C. 1362). Under 33 U.S.C. 1311 and 1342, a CAFO must obtain an NPDES permit and comply with the terms of that permit, which include appropriate record keeping and reporting requirements. Furthermore, 33 U.S.C. 1318 provides authority for information collection (*i.e.*, record keeping, reporting, monitoring, sampling, and other information as needed), which applies to point sources. Approved States will also incur burden for record keeping, data collection, and reporting requirements when they revise and implement any program changes necessitated by the final rule. Under 40 CFR 123.62(e), State NPDES programs must at all times be in compliance with federal regulations.

CAFOs must develop their nutrient management plans, retain them onsite, and make them available to the permitting authority on request. These plans may contain confidential business information. When this is the case, the respondent can request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR Part 2 (40 CFR 2.201 *et seq.*), and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

EPA estimates that the average annual public burden for this rule making will be 1.9 million hours. This estimate includes 0.3 million hours for State respondents and 1.6 million hours for CAFO respondents. It includes the time required to review instructions, search existing data sources, gather and maintain all necessary data, and complete and review the information collection. Table 10.1 provides the breakdown of these estimates by type of response. Average annual capital and O&M costs will total $5.9 million. This estimate includes $1.3 million in CAFO capital costs to purchase sampling equipment, install depth markers, and purchase services for the engineering portion of the nutrient management plan. Average annual CAFO O&M costs of $2.9 million include laboratory analyses of soil and manure samples, tractor rental, and record keeping costs. Average annual State O&M costs of $1.7 million pay for public notifications.

TABLE 10.1.—BURDEN ESTIMATES PER RESPONSE

Activities	Response frequency	Average annual burden (hours)	Average annual responses [1]	Labor cost ($ millions)
CAFO Respondents				
Start-up Activities	One time	14,493	4,831	$0.32
Permit Application Activities and NOIs	Every 5 years	43,479	4,831	0.95
ELG and NPDES Data Collection and Record Keeping Activities:				
Visual inspections	Annual	152,260	11,712	1.67
Equipment inspection	Annual	32,238	8,060	0.35
Manure sampling	Annual	26,088	11,712	0.29
Soil sampling	Every 5 years	31,057	3,613	0.34
ELG and NPDES record keeping	Annual	936,982	11,712	10.31
Additional NPDES Record Keeping and Reporting Activities:				
Nutrient management plan	Every 5 years	250,168	4,831	9.06
Manure transfer record keeping	Annual	102,858	7,347	1.13
Annual report	Annual	11,712	11,712	0.26
Compliance inspections	Per inspection	9,370	2,342	0.20
State Respondents				
NPDES Program Modification Activities	One time	3,583	14	0.11
General Permit Activities	Annual	31,598	3,277	0.94
Individual Permit Activities	Annual	174,143	1,573	5.19
Compliance Evaluation:				
Inspections	Annual	36,317	2,270	1.08
Annual Reports	Annual	45,397	11,349	1.35

[1] For CAFOs, the number of respondents for each type of response equals the number of responses. For approved States, these estimates differ. There are 43 approved States responding to the information collection requirements, but the number of responses for some activities can be greater because the estimate depends on the number of CAFOs submitting information or undergoing inspections. EPA is the permitting authority for some CAFOs, so the response estimates for CAFOs and States will differ.

These burden and cost estimates have been updated since the proposed rule to reflect changes in the final rule. The Agency received only a few comments on the PRA section of the preamble for the proposed rule. Most commenters believed that the number of affected operations was underestimated. EPA revised its estimate of total AFO operations and its estimate of affected CAFO operations. The final rule requirements results in fewer CAFOs compared to the proposed rule estimates.

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.

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. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Regulatory Flexibility Act

1. Background

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) A small business based on annual revenue standards established by the Small Business Administration (SBA), with the exception of one of the six industry sectors where an alternative definition to SBA's is used; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

For purposes of assessing the impacts of today's rule on small entities in the egg-laying sector, EPA considered small entities in this sector as an operation that generates less than $1.5 million in annual revenue. A summary of EPA's rationale and supporting analyses pertaining to this alternative definition is provided in the record and in section 4 of the *Economic Analysis. See* discussion under ''Use of Alternative Definition'' later in this section. Because this definition of small business is not the definition established under the RFA, EPA proposed using this alternative definition in the **Federal Register** and sought public comment. *See* 66 FR 3099. EPA also consulted with SBA Chief Counsel for Advocacy on the use of this alternative definition.

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations of representatives of affected small entities in accordance with section 609(b) of the RFA. *See* 66 FR 3121–3124; 3126–3128 (January 12, 2001). A detailed discussion of the SBAR Panel's advice and recommendations can be found in the *Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on National Pollutant Discharge Elimination System and Effluent Limitations Guideline Regulations for Concentrated Animal Feeding Operations,* April 7, 2000. This document is included in the public record (DCN 93001). The 2001 proposal provides a summary of the Panel's recommendations. (*See* 66 FR 3121–3124).

As required by section 604 of the RFA, EPA prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal for this rule. The FRFA is available for review in the docket and is summarized below.

2. Summary of Final Regulatory Flexibility Analysis

As required by section 604 of the RFA, EPA also prepared a final regulatory flexibility analysis (FRFA) for today's rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket (in section 4 of the final *Economic Analysis*). A summary is provided below.

a. Need for and objectives of the regulations. A detailed discussion of the need for the regulations is presented in section IV of the 2001 preamble (66 FR 2972–2976). A summary is also provided in section 4 of the final *Economic Analysis.* In summary, EPA's rationale for revising the existing regulations include the following: address reports of continued discharge and runoff from livestock and poultry operations in spite of the existing requirements; update the existing regulations to reflect structural changes in these industries over the past few decades; and improve the effectiveness of the existing regulations. A detailed discussion of the objectives and legal basis for the rule is presented in sections I and III of the proposal preamble (66 FR 2959).

b. Significant Comments on the IRFA. The significant issues raised by public comments on the IRFA address exemptions for small businesses, disagreement with SBA definitions and guidance on how to define small businesses for these sectors, and general concerns about EPA's financial analysis and whether it adequately captures potential financial effects on small businesses.

Commenters generally recommend that EPA exempt all small businesses from regulation, arguing in some cases that regulating small businesses could affect competition in the marketplace, discourage innovation, restrict improvements in productivity, create entry barriers, and discourage potential entrepreneurs from introducing beneficial products and processes. Several commenters claimed that EPA had misrepresented the number of small businesses. In particular, several commenters objected to SBA's small business definition for dairy operations, claiming it understates the number of small businesses in this sector. One commenter claimed that EPA's estimate of the total number of operations is understated and therefore must understate the number of small businesses. Some commenters objected to the consideration of total farm-level revenue to determine the number of

small businesses since this understates the number of small businesses (despite SBA guidance, which bases its definitions on total entity revenue for purposes of defining a small business). However, other commenters claimed that EPA's approach to its small business analysis does not only capture operations that are, in fact, small businesses but also larger corporate operations. Another commenter recommended that EPA simply consider any operation with fewer than 1,000 animal units a small business. EPA also received comments requesting that EPA consider use of regional-specific definitions of small business because of concerns that the revenue-based SBA definition might not be applicable to operations in Hawaii since producers in that State generally face higher cost of production and also higher producer prices relative to revenue and cost conditions at farms in the contiguous 48 States. Comments from SBA recommended that EPA adopt the Panel's recommendation not to consider changing the designation criteria for operations with fewer than 300 animal units as a means to provide relief to small businesses. SBA also recommended that EPA adopt the SBAR Panel's approach and allow permitting authorities to focus resources where there is greatest need. Finally, some commenters generally questioned the results of EPA's financial analysis, giving similarly stated concerns about EPA's financial data and models used for its main analysis.

In response, EPA notes that the projected impacts of today's final regulations on small businesses are lower than the projected impacts of the proposed rule. For example, the final rule does not extend the effluent guideline regulations to Medium CAFOs, as was proposed in the 2001 proposal. Instead, EPA is retaining the existing regulatory threshold, applying the effluent guideline to Large CAFOs only. Requirements for Medium CAFOs will continue to be subject to the BPJ requirements as determined by the permitting authority, thus requiring that fewer small businesses adopt the effluent guideline standards. More information on this topic is available in section IV of this preamble. Section IV discusses other regulatory changes since the 2001 proposal, indicating greater alignment with SBAR Panel recommendations. Refer to section IV of this preamble for more information on the comments and EPA's responses to those comments, as well as EPA's justification for final decisions on these options.

Regarding EPA's estimate of the number of small businesses, the Agency continues to follow SBA guidance and SBA definitions on how to define small businesses for these sectors. However, EPA has made substantial changes to the financial data and models used for its main analysis, which is also used to evaluate financial effects on small businesses. Both the 2001 Notice (66 FR 58556) and the 2002 Notice (67 FR 48099) describe the public comments received by EPA on the baseline financial data and the methodological approach developed by EPA to evaluate financial effects. These comments and how EPA has addressed them are discussed more fully in section 4 of the final *Economic Analysis.* EPA's detailed responses to comments, and the comments themselves, are contained in the *Comment Response Document* in response categories SBREFA and Small Business.

c. Description and estimation of number of small entities to which the regulations will apply. The small entities subject to this rule are small businesses. No nonprofit organizations or small governmental operations operate CAFOs. As discussed in section VIII.B.1(c) of this preamble, to estimate the number of small businesses affected by this final rule, EPA relied on the SBA size standards for these sectors, with the exception of size definitions for the egg sector. SBA defines a ''small business'' in these sectors as an operation with average annual revenues of less than $0.75 million for dairy, hog, broiler, and turkey operations; $1.5 million in revenue for beef feedlots; and $9.0 million for egg operations. The definitions of small business for the livestock and poultry industries are in SBA's regulations at 13 CFR 121.201. For this rule, EPA proposed and solicited public comment on and is using an alternative definition for small business for egg-laying operations. EPA defines a ''small'' egg laying operation for purposes of its regulatory flexibility assessments as an operation that generates less than $1.5 million in annual revenue. EPA consulted with SBA on the use of this alternative definition, as documented in the rulemaking record for the 2001 proposal. Given these definitions, EPA evaluates ''small business'' for this rule as an operation that houses or confines fewer than 1,400 fed beef cattle (includes fed beef, veal, and heifers); 300 mature dairy cattle; 2,100 market hogs; 37,500 turkeys; 61,000 layers; or 375,000 broilers. The approach used to derive these estimates is described in the *Economic Analysis* and in the record.

Using these definitions and available data from USDA and industry, EPA estimates that 6,200 of affected CAFOs across all size categories are small businesses. Among Large CAFOs, EPA estimates that about 2,330 operations are small businesses. Among Medium CAFOs, EPA estimates that about 3,870 operations are small businesses. Table 8.3 in section VIII of this preamble shows EPA's estimates of the number of regulated small businesses across all industry sectors. Section VIII.B.1(c) provides more detail on the estimated financial effects on small businesses under the final rule.

d. Description of the reporting, record-keeping, and other compliance requirements. Today's rule would require all AFOs that meet the CAFO definition to apply for a permit, develop and implement a nutrient management plan, collect and maintain records required by applicable technology-based effluent discharge standards, and submit an annual report to the responsible NPDES permitting authority. (No nonprofit organizations or small governmental operations operate CAFOs.) All CAFOs would also be required to maintain records of off-site transfers of manure. Record-keeping and reporting burdens include the time to record and report animal inventories, manure generation, field application of manure (amount, method, date, weather conditions), manure and soil analysis results, crop yield goals, findings from visual inspections of feedlot areas, and corrective measures. Records may include manure spreader calibration worksheets, manure application worksheets, maintenance logs, and soil and manure test results. EPA believes the owner/operator has the skills necessary to keep these records and make reports to the permitting authority.

