Federal Register

9–12–02 Thursday
Vol. 67 No. 177 September 12, 2002

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

9–12–02 Thursday
Vol. 67 No. 177 Sept. 12, 2002
Pages 57719–57936

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–523–5243**
Assistance with Federal agency subscriptions	**202–523–5243**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the **Federal Register** and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the **Federal