Section X.B further summarizes the expected reporting and record-keeping requirements under the final regulations based on information compiled as part of the ICR for the Final NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (EPA ICR No. 1989.01) prepared by EPA.

e. Steps taken to minimize significant impacts on small entities. In today's final rulemaking, EPA has adopted an approach for a regulatory program that mitigates impacts on small business, recognizes and promotes effective non-NPDES State programs, and works in partnership with USDA to promote environmental stewardship through voluntary programs, and financial and technical assistance. EPA's proposal

included many options that were not finally adopted in deference to these principles.

Because of the estimated impacts on small entities EPA is not certifying that this rule will not impose a significant impact on a substantial number of small entities. EPA has complied with all RFA provisions and conducted outreach to small businesses, convened a SBAR panel, prepared an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA), and also prepared an economic analysis. The Agency's actions include the following efforts to minimize impacts on small businesses:

- Retained structure of existing regulations, which allows EPA and states to focus on the largest producers;
- Retained applicability of effluent guidelines for Large CAFOs only;
- Retained existing designation criteria and process;
- Retained existing definition of an AFO;
- Retained conditions for being defined as a Medium CAFO;
- Eliminated the ''mixed'' animal calculation for operations with more than a single animal type for determining which AFOs are CAFOs;
- Raised the duck threshold for dry manure handling duck operations; and
- Adopted a dry-litter chicken threshold higher than proposed.

EPA went to some length to explore and analyze a variety of ELG regulatory alternatives to minimize impacts on small businesses. The record for today's rule includes extensive discussions of the alternatives, EPA's analysis of those alternatives, and the rationale for the Agency's decisions. In large part, the Agency incorporated most of the alternative considerations to reduce the burden to small businesses. By way of example, today's regulations will affect fewer small businesses at significantly reduced costs, as compared to the estimates of the number of small businesses and expected costs to those businesses based on the requirements set forth in the 2001 proposal. For more information on EPA's option selection rationale, see section IV of this preamble.

3. Compliance Guide

As required by section 212 of SBREFA, EPA is also preparing a small entity compliance guide to help small businesses comply with this rule. To request a copy, contact one of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble. EPA expects that the guide will be available in March 2003.

4. Use of Alternative Definition

The RFA defines small entities as including small businesses, small governmental jurisdictions, and small organizations. The statute provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

As stated above, EPA proposed defining ''small entity'' for purposes of its regulatory flexibility assessments under the RFA as an operation that generates less than $1.5 million in annual revenue. The Agency also consulted with SBA Chief Counsel for Advocacy. See 66 FR 2959, (January 12, 2001).

EPA received two comments from the same commenter requesting that EPA not use the alternative definition for egg-laying operations but instead consider regional-specific conditions for determining the number of small businesses. The commenter expressed concern that SBA's revenue-based definition might not be applicable to operations in Hawaii since producers in that State generally face higher cost of production and also higher producer prices relative to revenue and cost conditions at farms in the contiguous 48 States. There are a number of reasons why EPA did not use a regional-specific definition of small business for egg operations. First, consistent with the RFA, EPA uses small business definitions as defined by the SBA except in cases where EPA consults with the SBA Chief Counsel for Advocacy. Since size standards set by the SBA do not vary by region, EPA follows SBA's lead. Second, the regulations set requirements by the number of animal units at a farm, not the revenues associated with those animal units. An 82,000 bird egg-laying operation in the Midwest will be subject to the same effluent limitations guidelines as a 82,000 bird egg-laying operation in Hawaii and the territories. Third, the economic analysis, uses a representative farm approach. Only the broadest regional information could be obtained through USDA and other sources. Although some small subregions or localities might face unique issues, without performing a Section 308 survey of all regulated entities EPA must rely on the representative farm approach. (*See also* response to comment DCN CAFO201246–C–6 regarding EPA's use of a representative farm approach, which is consistent with longstanding practices at USDA and the land grant universities.) Note however, that although EPA uses a single definition of small business across all regions, EPA's representative farm analysis of small business impacts does account for some regional variation in costs and revenues. Fourth, very few impacts are seen in the egg-laying sector, regardless of size. Even if EPA had classified the majority of egg-laying operations with less than 1,000 AU as small businesses, this would not have changed the outcome of the Agency's small business analysis in any material way. Finally, even if EPA were to classify all operations as small businesses in areas outside the contiguous 48 States (including Hawaii and Alaska), this would only raise the total number of small business by less than 10 operations. See response to comment DCN CAFO NODA 600053–5 regarding EPA's consideration of regional-specific definition of small business for the regulated sectors.

Today, EPA is establishing this alternative definition of ''small entity'' for the egg-laying sector for purposes of the regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, established requirements for federal agencies to assess the effects of their regulatory actions on State, Tribal and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, Tribal and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

EPA has determined that this rule contains a federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA revised the unfunded mandates analysis for State costs based on comments received. EPA expanded the categories of costs and increased the unit costs and hour burden while the final rule significantly decreased the number of potential permittees. Because the revisions were largely offsetting, there is little change in the overall burden estimated ($8 million annually at proposal and $9 million annually for the final rule). Accordingly, EPA has prepared under section 202 of the UMRA a written statement, which is summarized below. See section 5 of the *Economic Analysis* for the complete section 202 statement.

1. Private Costs

This statement provides quantitative cost-benefit assessment of the federal requirements imposed by today's final rules. In large part, the private sector, not other governments, will incur the costs. EPA estimates total compliance costs to industry of $326 million per year (pre-tax, 2001 dollars). EPA estimates that the monetized benefits of the final regulations range from $204 million to $355 million annually. Section VIII.C.1 of this preamble provides additional information on EPA's analysis. The analysis is provided in section 5 of the *Economic Analysis* and other supporting information is provided in the *Benefits Analysis* supporting the final regulations. Both of these support documents are available in the administrative record for this rulemaking. A summary of these analyses is provided in section's VII and VIII of today's preamble.

2. State Local and Tribal Government Costs

Authorized States are expected to incur costs to update their State NPDES programs to conform to the final rule and implement the revised standards through issuing NPDES permits and inspecting CAFOs to ensure compliance. The total average annual State administrative cost to implement the permit program, approximately $9 million, will not exceed the thresholds established by the UMRA. The analysis underlying this cost estimate is in the *NPDES Technical Support Document* found in the rule record. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect local or Tribal governments. There are no local or Tribal governments authorized to implement the NPDES permit program and the Agency is unaware of any local or Tribal governments who are owners or operators of CAFOs. Thus today's rule is not subject to the requirements of Section 203 of UMRA.

3. Funding and Technical Assistance Available to CAFOs

The 2002 Farm Bill authorized cost-share funding for six years (2002 through 2007) for EQIP. Funding starts at $400 million in 2002 and continually increases to $1.3 billion in the last year. Sixty percent of this funding is to be targeted to animal agriculture, including large and small feedlots, as well as pasture and grazing operations. An operation is eligible for a total of up to $450,000 over the six year time frame. This funding is open to both CAFOs and AFOs. Being defined as a CAFO does not make you ineligible for this funding.

4. Funding Available to States

States may be able to use existing sources of financial assistance to revise and implement the final rule. Section 106 of the Clean Water Act authorizes EPA to award grants to States, Tribes, intertribal consortia, and interstate agencies for administering programs for the prevention, reduction, and elimination of water pollution. These grants may be used for various activities to develop and carry out a water pollution control program, including permitting, monitoring, and enforcement. Thus, State and Tribal NPDES permit programs represent one type of State program that can be funded by section 106 grants.

Key comments received on Unfunded Mandates relate to the increased cost to farmers and States and the need for funds for CAFO compliance and State permitting. In the discussion above, EPA outlines the funding available to CAFO owners (EQIP) and to States (CWA section 106 grants) to help meet this rule's mandates.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 19, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA does not consider an annual impact of approximately $9 million on States a substantial effect. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations would not alter the basic State-federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA's policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

During public comment, EPA received comments on its analysis required under the Federalism Executive Order. The comments were that the Agency had underestimated the cost impacts of the rule on States. In response to these comments, EPA reanalyzed the impacts on States.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with

Indian Tribal Governments'' (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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects 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.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, 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 in Executive Order 13175. First, no Tribal governments have been authorized to issue NPDES permits. Second, few CAFO operations are located on Tribal lands. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA has briefed Tribal communities about this rulemaking at the National Environmental Justice Advisory Committee meeting in Atlanta, Georgia in June, 2000 and through notices in Tribal publications. In addition, EPA Regional Offices discussed this rulemaking with the Tribes in their regions.

During the public comment period, the Agency received no comments from Tribes or comments relating to tribal issues.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is subject to Executive Order 13045 because it is an economically regulatory action as defined by Executive Order 12866, and we believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of increased nutrients, pathogens, and metals in surface water on children. The results of this evaluation are contained in the proposed *Environmental Assessment,* which is part of the public record for this final rule.

EPA has established a maximum contaminate level for nitrates in drinking water at 10 micrograms/liter. There is some evidence that infants under the age of six months may be at risk from methemoglobinemia caused by nitrates in private drinking water wells when ingesting water at nitrate levels higher than 10 micrograms/liter. The Agency has estimated the reduction in the number of households that will be exposed to drinking water with nitrate levels above 10 micrograms/liter in Chapter 8 of the *Benefits Assessment* (noting that the Agency does not have information on the number of households exposed to nitrates that also have infants). The Agency estimates that there are approximately 13.5 million households with drinking water wells in counties with animal feeding operations. Of these, the Agency estimates that approximately 1.3 million households are exposed to nitrate levels above 10 micrograms/liter. The Agency further estimates that approximately 112,000 households would have their nitrate levels brought below 10 micrograms/liter under the requirements of this final rule. The Agency estimates that options more stringent than these would provide only small incremental changes in pollutant loadings to groundwater (*see* the *Technical Development Document*). The Agency therefore does not believe that requirements more stringent than these in the rule would provide meaningful additional protection of children's health risks from methemoglobinemia.

The Agency received no comments on the impacts to children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The 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. EPA has concluded that this rule is not likely to have any adverse energy effects. While there will be a minor increase in energy use from increased hauling of manure to offsite locations, EPA has estimated the increased fuel usage associated with transporting manure, litter, and other process wastewaters off site is approximately 423,000 barrels annually for all CAFOs. EPA does not believe that this will have a significant impact on the energy supply.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Pub L. 104–113 section 12(d), 15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does involve the use of technical standards. In this rulemaking, EPA has developed regulatory standards for controlling pollutant discharges from permitted CAFOs based on its expertise, professional judgment, and the extensive record developed, in part, through the APA's notice and comment process. While we identified the American National Standards for Good Environmental Livestock Production Practices, developed by the National Pork Producers Council and certified by ANSI as an American National Standard on February 20, 2002 (GELPP 0001–2002; 0002–2002; 0003–2002; 0004–2002; 0005–2002), and a commenter has identified ANSI/ASCE 7–98, a separate voluntary consensus standard, as being potentially applicable, we have decided not to use them in this rulemaking. The use of these voluntary consensus standard would have been impractical because EPA's rule establishes a regulatory framework in which decisions as to what specific best management practices must be applied at individual animal feeding operations is generally left to the State in the exercise of its authority to issue NPDES permits. In issuing permits, States may consider these ANSI-certified standards and include, or not include, various elements as they may deem appropriate. It would not have been consistent with

EPA's design for this rule to adopt these ANSI-certified standards as national minimum requirements for all States to incorporate into all permits for covered animal feeding operations. EPA received a number of comments suggesting that EPA should specifically include the GELPPs and ANSI/ASCE 7–98 as authorized alternative management standards in the final CAFO rule. EPA decided not to do so for the reasons discussed above.

In any event, it is important to note that the standards set out in this rule may be better characterized as representing regulatory decisions EPA is directed to make by the Clean Water Act, rather than as ''technical standards''. Consistent with Section 6(c) of OMB Circular A–119, EPA would not be obliged to consider the use of voluntary consensus standards as possible alternatives to the regulatory standards being adopted.

It should be noted that the effluent guideline rule (40 CFR 412) provides for voluntary alternative performance standards developed and applied in NPDES permits on a site-specific basis. CAFOs that voluntarily develop and adopt such performance standards in their NPDES permits may need to use previously approved technical standards to analyze for some or all of the following pollutants: nitrogen, phosphorus, BOD, and TSS. Consensus standards have already been promulgated in tables at 40 CFR 136.3 for measurement of all of these analytes.

Further, the rule specifically provides that the determination of land application rates for manure is to be done in accordance with technical standards established by the State. In establishing such standards, States may rely on standards already established by USDA or other existing standards or may develop new standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

In implementing the requirements of the Environmental Justice Executive Order, EPA reviews the environmental effects of major federal actions significantly affecting the quality of the human environment. For such actions, EPA reviewers focus on the spatial distribution of human health, social and economic effects to ensure that agency decisionmakers are aware of the extent to which those impacts fall disproportionately on covered communities. EPA has determined that this rulemaking is a major federal action. However, the Agency does not believe this rulemaking will have a disproportionate effect on minority or low-income communities. The proposed regulations will reduce the negative effects of CAFO waste in the nation's waters to benefit all of society, including minority communities.

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 (SBREFA) 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 can not take affect until 60 days after it is published in the **Federal Register**. This will be effective April 14, 2003. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

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APPENDIX - FORM 2B

Form Approved
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Approval expires 12-15-05

EPA I.D. NUMBER (*copy from Item 1 of Form 1*)

FORM 2B NPDES	**EPA**	U.S. ENVIRONMENTAL PROTECTION AGENCY APPLICATIONS FOR PERMIT TO DISCHARGE WASTEWATER CONCENTRATED ANIMAL FEEDING OPERATIONS AND AQUATIC ANIMAL PRODUCTION FACILITIES

I. GENERAL INFORMATION Applying for: Individual Permit ☐ Coverage Under General Permit ☐

A. TYPE OF BUSINESS	B. CONTACT INFORMATION	C. FACILITY OPERATION STATUS
❑ 1. Concentrated Animal Feeding Operation (complete items B, C, D, and Section II) ❑ 2. Concentrated Aquatic Animal Production Facility (complete items B, C, and section III)	Owner/or Operator Name: _____ Telephone: (_____) _____ Address: _____ Facsimile: (_____) _____ City: _____ State: __ Zip Code: _____	❑ 1. Existing Facility ❑ 2. Proposed Facility

A. FACILITY INFORMATION

Name: _____ Telephone: (____) _____
Address: _____ Facsimile: (____) _____
City: _____ State: _____ Zip Code: _____
County: _____ Latitude: _____ Longitude: _____

If contract operation: Name of Integrator: _____
Address of Integrator: _____

II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS

A. TYPE AND NUMBER OF ANIMALS

1. TYPE	2. ANIMALS	
	NO. IN OPEN CONFINEMENT	NO. HOUSED UNDER ROOF
❑ Mature Dairy Cows		
❑ Dairy Heifers		
❑ Veal Calves		
❑ Cattle (not dairy or veal)		
❑ Swine (55 lb. or over)		
❑ Swine (under 55 lb.)		
❑ Horses		
❑ Sheep or Lambs		

B. Manure, Litter and/or Wastewater Production and Use

a) How much manure, litter and wastewater is generated annually by the facility? _____ tons _____ gallons
b) If land applied how many acres of land under the control of the applicant are available for applying the CAFOs manure/litter/wastewater? _____ acres
c) How many tons of manure or litter, or gallons of waste-water produced by the CAFO will be transferred annually to other persons? tons/gallons (*circle one*)

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❑ Turkeys		
❑ Chickens (Broilers)		
❑ Chickens (Layers)		
❑ Ducks		
❑ Other Specify _____		
3. TOTAL ANIMALS		

C. ❑ TOPOGRAPHIC MAP

D. TYPE OF CONTAINMENT, STORAGE AND CAPACITY

1. Type of Containment	Total Capacity (in gallons)
❑ Lagoon	
❑ Holding Pond	
❑ Evaporation Pond	
❑ Other: Specify _____	

2. Report the total number of acres contributing drainage: _____ acres

3. Type of Storage	Total Number. of Days	Total Capacity (gallons/tons)
❑ Anaerobic Lagoon		
❑ Storage Lagoon		
❑ Evaporation Pond		
❑ Aboveground Storage Tanks		
❑ Belowground Storage Tanks		
❑ Roofed Storage Shed		
❑ Concrete Pad		
❑ Impervious Soil Pad		
❑ Other: Specify _____		

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E. NUTRIENT MANAGEMENT PLAN

A. Has a nutrient management plan been developed? ☐ Yes ☐ No

B. Is a nutrient management plan being implemented for the facility? ☐ Yes ☐ No

C. If no, when will the nutrient management plan be developed? Date: _____

D. The date of the last review or revision of the nutrient management plan. Date: _____

E. If not land applying, describe alternative use(s) of manure, litter and or wastewater:

F. LAND APPLICATION BEST MANAGEMENT PRACTICES
Please check any of the following best management practices that are being implemented at the facility to control runoff and protect water quality:

❑ Buffers ❑ Setbacks ❑ Conservation tillage ❑ Constructed wetlands ❑ Infiltration field ❑ Grass filter ❑ Terrace

III. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY CHARACTERISTICS

A. For each outfall give the maximum daily flow, maximum 30- day flow, and the long-term average flow.

1. Outfall No.	2. Flow (*gallons per day*)		
	a. Maximum. Daily	b. Maximum 30 Day	c. Long Term Average

B. Indicate the total number of ponds, raceways, and similar structures in your facility.

1. Ponds	2. Raceways	3. Other

C. Provide the name of the receiving water and the source of water used by your facility.

1. Receiving Water	2. Water Source

D. List the species of fish or aquatic animals held and fed at your facility. For each species, give the total weight produced by your facility per year in pounds of harvestable weight, and also give the maximum weight present at any one time.

1. Cold Water Species			2. Warm Water Species		
a. Species	b. Harvestable Weight (*pounds*)		a. Species	b. Harvestable Weight (*pounds*)	
	(1) Total Yearly	(2) Maximum		(1) Total Yearly	(2) Maximum

E. Report the total pounds of food during the calendar month of maximum feeding.

1. Month	2. Pounds of Food

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IV. CERTIFICATION	
I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.	
A. Name and Official Title (*print or type)*	B. Phone No. ( )
C. Signature	D. Date Signed

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INSTRUCTIONS

GENERAL

This form must be completed by all applicants who check "yes" to Item II-B in Form 1. Not all animal feeding operations or fish farms are required to obtain NPDES permits. Exclusions are based on size. See the description of these statutory and regulatory exclusions in the General Instructions that accompany Form 1.

For aquatic animal production facilities, the size cutoffs are based on whether the species are warm water or cold water, on the production weight per year in harvestable pounds, and on the amount of feeding in pounds of food (*for cold water species*). Also, facilities which discharge less than 30 days per year, or only during periods of excess runoff (*for warm water fish*) are not required to have a permit.

Refer to the Form 1 instructions to determine where to file this form.

Item I-A

See the note above and the General Instructions which accompany Form 1 to be sure that your facility is a "concentrated animal feeding operation" (CAFO).

Item I-B

Use this space to give owner/operator contact information.

Item I-C

Check "proposed" if your facility is not now in operation or is expanding to meet the definition of a CAFO in accordance with the information found in the General Instructions that accompany Form 1.

Item I-D

Use this space to give a complete legal description of your facility's location including name, address, and latitude/longitude. Also, the if a contract grower, the name and address of the integrator.

Item II

Supply all information in item II if you checked (1) in item I-A.

Item II-A

Give the maximum number of each type of animal in open confinement or housed under roof (either partially or totally) which are held at your facility for a total of 45 days or more in any 12 month period. Provide the total number of animals confined at the facility.

Item II-B

Provide the total amount of manure, litter and wastewater generated annually by the facility. Identify if manure, litter and wastewater generated by the facility is to be land applied and the number of acres, under the control of the CAFO operator, suitable for land application. If the answer to question 3 is yes, provide the estimated annual quantity of manure, litter and wastewater that the applicant plans to transfer off-site.

Item II-C

Check this box if you have submitted a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area.

Item II-D

1. Provide information on the type of containment and the capacity of the containment structure (s).
2. The number of acres that are drained and collected in the containment structure (s).
3. Identify the type of storage for the manure, litter and/or wastewater. Give the capacity of this storage in days and gallons or tons.

Item II-E

Provide information concerning the status of the development and implementation of a nutrient management plan for the facility. In those cases where the nutrient management plan has not been completed, provide an estimated date of development and implementation. If not land applying, describe the alternative uses of the manure, litter and wastewater (e.g., composting, pelletizing, energy generation, etc.).

Item II-F

Check any of the identified conservation practices that are being implemented at the facility to control runoff and protect water quality.

Item III

Supply all information in Item III if you checked (2) in Item I-A.

Item III-A

Outfalls should be numbered to correspond with the map submitted in Item XI of Form 1. Values given for flow should be representative of your normal operation. The maximum daily flow is the maximum measured flow occurring over a calendar day. The maximum 30-day flow is the average of measured daily flow over the calendar month of highest flow. The long-term average flow is the average of measure daily flows over a calendar year.

Item III-B

Give the total number of discrete ponds or raceways in your facility. Under "other," give a descriptive name of any structure which is not a pond or a raceway but which results in discharge to waters of the United States.

Item III-C

Use names for receiving water and source of water which correspond to the map submitted in Item XI of Form 1.

Item III-D

The names of fish species should be proper, common, or scientific names as given in special Publication No. 6 of the American Fisheries Society. "A List of Common and Scientific Names of Fishes from the United States and Canada." The values given for total weight produced by your facility per year and the maximum weight present at any one time should be representative of your normal operation.

Item III-E

The value given for maximum monthly pounds of food should be representative of your normal operation.

Item IV

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(C)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application...shall upon conviction, be punished by a fine of no more than $10,000 or by imprisonment for not more than six months, or both."

Federal regulations require the certification to be signed as follows:

A. For corporation, by a principal executive officer of at least the level of vice president.

B. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

C. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

Paper Reduction Act Notice

The Public reporting burden for this collection of information estimated to average 4 hours per response. The estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information to the chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked Attention: Desk Officer for EPA.

EPA Form 3510-2B (12-02)

BILLING CODE 6560–50–C

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Parts 122 and 123

Administrative practice and procedure, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 412

Feedlots, Livestock, Waste treatment and disposal, Water pollution control.

Dated: December 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under the indicated heading and a new heading and entries to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
* * * * *	
122.21(f)	2040–0250
122.23(i)	2040–0250
* * * * *	
122.28(b)	2040–0250
* * * * *	
122.42(e)	2040–0250
* * * * *	
Feedlots Point Source Category	
412.31–412.37	2040–0250
412.41–412.47	2040–0250

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 122.21 by adding a sentence to the end of paragraph (a)(1) and revising paragraph (i)(1) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) * * *

(1) * * * All concentrated animal feeding operations have a duty to seek coverage under an NPDES permit, as described in § 122.23(d).

* * * * *

(i) * * *

(1) For concentrated animal feeding operations:

(i) The name of the owner or operator;

(ii) The facility location and mailing addresses;

(iii) Latitude and longitude of the production area (entrance to production area);

(iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of paragraph (f)(7) of this section;

(v) Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(vi) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage(tons/gallons);

(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(viii) Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);

(ix) Estimated amounts of manure, litter and process wastewater transferred to other persons per year (tons/gallons); and

(x) For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

* * * * *

3. Section 122.23 is revised to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement for CAFOs.* Concentrated animal feeding operations, as defined in paragraph (b) of this section, are point sources that require NPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) Definitions applicable to this section:

(1) *Animal feeding operation* (''AFO'') means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) *Concentrated animal feeding operation* (''CAFO'') means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) The term *land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

(4) *Large concentrated animal feeding operation* (''Large CAFO''). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(i) 700 mature dairy cows, whether milked or dry;

(ii) 1,000 veal calves;

(iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle

includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(iv) 2,500 swine each weighing 55 pounds or more;

(v) 10,000 swine each weighing less than 55 pounds;

(vi) 500 horses;

(vii) 10,000 sheep or lambs;

(viii) 55,000 turkeys;

(ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or

(xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

(5) The term *manure* is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(6) *Medium concentrated animal feeding operation* (''Medium CAFO''). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(i) The type and number of animals that it stables or confines falls within any of the following ranges:

(A) 200 to 699 mature dairy cows, whether milked or dry;

(B) 300 to 999 veal calves;

(C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(D) 750 to 2,499 swine each weighing 55 pounds or more;

(E) 3,000 to 9,999 swine each weighing less than 55 pounds;

(F) 150 to 499 horses;

(G) 3,000 to 9,999 sheep or lambs;

(H) 16,500 to 54,999 turkeys;

(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and

(ii) Either one of the following conditions are met:

(A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(7) *Process wastewater* means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

(8) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(9) *Small concentrated animal feeding operation* (''Small CAFO''). An AFO that is designated as a CAFO and is not a Medium CAFO.

(c) *How may an AFO be designated as a CAFO?* The appropriate authority (*i.e.*, State Director or Regional Administrator, or both, as specified in paragraph (c)(1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.

(1) *Who may designate?*

(i) *Approved States.* In States that are approved or authorized by EPA under Part 123, CAFO designations may be made by the State Director. The Regional Administrator may also designate CAFOs in approved States, but only where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.

(ii) *States with no approved program.* The Regional Administrator may designate CAFOs in States that do not have an approved program and in Indian country where no entity has expressly demonstrated authority and has been expressly authorized by EPA to implement the NPDES program.

(2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:

(i) The size of the AFO and the amount of wastes reaching waters of the United States;

(ii) The location of the AFO relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and

(v) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) *Who must seek coverage under an NPDES permit?*

(1) *All CAFO owners or operators must apply for a permit.* All CAFO owners or operators must seek coverage under an NPDES permit, except as provided in paragraph (d)(2) of this

section. Specifically, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Director.

(2) *Exception.* An owner or operator of a Large CAFO does not need to seek coverage under an NPDES permit otherwise required by this section once the owner or operator has received from the Director notification of a determination under paragraph (f) of this section that the CAFO has ''no potential to discharge'' manure, litter or process wastewater.

(3) *Information to submit with permit application.* A permit application for an individual permit must include the information specified in § 122.21. A notice of intent for a general permit must include the information specified in §§ 122.21 and 122.28.

(e) *Land application discharges from a CAFO are subject to NPDES requirements.* The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 122.42(e)(1)(vi)–(ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

(f) *''No potential to discharge'' determinations for Large CAFOs.*

(1) *Determination by the Director.* The Director, upon request, may make a case-specific determination that a Large CAFO has ''no potential to discharge'' pollutants to waters of the United States. In making this determination, the Director must consider the potential for discharges from both the production area and any land application areas. The Director must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have ''no potential to discharge'' if it has had a discharge within the 5 years prior to the date of the request submitted under paragraph (f)(2) of this section. For purposes of this section, the term ''no potential to discharge'' means that there is no potential for any CAFO manure, litter or process wastewater to be added to waters of the United States under any circumstance or climatic condition. A determination that there is ''no potential to discharge'' for purposes of this section only relates to discharges of manure, litter and process wastewater covered by this section.

(2) *Information to support a ''no potential to discharge'' request.* In requesting a determination of ''no potential to discharge,'' the CAFO owner or operator must submit any information that would support such a determination, within the time frame provided by the Director and in accordance with paragraphs (g) and (h) of this section. Such information must include all of the information specified in § 122.21(f) and (i)(1)(i) through (ix). The Director has discretion to require additional information to supplement the request, and may also gather additional information through on-site inspection of the CAFO.

(3) *Process for making a ''no potential to discharge'' determination.* Before making a final decision to grant a ''no potential to discharge'' determination, the Director must issue a notice to the public stating that a ''no potential to discharge'' request has been received. This notice must be accompanied by a fact sheet which includes, when applicable: a brief description of the type of facility or activity which is the subject of the ''no potential to discharge'' determination; a brief summary of the factual basis, upon which the request is based, for granting the ''no potential to discharge'' determination; and a description of the procedures for reaching a final decision on the ''no potential to discharge'' determination. The Director must base the decision to grant a ''no potential to discharge'' determination on the administrative record, which includes all information submitted in support of a ''no potential to discharge'' determination and any other supporting data gathered by the permitting authority. The Director must notify any CAFO seeking a ''no potential to discharge'' determination of its final determination within 90 days of receiving the request.

(4) *What is the deadline for requesting a ''no potential to discharge'' determination?* The owner or operator must request a ''no potential to discharge'' determination by the applicable permit application date specified in paragraph (g) of this section. If the Director's final decision is to deny the ''no potential to discharge'' determination, the owner or operator must seek coverage under a permit within 30 days after the denial.

(5) *The ''no potential to discharge'' determination does not relieve the CAFO from the consequences of an actual discharge.* Any unpermitted CAFO that discharges pollutants into the waters of the United States is in violation of the Clean Water Act even if it has received a ''no potential to discharge'' determination from the Director. Any CAFO that has received a determination of ''no potential to discharge,'' but who anticipates changes in circumstances that could create the potential for a discharge, should contact the Director, and apply for and obtain permit authorization prior to the change of circumstances.

(6) *The Director retains authority to require a permit.* Where the Director has issued a determination of ''no potential to discharge,'' the Director retains the authority to subsequently require NPDES permit coverage if circumstances at the facility change, if new information becomes available, or if there is another reason for the Director to determine that the CAFO has a potential to discharge.

(g) *When must a CAFO seek coverage under an NPDES permit?*

(1) *Operations defined as CAFOs prior to April 14, 2003.* For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an NPDES permit as of April 14, 2003, and comply with all applicable NPDES requirements, including the duty to maintain permit coverage in accordance with paragraph (h) of this section.

(2) *Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date.* For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than February 13, 2006.

(3) *Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.* For newly constructed AFOs and AFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under an NPDES permit, as follows:

(i) For newly constructed operations not subject to effluent limitations guidelines, 180 days prior to the time CAFO commences operation; or

(ii) For other operations (*e.g.*, resulting from an increase in the number of animals), as soon as possible,

but no later than 90 days after becoming defined as a CAFO; except that

(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until April 13, 2006, or 90 days after becoming defined as a CAFO, whichever is later.

(4) *New sources.* New sources must seek to obtain coverage under a permit at least 180 days prior to the time that the CAFO commences operation.

(5) *Operations that are designated as CAFOs.* For operations designated as a CAFO in accordance with paragraph (c) of this section, the owner or operator must seek to obtain coverage under a permit no later than 90 days after receiving notice of the designation.

(6) *No potential to discharge.* Notwithstanding any other provision of this section, a CAFO that has received a ''no potential to discharge'' determination in accordance with paragraph (f) of this section is not required to seek coverage under an NPDES permit that would otherwise be required by this section. If circumstances materially change at a CAFO that has received a NPTD determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the Director, and seek coverage under an NPDES permit within 30 days after the change in circumstances.

(h) *Duty to Maintain Permit Coverage.* No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, in accordance with § 122.21(g). However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

(1) The facility has ceased operation or is no longer a CAFO; and

(2) The permittee has demonstrated to the satisfaction of the Director that there is no remaining potential for a discharge of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural stormwater from land application areas.

4. Section 122.28 is amended by adding one sentence to the end of paragraph (b)(2)(ii) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) * * *

(ii) * * * Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in § 122.21(i)(1), including a topographic map.

* * * * *

5. Section 122.42 is amended by adding paragraph (e) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) *Concentrated animal feeding operations (CAFOs).* Any permit issued to a CAFO must include:

(1) *Requirements to develop and implement a nutrient management plan.* At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006 must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

(i) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(ii) Ensure proper management of mortalities (*i.e.*, dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

(iii) Ensure that clean water is diverted, as appropriate, from the production area;

(iv) Prevent direct contact of confined animals with waters of the United States;

(v) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

(vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;

(vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

(viii) Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

(ix) Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs (e)(1)(i) through (e)(1)(viii) of this section.

(2) *Recordkeeping requirements.*

(i) The permittee must create, maintain for five years, and make available to the Director, upon request, the following records:

(A) All applicable records identified pursuant paragraph (e)(1)(ix) of this section;

(B) In addition, all CAFOs subject to 40 CFR part 412 must comply with record keeping requirements as specified in § 412.37(b) and (c) and § 412.47(b) and (c).

(ii) A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Director upon request.

(3) *Requirements relating to transfer of manure or process wastewater to other persons.* Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR part 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

(4) *Annual reporting requirements for CAFOs.* The permittee must submit an annual report to the Director. The annual report must include:

(i) The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(ii) Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

(iii) Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);

(iv) Total number of acres for land application covered by the nutrient management plan developed in accordance with paragraph (e)(1) of this section;

(v) Total number of acres under control of the CAFO that were used for

land application of manure, litter and process wastewater in the previous 12 months;

(vi) Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and

(vii) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

Appendix B to Part 122 [Removed and Reserved]

6. Remove and reserve Appendix B to part 122.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Add a new § 123.36 to read as follows:

§ 123.36 Establishment of technical standards for concentrated animal feeding operations.

If the State has not already established technical standards for nutrient management that are consistent with 40 CFR 412.4(c)(2), the Director shall establish such standards by the date specified in § 123.62(e).

Part 412 is revised to read as follows:

PART 412—CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) POINT SOURCE CATEGORY

Sec.

412.1 General applicability.
412.2 General definitions.
412.3 General pretreatment standards.
412.4 Best management practices (BMPs) for land application of manure.

Subpart A—Horses and Sheep

412.10 Applicability.
412.11 [Reserved]
412.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
412.13 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).
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412.33 Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).
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412.41–412.42 [Reserved]
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412.45 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).
412.46 New source performance standards (NSPS).
412.47 Additional measures.

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, 1361.

§ 412.1 General applicability.

This part applies to manure, litter, and/or process wastewater discharges resulting from concentrated animal feeding operations (CAFOs). Manufacturing and/or agricultural activities which may be subject to this part are generally reported under one or more of the following Standard Industrial Classification (SIC) codes: SIC 0211, SIC 0213, SIC 0214, SIC 0241, SIC 0251, SIC 0252, SIC 0253, SIC 0254, SIC 0259, or SIC 0272 (1987 SIC Manual).

§ 412.2 General definitions.

As used in this part:

(a) The general definitions and abbreviations at 40 CFR part 401 apply.

(b) *Animal Feeding Operation (AFO)* and *Concentrated Animal Feeding Operation (CAFO)* are defined at 40 CFR 122.23.

(c) *Fecal coliform* means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.

(d) *Process wastewater* means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(e) *Land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

(f) *New source* is defined at 40 CFR 122.2. New source criteria are defined at 40 CFR 122.29(b).

(g) *Overflow* means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure.

(h) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(i) *Ten (10)-year, 24-hour rainfall event, 25-year, 24-hour rainfall event,* and *100-year, 24-hour rainfall event* mean precipitation events with a probable recurrence interval of once in ten years, or twenty five years, or one hundred years, respectively, as defined by the National Weather Service in Technical Paper No. 40, ''Rainfall Frequency Atlas of the United States,'' May, 1961, or equivalent regional or

State rainfall probability information developed from this source.

(j) *Analytical methods.* The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1B at 40 CFR 136.3 are defined as follows:

(1) *Ammonia (as N)* means ammonia reported as nitrogen.

(2) *BOD5* means 5-day biochemical oxygen demand.

(3) *Nitrate (as N)* means nitrate reported as nitrogen.

(4) *Total dissolved solids* means nonfilterable residue.

(k) The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1A at 40 CFR 136.3 are defined as follows:

(1) *Fecal coliform* means fecal coliform bacteria.

(2) *Total coliform* means all coliform bacteria.

§ 412.3 General pretreatment standards.

Any source subject to this part that introduces process wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR part 403.

§ 412.4 Best Management Practices (BMPs) for Land Application of Manure, Litter, and Process Wastewater.

(a) *Applicability.* This section applies to any CAFO subject to subpart C of this part (Dairy and Beef Cattle other than Veal Calves) or subpart D of this part (Swine, Poultry, and Veal Calves).

(b) *Specialized definitions.*

(1) *Setback* means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

(2) *Vegetated buffer* means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

(3) Multi-year phosphorus application means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.

(c) *Requirement to develop and implement best management practices.* Each CAFO subject to this section that land applies manure, litter, or process wastewater, must do so in accordance with the following practices:

(1) *Nutrient Management Plan.* The CAFO must develop and implement a nutrient management plan that incorporates the requirements of paragraphs (c)(2) through (c)(5) of this section based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.

(2) *Determination of application rates.* Application rates for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the technical standards for nutrient management established by the Director. Such technical standards for nutrient management shall:

(i) Include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters; and

(ii) Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the Director.

(3) *Manure and soil sampling.* Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil analyzed a minimum of once every five years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater.

(4) *Inspect land application equipment for leaks.* The operator must periodically inspect equipment used for land application of manure, litter, or process wastewater.

(5) *Setback requirements.* Unless the CAFO exercises one of the compliance alternatives provided for in paragraph (c)(5)(i) or (c)(5)(ii) of this section, manure, litter, and process wastewater may not be applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.

(i) *Vegetated buffer compliance alternative.* As a compliance alternative, the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited.

(ii) *Alternative practices compliance alternative.* As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.

Subpart A—Horses and Sheep

§ 412.10 Applicability.

This subpart applies to discharges resulting from the production areas at horse and sheep CAFOs. This subpart does not apply to such CAFOs with less than the following capacities: 10,000 sheep or 500 horses.

§ 412.11 [Reserved]

§ 412.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 10-year, 24-hour rainfall event for the location of the point source.

§ 412.13 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32 and when the provisions of paragraph (b) of this section apply, any existing point source subject to this subpart must achieve the

following effluent limitations representing the application of BAT: There shall be no discharge of process waste water pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

§ 412.14 [Reserved]

§ 412.15 Standards of performance for new sources (NSPS)

(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no discharge of process wastewater pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

Subpart B—Ducks

§ 412.20 Applicability.

This subpart applies to discharges resulting from the production areas at dry lot and wet lot duck CAFOs. This subpart does not apply to such CAFOs with less than the following capacities: 5,000 ducks.

§ 412.21 Special definitions.

For the purposes of this subpart:

(a) *Dry lot* means a facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(b) *Wet lot* means a confinement facility for raising ducks which is open to the environment, has a small number of sheltered areas, and with open water runs and swimming areas to which ducks have free access.

§ 412.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the (BPT):

Regulated parameter	Maximum daily [1]	Maximum monthly average [1]	Maximum daily [2]	Maximum monthly average [2]
BOD_5	3.66	2.0	1.66	0.91
Fecal coliform	([3])	([3])	([3])	([3])

[1] Pounds per 1000 ducks.
[2] Kilograms per 1000 ducks.
[3] Not to exceed MPN of 400 per 100 ml at any time.

(b) [Reserved]

§§ 412.23–412.24 [Reserved]

§ 412.25 New source performance standards (NSPS).

(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no discharge of process waste water pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

§ 412.26 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 and in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no introduction of process waste water pollutants to a POTW.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be introduced to a POTW.

Subpart C—Dairy Cows and Cattle Other Than Veal Calves

§ 412.30 Applicability.

This subpart applies to operations defined as concentrated animal feeding operations (CAFOs) under 40 CFR 122.23 and includes the following animals: mature dairy cows, either milking or dry; cattle other than mature dairy cows or veal calves. Cattle other than mature dairy cows includes but is not limited to heifers, steers, and bulls. This subpart does not apply to such CAFOs with less than the following capacities: 700 mature dairy cows whether milked or dry; 1,000 cattle other than mature dairy cows or veal calves.

§ 412.31 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) *For CAFO production areas.* Except as provided in paragraphs (a)(1) through (a)(2) of this section, there must be no discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area.

(1) Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into U.S. waters provided:

(i) The production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event;

(ii) The production area is operated in accordance with the additional measures and records required by § 412.37(a) and (b).

(2) *Voluntary alternative performance standards.* Any CAFO subject to this subpart may request the Director to establish NPDES permit effluent limitations based upon site-specific alternative technologies that achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants that would be discharged under the baseline

performance standards as provided by paragraph (a)(1) of this section.

(i) *Supporting information.* In requesting site-specific effluent limitations to be included in the NPDES permit, the CAFO owner or operator must submit a supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time frame provided by the Director. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site-specific analysis of a system designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff from a 25-year, 24-hour rainfall event. The technical analysis of the discharge of pollutants must include:

(A) All daily *inputs* to the storage system, including manure, litter, all process waste waters, direct precipitation, and runoff.

(B) All daily *outputs* from the storage system, including losses due to evaporation, sludge removal, and the removal of waste water for use on cropland at the CAFO or transport off site.

(C) A calculation determining the predicted median annual overflow volume based on a 25-year period of actual rainfall data applicable to the site.

(D) Site-specific pollutant data, including N, P, BOD_5, TSS, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.

(E) Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering paragraphs (a)(2)(i)(A) through (a)(2)(i)(D) of this section.

(ii) The Director has the discretion to request additional information to supplement the supporting technical analysis, including inspection of the CAFO.

(3) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(b) *For CAFO land application areas.* Discharges from land application areas are subject to the following requirements:

(1) Develop and implement the best management practices specified in § 412.4;

(2) Maintain the records specified at § 412.37 (c);

(3) The CAFO shall attain the limitations and requirements of this paragraph by December 31, 2006.

§ 412.32 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:

(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.31(a).

(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.31(b).

§ 412.33 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.31(a).

(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.31(b).

§ 412.34 [Reserved]

§ 412.35 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following effluent limitations representing the application of NSPS:

(a) *For CAFO production areas.* The CAFO shall attain the same limitations and requirements as § 412.31(a)(1) and § 412.31(a)(2).

(b) *For CAFO land application areas:* The CAFO shall attain the same limitations and requirements as § 412.31(b)(1) and § 412.31(b)(2).

(c) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(d) Any source subject to this subpart that commenced discharging after April 14, 1993, and prior to April 14, 2003, which was a new source subject to the standards specified in § 412.15, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in § 412.31(a) and (b).

§ 412.36 [Reserved]

§ 412.37 Additional measures.

(a) Each CAFO subject to this subpart must implement the following requirements:

(1) *Visual inspections.* There must be routine visual inspections of the CAFO production area. At a minimum, the following must be visually inspected:

(i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channelling contaminated storm water to the wastewater and manure storage and containment structure;

(ii) Daily inspection of water lines, including drinking water or cooling water lines;

(iii) Weekly inspections of the manure, litter, and process wastewater impoundments; the inspection will note the level in liquid impoundments as indicated by the depth marker in paragraph (a)(2) of this section.

(2) *Depth marker.* All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event, or, in the case of new sources subject to the requirements in § 412.46 of this part, the runoff and direct precipitation from a 100-year, 24-hour rainfall event.

(3) *Corrective actions.* Any deficiencies found as a result of these inspections must be corrected as soon as possible.

(4) *Mortality handling.* Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to § 412.31(a)(2) and approved by the Director are designed to handle mortalities.

(b) *Record keeping requirements for the production area.* Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by 40 CFR 122.21(i)(1) and 40 CFR 122.42(e)(1)(ix) and the records specified in paragraphs (b)(1) through (b)(6) of this section. The CAFO must make these records available to the Director and, in an authorized State, the Regional Administrator, or his or her designee, for review upon request.

(1) Records documenting the inspections required under paragraph (a)(1) of this section;

(2) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the

depth marker under paragraph (a)(2) of this section;

(3) Records documenting any actions taken to correct deficiencies required under paragraph (a)(3) of this section. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction;

(4) Records of mortalities management and practices used by the CAFO to meet the requirements of paragraph (a)(4) of this section.

(5) Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;

(6) Records of the date, time, and estimated volume of any overflow.

(c) *Recordkeeping requirements for the land application areas.* Each CAFO must maintain on-site a copy of its site-specific nutrient management plan. Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by § 412.4 and 40 CFR 122.42(e)(1)(ix) and the records specified in paragraphs (c)(1) through (c)(10) of this section. The CAFO must make these records available to the Director and, in an authorized State, the Regional Administrator, or his or her designee, for review upon request.

(1) Expected crop yields;

(2) The date(s) manure, litter, or process waste water is applied to each field;

(3) Weather conditions at time of application and for 24 hours prior to and following application;

(4) Test methods used to sample and analyze manure, litter, process waste water, and soil;

(5) Results from manure, litter, process waste water, and soil sampling;

(6) Explanation of the basis for determining manure application rates, as provided in the technical standards established by the Director.

(7) Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;

(8) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;

(9) The method used to apply the manure, litter, or process wastewater;

(10) Date(s) of manure application equipment inspection.

Subpart D—Swine, Poultry, and Veal Calves

§ 412.40 Applicability.

This subpart applies to operations defined as concentrated animal feeding operations (CAFOs) under 40 CFR 122.23 and includes the following animals: swine; chickens; turkeys; and veal calves. This subpart does not apply to such CAFOs with less than the following capacities: 2,500 swine each weighing 55 lbs. or more; 10,000 swine each weighing less than 55 lbs.; 30,000 laying hens or broilers if the facility uses a liquid manure handling system; 82,000 laying hens if the facility uses other than a liquid manure handling system; 125,000 chickens other than laying hens if the facility uses other than a liquid manure handling system; 55,000 turkeys; and 1,000 veal calves.

§§ 412.41–412.42 [Reserved]

§ 412.43 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) *For CAFO production areas.*

(1) The CAFO shall attain the same limitations and requirements as § 412.31(a)(1) through (a)(2).

(2) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(b) *For CAFO land application areas.*

(1) The CAFO shall attain the same limitations and requirements as § 412.31(b)(1) and (b)(2).

(2) The CAFO shall attain the limitations and requirements of this paragraph by December 31, 2006.

§ 412.44 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:

(a) *For CAFO production areas:* the CAFO shall attain the same limitations and requirements as § 412.43(a).

(b) *For CAFO land application areas:* the CAFO shall attain the same limitations and requirements as § 412.43(b).

§ 412.45 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) *For CAFO production areas:* the CAFO shall attain the same limitations and requirements as § 412.43(a).

(b) *For CAFO land application areas:* the CAFO shall attain the same limitations and requirements as § 412.43(b).

§ 412.46 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following effluent limitations representing the application of NSPS:

(a) *For CAFO production areas.* There must be no discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area, subject to paragraphs (a)(1) through (a)(3) of this section.

(1) Waste management and storage facilities designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 100-year, 24-hour rainfall event and operated in accordance with the additional measures and records required by § 412.47(a) and (b), will fulfill the requirements of this section.

(2) The production area must be operated in accordance with the additional measures required by § 412.47(a) and (b).

(3) Provisions for upset/bypass, as provided in 40 CFR 122.41(m)–(n), apply to a new source subject to this provision.

(b) *For CAFO land application areas:* the CAFO shall attain the same limitations and requirements as § 412.43(b)(1).

(c) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(d) *Voluntary superior environmental performance standards.* Any new source CAFO subject to this subpart may request the Director to establish alternative NPDES permit limitations based upon a demonstration that site-specific innovative technologies will achieve overall environmental performance across all media which is equal to or superior to the reductions achieved by baseline standards as provided by § 412.46(a). The quantity of pollutants discharged from the

production area must be accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media from the production area (*e.g.*, air emissions from housing and storage) and/or land application areas for all manure, litter, and process wastewater at on-site and off-site locations. The comparison of quantity of pollutants must be made on a mass basis where appropriate. The Director has the discretion to request supporting information to supplement such a request.

(e) Any source subject to this subpart that commenced discharging after April 14, 1993, and prior to April 14, 2003, which was a new source subject to the standards specified in § 412.15, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in § 412.43(a) and (b).

§ 412.47 Additional measures.

(a) Each CAFO subject to this subpart must implement the requirements of § 412.37(a).

(b) Each CAFO subject to this subpart must comply with the record-keeping requirements of § 412.37(b).

(c) Each CAFO subject to this subpart must comply with the record-keeping requirements of § 412.37(c).

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Wednesday,
February 12, 2003

Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D: 2003–2005 Subsistence Taking of Fish and Shellfish Regulations; Changes to Harvest Limits for Moose in Units 21(D) and 24, Muskox in Unit 26(C), and Caribou in Unit 17(A) and (C); Final Rules and Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI09

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2003 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the fish and shellfish regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on February 28, 2003. This rule also amends the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section __ .24 of Subpart C).

DATES: Sections __ .24(a)(2) and (3) are effective March 1, 2003. Sections __ .27 and __ .28 are effective March 1, 2003, through February 29, 2004.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). On January 8, 1999 (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt*. Consistent with Subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 and 242.22 (2002) and 50 CFR 100.11 and 100.22 (2002), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents, with personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting of December 17–18, 2002.

Summary of Changes

Section __ .24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** (59 FR 27462, published May 27, 1994; 59 FR 51855, published October 13, 1994; 60 FR 10317, published February 24, 1995; 61 FR 39698, published July 30, 1996; 62 FR 29016, published May 29, 1997; 63 FR 35332, published June 29, 1998; 63 FR 46148, published August 28, 1998; 64 FR 1276, published January 8, 1999; 64 FR 35776, published July 1, 1999; 66 FR 10142, published February 13, 2001; and 67 FR 5890, published

February 7, 2002). During its December 17–18, 2002, meeting, the Board made additional determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained below in Analysis of Proposals Adopted by the Board.

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. We published proposed Subpart D regulations for the 2003–04 seasons, harvest limits, and methods and means on February 11, 2002, in the **Federal Register** (67 FR 6334). A 50-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 33 proposals for changes to Customary and Traditional Use Determinations or to Subpart D. This number included some proposals deferred from previous years. Subsequent to the review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The ten Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Five of the proposals were not considered, falling outside the call for proposals. Three proposals and part of another were withdrawn before Board consideration. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments.

Analysis of Proposals Rejected by the Board

The Board rejected five proposals and part of one other proposal. All but one of these rejections were based on recommendations from the respective Regional Council. In that other case, the Regional Council recommendation to extend jurisdiction into an area of marine waters was inconsistent with the authority provided for in ANILCA.

The Board rejected three proposals requesting revised customary and traditional use determinations in the Prince William Sound Area. These proposals were rejected because there was inadequate information documenting historical use of Federal waters.

One proposal requested specific regulations for the use of fish traps (fyke nets). This proposal was rejected because it would be detrimental to the subsistence user and limit the flexibility for species management in the area.

The Board rejected a proposal that would have allowed the use of bait for taking coho salmon. This proposal was rejected because there is no information that subsistence users are unable to meet their needs under the present regulations and there is a concern regarding hooking mortality in other species with the use of bait.

In the case of the partial rejection, the marine area requested for regulation is not under jurisdiction of the Federal Subsistence Program and the freshwater areas support sockeye salmon populations that are sufficient for subsistence and nonsubsistence harvest.

The Board deferred action on three proposals and part of one other in order to assemble additional fisheries data, harvest information, or to allow communities or Regional Councils additional time to review the issues and provide additional information.

Analysis of Proposals Adopted by the Board

The Board adopted 11 proposals and part of 1 other proposal. In two cases, a number of proposals dealing with the same issue were dealt with as a package. Some proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, harvest practices, or protecting fish populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/home.html*). Additional technical clarifications and removal of excess materials have been made, which result in a more readable document.

Multiple Regions

The Board adopted two proposals resulting in the following changes in the regulations found in § __.27, which affects residents of multiple Regions.

- Provided for harvest of fish to be used in traditional religious ceremonies as part of a funerary or mortuary cycle.
- Provided for the adoption of State Emergency Orders in the Yukon and Kuskokwim River drainages.

Yukon-Northern Fishery Management Area

The Board adopted one proposal affecting residents of the Yukon-Northern Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Revised the regulations relative to use of rod and reel to take salmon during the period closed to net or fishwheel use.

Kuskokwim Fishery Management Area

The Board adopted one proposal affecting residents of the Kuskokwim Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Revised the regulations relative to use of rod and reel to take salmon during the period closed to net or fishwheel use in a portion of the area.

Bristol Bay Fishery Management Area

The Board adopted one proposal affecting residents of the Bristol Bay Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Established harvest regulations for rainbow trout.

Kodiak Fishery Management Area

The Board adopted one proposal affecting residents of the Kodiak Fishery Management Area resulting in the following changes to the regulations found in § __.28.

- Revised the regulations relative to the harvest of king crab.

Cook Inlet Fishery Management Area

The Board adopted parts of three similar proposals affecting residents of the Cook Inlet Fishery Management Area resulting in the following change to the regulations found in §§ __.24 and __.27.

- Established a customary and traditional use determination in Federal waters for shellfish.
- Established subsistence harvest regulations for shellfish.

Prince William Sound Fishery Management Area

The Board adopted three proposals affecting residents of the Prince William Sound Fishery Management Area resulting in the following changes to the regulations found in § __.27.

• Revised the marking and recording requirements for subsistence taken salmon and rainbow/steelhead trout.

• Allowed the retention of incidentally caught freshwater fish in fishwheels.

• Established a harvest limit for chinook salmon taken by rod and reel.

Southeastern Alaska Fishery Management Area

The Board considered five proposals relative to steelhead harvest on Prince of Wales Island and adopted a modified proposal affecting residents of the Southeastern Alaska Fishery Management Area resulting in the following changes to the regulations found in § __.27.

• Established harvest limits and methods and means for rainbow/steelhead trout on Prince of Wales Island in a winter and a spring season.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992; amended January 8, 1999, 64 FR 1276, June 12, 2001, 66 FR 31533, and May 7, 2002, 67 FR 30559) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires July 31, 2003. On January 16, 2003, we published in the **Federal Register** (68 FR 2347) a notice of our intent to request OMB approval of a 3-year renewal of this information collection. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon and $ 0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART __—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, §§ __.24(a)(2) and (3) are revised to read as follows:

§ __.24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
KOTZEBUE AREA	All fish	Residents of the Kotzebue Area.
NORTON SOUND—PORT CLARENCE AREA:		
Norton Sound—Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point.	All fish	Residents of Stebbins, St. Michael, and Kotlik.
Norton Sound-Port Clarence Area, remainder.	All fish	Residents of the Norton Sound—Port Clarence Area.
YUKON-NORTHERN AREA:		
Yukon River Drainage	Salmon, other than fall chum salmon.	Residents of the Yukon River drainage, including the community of Stebbins.
Yukon River drainage	Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish (other than salmon).	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area.	All fish	Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26–B.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA:		
Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and freshwater fish	Residents of the Naknek and Kvichak River drainages.

Area	Species	Determination
Naknek-Kvichak District—Kvichak/Iliamna-Lake Clark drainage.	Salmon and freshwater fish	Residents of the Kvichak/Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Egegik District, including drainages flowing into the district.	All fish	Residents of the Bristol Bay Area.
Ugashik District, including drainages flowing into the district.	All fish	Residents of the Bristol Bay Area.
Togiak District	Herring spawn on kelp	Residents of the Togiak District and freshwater drainages flowing into the district.
Remainder of the Bristol Bay Area.	All fish	Residents of the Bristol Bay Area.
ALEUTIAN ISLANDS AREA	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA	Halibut, salmon and fish other than rainbow/steelhead trout.	Residents of the Chignik Area.
KODIAK AREA—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than rainbow/steelhead trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
	Salmon, Dolly Varden trout, char, grayling, and burbot.	No Determination.
PRINCE WILLIAM SOUND AREA:		
South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Copper River drainage upstream from Haley Creek.	Freshwater fish	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Chitina Subdistrict of the Upper Copper River District.	Salmon	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Glennallen Subdistrict of the Upper Copper River District.	Salmon	Residents of the Prince William Sound Area and residents of Cantwell, Chisana, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Tok and those individuals living along the Alaska Highway from the Alaskan/Canadian border to along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.

Area	Species	Determination
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon	Residents of Mentasta Lake and Dot Lake.
Remainder of the Prince William Sound Area.	Salmon	Residents of the Prince William Sound Area.
YAKUTAT AREA:		
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area	Dolly Varden, trout, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.
SOUTHEASTERN ALASKA AREA:		
District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132° 20′ W. long and east of 132° 25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.

Area	Species	Determination
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Remainder of the Southeastern Alaska Area.	Dolly Varden, trout, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.

(3) Shellfish determinations. The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
BERING SEA AREA	All shellfish	Residents of the Bering Sea Area.
ALASKA PENINSULA—ALEUTIAN ISLANDS AREA.	Shrimp, Dungeness, king, and Tanner crab	Residents of the Alaska Peninsula-Aleutian Islands Area.
KODIAK AREA	Shrimp, Dungeness, and Tanner crab	Residents of the Kodiak Area.
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA:		
Federal waters in the Tuxedni Bay Area within boundaries of Lake Clark National Park & Preserve or Alaska Maritime NWR.	Shellfish	Residents of Tuxedni Bay, Chisik Island, and Tyonek.
PRINCE WILLIAM SOUND AREA	Shrimp, the clams, Dungeness, king, and Tanner crab.	Residents of the Prince William Sound Area.
SOUTHEASTERN ALASKA—YAKUTAT AREA:		
Section 1–E south of the latitude of Grant Island light.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 3–A and 3–B	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
District 13	Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.	Residents of the Southeast Area.

* * * * *

3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § __.27 and § __.28 are added effective March 1, 2003, through February 29, 2004, to read as follows:

§ __.27 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) [*Reserved*]

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) You may not accumulate harvest limits authorized in this section or §—.28 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

(20) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(21) The taking of fish from Federal waters is authorized outside of published open seasons or harvest limits if the harvested fish will be used for food in traditional or religious ceremonies, that are part of funerary or mortuary cycles, including memorial potlatches, provided that:

(i) Prior to attempting to take fish, the person (or designee) or Tribal Government organizing the ceremony contacts the appropriate Federal fisheries manager to provide the nature of the ceremony, the parties and/or clans involved, the species and the number of fish to be taken, and the Federal waters from which the harvest will occur;

(ii) The taking does not violate recognized principles of fisheries conservation, and uses the methods and means allowable for the particular species published in the applicable Federal regulations (the Federal fisheries manager will establish the number, species, or place of taking if necessary for conservation purposes);

(iii) Each person who takes fish under this section must, as soon as practical, and not more than 15 days after the harvest, submit a written report to the appropriate Federal fisheries manager, specifying the harvester's name and address, the number and species of fish

taken, and the date and locations of the taking; and

(iv) No permit is required for taking under this section; however, the harvester must be eligible to harvest the resource under Federal regulations.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service, Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October 31 when taking whitefish or pike in streams, creeks, or sloughs within the Kobuk River drainage and from May 15 to October 31 in the Selawik River drainage. Only one gillnet 100 feet or less in length with a mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8 a.m. Monday until 8 p.m. Saturday;

(C) In Subdistricts 1–3, you may take salmon other than chum salmon by beach seine during periods established by emergency action.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You must have a subsistence fishing permit for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (i)(3) of this section.

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4–A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take king salmon during the State commercial fishing season, with drift gillnet gear only, from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches stretch-measure may be used from June 15–September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xiv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no

minimum distance requirement between fish wheels;

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods;

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxi) In the Yukon River drainage, chinook (king) salmon must be used primarily for human consumption and may not be targeted for dog food. Dried chinook salmon may not be used for dogfood anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5–D, upstream of Circle City.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for 6 hours after, each State open commercial salmon fishing period for District 1.

(iv) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(v) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each State open commercial salmon fishing period in each district.

(vi) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon by net gear or fishwheel for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in the district. You may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (i)(4) of this section.

(vii) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(ix) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(x) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(xi) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xii) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xiii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiv) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch mesh may not be more than 35 meshes in depth.

(xvi) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvii) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xviii) Rainbow trout may be taken by only residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak. The following restrictions apply:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15–June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9 a.m. Monday until 9 a.m. Friday.

From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9 a.m. June 23 through 9 a.m. July 17, you may take salmon only from 9 a.m. Tuesday to 9 a.m. Wednesday and 9 a.m. Saturday to 9 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon by spear in the Togiak River excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, rainbow trout, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit. You may take rainbow trout only under authority of a Federal subsistence fishing permit; permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G and local users.

(xv) Only one subsistence fishing permit for salmon and one for rainbow trout may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage, you may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are 2 per day/2 in possession with no size limit April 10–October 31; 5 per day/5 in possession with no size limit November 1–April 9.

(xviii) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36′ North latitude.

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after a State open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the ''Bishop's House'' at 53° 52.64″ N. lat., 166° 32.30″ W. long. to a point on Amaknak Island at 53° 52.82″ N. lat., 166° 32.13″ W. long., and north of line from a point south of Agnes Beach at 53° 52.28″ N. lat., 166° 32.68″ W. long. to a point at 53° 52.35″ N. lat., 166° 32.95″ W. long. on Amaknak Island;

(C) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(D) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(E) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(F) Waters of McLees Lake and its tributaries and outlet stream;

(G) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(H) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between

a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each State open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 20.22″ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow/steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first State commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 51.10′ N. lat.), west of 150° W. long., north of 55° 30.00′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156° 20.22′ W. long.).

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—all waters inside a line from the tip of the Nyman Peninsula (57°43.23′ N. lat., 152°31.51′ W long.), to the northeastern tip of Mary's Island (57°42.40′ N. lat., 152°32.00′ W. long.), to the southeastern shore of Womens Bay at 57°41.95′ N. lat., 152°31.50′ W. long.;

(B) Buskin River closed waters—all waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ N. lat, 152°28.38′ W. long., to a point offshore at 57°45.35′ N. lat, 152°28.15′ W. long., to a marker located onshore south of the river mouth at approximately 57°45.15′ N. lat., 152°28.65′ W. long.;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51′ 06″ N. lat.) and a line extending south from Cape Fairfield (148° 50′ 15″ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take grayling or burbot for subsistence purposes.

(iii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iv) You may only take salmon, Dolly Varden, trout, and char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56).

(v) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and 2 inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(vi) Gillnets may not be used in freshwater, except for the taking of whitefish in the Tyone River drainage or for the taking of smelt.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon.

(ii) You may take fish by gear listed in paragraph (c)(1) of this part unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage upstream from Haley Creek, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fishwheel, unless the anal (ventral) fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District only from May 15 through September 30.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for chinook salmon taken by dip net or rod and reel does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year;

(B) Multiple types of gear may be specified on a permit, although only one unit of gear may be operated at any one time;

(C) You must return your permit no later than October 31 of the year in which the permit is issued, or you may be denied a permit for the following year;

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by Section ——.27(i)(11) and during fishing operations;

(E) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(F) You must personally operate your fish wheel or dip net;

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) If you are a fishwheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board;

(B) Your registration number and name and address must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water;

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel;

(D) You must remove the fish wheel from the water at the end of the permit period;

(E) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fishwheel:

(A) You may operate only one fish wheel at any one time;

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel;

(C) No fish wheel may have more than two baskets;

(D) If you are a permittee other than the owner, a wood or metal plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, must be attached to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G or the Federal Subsistence Board of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xiv):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, and rod and reel in Tanada Creek;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain chinook salmon taken in a fishwheel in the Copper River. You may not take chinook salmon in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15.

(xvi) You may take pink salmon for subsistence purposes from freshwater with a dip net from May 15 until September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(12) *Yakutat Area.* The Yakutat Area includes all waters and drainages of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before a State opening of commercial salmon net fishing season until 48 hours after the closure. This applies to each river or bay fishery individually.

(iii) When the length of the weekly State commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, trout (other than steelhead,) and char only under authority of a subsistence fishing permit. You may only take steelhead trout in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) With a subsistence fishing permit, you may harvest at any time up to 10 Dolly Varden with no minimum size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow/steelhead trout, in the Southeastern Alaska Area at any time.

(ii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(iii) You must possess a subsistence fishing permit to take salmon. You must possess a Federal subsistence fishing permit to take coho salmon, trout, or char. You must possess a Federal subsistence fishing permit to take steelhead in Hamilton Bay and Kadake Bay Rivers. You must possess a Federal subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1–C or 1–D.

(iv) You may take steelhead trout on Prince of Wales Island only under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of 2 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales Island has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales steelhead subsistence fishery. The permit conditions and systems to receive special protection

will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of 5 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(v) In the Southeastern Alaska Area, except for sections 3A, 3B, and 3C and the Stikine and Taku Rivers, you may take coho salmon in Southeast Alaska waters under Federal jurisdiction under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household, and the annual limit is 40 coho salmon per household. Only dipnets, spears, gaffs, and rod and reel may be used. Bait may only be used from September 15 through November 15. You may not retain incidentally caught trout and sockeye salmon unless taken by gaff or spear.

(vi) You may take coho salmon in Subdistricts 3(A), (B), and (C) only under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 fish per household. Only spears, dip net, and rod and reel may be used. Bait may be used only from September 15 through November 15.

(vii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(viii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(ix) You shall immediately remove the pelvic fins of all salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) For the Salmon Bay Lake system, the daily harvest and season limit per household is 30 sockeye salmon.

(xii) For Virginia Lake (Mill Creek), the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiii) For Thoms Creek, the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiv) The Sarkar River system above the bridge is closed to the use of all nets by both Federally-qualified and non-Federally qualified users.

(xv) Only Federally-qualified subsistence users may harvest sockeye salmon in streams draining into Falls Lake Bay, Gut Bay, or Pillar Bay. In the Falls Lake Bay and Gut Bay drainages, the possession limit is 10 sockeye salmon per household. In the Pillar Bay drainage, the individual possession limit is 15 sockeye salmon with a household possession limit of 25 sockeye salmon.

(xvi) In Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake, in addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, cutthroat, and rainbow trout apply:

(A) You may harvest at any time up to 10 Dolly Varden of any size;

(B) You may harvest at any time six cutthroat or rainbow trout in combination. You may only retain fish between 11″ and 22″. You may only use a rod and reel without bait.

(xvii) In all waters, other than those identified in paragraph (i)(13)(xvi) of this section, in addition to the requirement for a subsistence fishing permit, you may harvest Dolly Varden and cutthroat and rainbow trout in accordance with the seasons and harvest limits delineated in the Alaska Administrative Code, 5 AAC 47. You may only use a rod and reel without bait unless the use of bait is specifically permitted in 5 AAC 47.

§ __.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) *[Reserved]*

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;

(ii) Diving gear;

(iii) A grappling hook;

(iv) A handline;

(v) A hydraulic clam digger;

(vi) A mechanical clam digger;

(vii) A pot;

(viii) A ring net;

(ix) A scallop dredge;

(x) A sea urchin rake;

(xi) A shovel; and

(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) Kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § __.27(c)(2).

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(e) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified

subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this section, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* (i) You may take shellfish for subsistence purposes only as allowed in this section (k)(3).

(ii) You may not take king crab, Dungeness crab, or shrimp for subsistence purposes.

(iii) In the subsistence taking of Tanner crab:

(A) Male Tanner crab may be taken only from July 15 through March 15;

(B) The daily harvest and possession limit is 5 male Tanner crab;

(C) Only male Tanner crabs 5½ inches or greater in width of shell may be taken or possessed;

(D) No more than 2 pots per person, regardless of type, with a maximum of 2 pots per vessel, regardless of type, may be used to take Tanner crab.

(iv) In the subsistence taking of clams:

(A) The daily harvest and possession limit for littleneck clams is 1,000 and the minimum size is 1.5 inches in length;

(B) The daily harvest and possession limit for butter clams is 700 and the minimum size is 2.5 inches in length.

(v) Other than as specified in this section, there are no harvest, possession, or size limits for other shellfish, and the season is open all year.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a State closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the State opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may only use one crab pot, which may be of any size, to take king crab;

(D) You may take king crab only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crabs with a shell width 5½ inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed State commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1–January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six males crabs per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1–January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crabs.

Dated: December 27, 2002.

William W. Knauer II,

Acting Chair, Federal Subsistence Board.

Dated: January 6, 2003.

Calvin H. Casipit,

Acting Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 03–2396 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI89

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004–05 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2004–05 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish taking regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2003–04 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on February 29, 2004. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 28, 2003. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 11, 2003—March 20, 2003. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may submit proposals electronically to *Subsistence@fws.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council	Ketchikan	February 25, 2003.
Region 2—Southcentral Regional Council	Anchorage	March 4, 2003.
Region 3—Kodiak/Aleutians Regional Council	Old Harbor	March 19, 2003.
Region 4—Bristol Bay Regional Council	Dillingham	February 27, 2003.
Region 5—Yukon-Kuskokwim Delta Regional Council	Chevak	March 6, 2003.
Region 6—Western Interior Regional Council	Aniak	March 18, 2003.
Region 7—Seward Peninsula Regional Council	Unalakleet	February 11, 2003.
Region 8—Northwest Arctic Regional Council	Kotzebue	February 26, 2003.
Region 9—Eastern Interior Regional Council	Nenana	March 11, 2003.
Region 10—North Slope Regional Council	Barrow	February 19, 2003.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments (preferred method): You may submit electronic comments (proposals) and other data to *Subsistence@fws.gov*. Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

We will compile and distribute for additional public review during May 2003 the written proposals to change Subpart D fishing regulations and customary and traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on June 11, 2003.

We will hold a second series of Regional Council meetings in September and October 2003, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, December 2003. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note: The Board will not consider proposals for changes relating to hunting or trapping regulations at this time. The Board will be calling for proposed changes to those regulations in August 2003.

The Board's review of your comments and fish and shellfish proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, Subpart C and §§ __.25, __.27, or __.28, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use

determinations or to subsistence fishing seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002, (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in December 2003.

Proposed Changes from 2003–2004 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ __.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2003–04 Subparts C and D final rule, without modification, served as the foundation for the 2004–05 Subparts C and D proposed rule. Please see the final rule published elsewhere in this issue of the **Federal Register**. The amendments made to subparts C and D in that rule are the same as the amendments we are proposing in this rule. The regulations contained in this proposed rule would take effect on March 1, 2004, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did

not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements are approved by OMB under 44 U.S.C. 3501 and have been assigned control number 1018–0075, which expires July 31, 2003. On January 16, 2003, we published in the **Federal Register** (68 FR 2347) a notice of our intent to request OMB approval of a 3-year renewal of this information collection. We will not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866.

This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [Note: $3.00 per pound is much higher than the current commercial value for salmon.] and $0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2004–05 regulatory year. The text of the amendments would be the same as the final rule amendments for the 2003–04 regulatory year published elsewhere in this issue of the **Federal Register**.

Dated December 27, 2002.

William W. Knauer II,

Acting Chair, Federal Subsistence Board.

Dated: January 6, 2003.

Calvin H. Casipit,

Acting Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 03–2397 Filed 2–11–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Changes to Harvest Limits for Moose in Units 21(D) and 24, Muskox in Unit 26(C), and Caribou in Unit 17(A) and (C)

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Change in harvest limits.

SUMMARY: This provides notice of the Federal Subsistence Board's change in harvest limits to protect moose populations in Units 21(D) and 24, muskox populations in Unit 26(C), and caribou populations in Units 17(A) and (C). This regulatory change provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 28, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2002–2003 regulatory year.

DATES: The emergency action on moose was effective August 27 through September 25, 2002. The temporary action on muskox is effective September 15, 2002, through March 31, 2003. The temporary action on caribou is effective December 1, 2002, through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002, (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2002–2003 wildlife seasons, harvest limits, and methods and means were published on June 28, 2002, (67 FR 43710). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG), manages the general harvest and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

Units 21(D) and 24 (portion)—Moose

Analysis of results from trend surveys conducted by ADF&G in Units 21(D) and 24 between 1985 and 1999, reveal significant declines in calf production and yearling bull recruitment. Trend count surveys conducted in 2000 and 2001 show that these declines continue. Current Federal regulations provide opportunities to harvest antlerless moose in Units 21(D) and 24. While increased cow harvest levels have provided additional opportunity and have served to stabilize moose populations in past years, prolonged harvest at the current levels may contribute to further declines in productivity and recruitment. As current management objectives prescribe more conservative sustained yields than the current harvest regimes, regulatory changes are needed to decrease the total cow harvest and to maintain productivity and recruitment. Moose harvests in Units 21(D) and 24 have not declined for any local resident hunting for subsistence purposes. Subsistence hunter days in the field are minimal and are not increasing. Results from household surveys conducted by ADF&G in 10 Middle Yukon and Koyukuk River communities reflect that local subsistence harvest rates for moose are high. Therefore, the reduced harvest limit from any moose to one bull is expected to stabilize the moose populations in Units 21(D) and 24 at current levels while still providing continued opportunity for subsistence users.

Unit 26(C)—Muskox

Muskoxen were reestablished in and near the Arctic National Wildlife Refuge in Unit 26(C) in 1969 and 1970. For several years after their release, numbers of muskoxen increased rapidly and began expanding into regions east (Canada) and west (Unit 26B) of the Refuge. After reaching a peak of 399 animals in 1986, numbers of muskoxen in Unit 26(C) were relatively stable from 1987–1998, but have declined sharply in the past two years.

A conservation concern was recognized when less than 70 muskoxen were counted during aerial surveys made in late June/early July 2002. Reasons for the decline include poor calf recruitment, emigration of muskoxen from Unit 26(C) into regions east and west of the Refuge, and increased predation. Until more calves are born and survive or muskoxen move back into the Refuge, numbers are likely to remain low and could continue to decline. The low number of calves seen in 2000 and 2001 is likely related to

severe weather (fall icing conditions, deep snow and a prolonged snow season). Changes in distribution also has affected the number of muskoxen in the Refuge. Between 2000 and 2002, mixed-sex groups with 3 radio-collared animals dispersed eastward into Canada and at least 1 group with a radio-collared animal moved west off the Refuge. Muskoxen may also have dispersed southward into the mountains.

On July 11, 2002 the Federal Subsistence Board, acting through the delegated official and at the request of the North Slope Muskox Working Group, delayed the opening of the muskox season in Unit 26(C), from July 15 to September 15. Delaying the start of the season until September 15 allowed biologists time to conduct additional surveys and to recommend a more permanent course of action to address the population decline of muskoxen in Unit 26(C). That recommendation, which the Board adopted effective September 15, 2002, reduced the muskox harvest quota to two bulls.

Unit 17(A) and (C), Nushagak Peninsula—Caribou

Caribou from the Northern Alaska Peninsula Herd were reintroduced to the Nushagak Peninsula in February 1988, after an absence for over 100 years. This herd grew rapidly during the first six years following reintroduction with an average annual growth rate of 38%. During the mid to late 1990's, the caribou population remained relatively stable at around 1,200–1,300 animals. Since 1999, the caribou population has undergone a decline. The current population estimate is approximately 700 caribou. Causes for the decline are not fully understood, but are likely related to a decline in habitat condition, increase in predation, and unreported human harvest. The herd is managed according to the guidelines of the Nushagak Peninsula Caribou Management Plan, prepared by the Nushagak Peninsula Caribou Management Planning Committee. The management plan sets a harvest level of not more than 10 percent when the population is between 600 and 1000 caribou. Management recommendations include continued population and range monitoring, and continued law enforcement efforts necessary to promote hunter compliance.

This emergency special action reduced the harvest limit from 2 caribou to 1 caribou for the first 60 days of the winter hunt. Subsequent Board action, following a scheduled January 10 local public meeting, extended the action through the remainder of the season (March 31). Reducing the harvest limit will mean fewer caribou for subsistence users but will help the current estimated population of 700 from decreasing below the 600 animal threshold identified in the management plan as the population needed to allow continued hunting. It also allows additional hunters to participate in the hunt. The special action also provides the Refuge Manager the authority to close the harvest season if the harvest reaches the limit of 50 caribou as recommended by the Committee.

The emergency and temporary changes are necessary to protect declining moose, muskox, and caribou populations in the three areas described above. These changes are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this emergency action is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d) to make this rule effective as indicated in the **DATES** section.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This emergency change does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

This emergency change has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as gun, hunting gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the emergency change has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the emergency change will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the emergency change meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the emergency change does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Daniel LaPlant drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: December 24, 2002.

Peggy Fox,

Acting Chair, Federal Subsistence Board.

Dated: January 6, 2003.

Calvin H. Casipit

Acting Subsistence Program Leader, USDA-Forest Service.

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H.J. Res. 18/P.L. 108–5
Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Feb. 7, 2003; 117 Stat. 9)
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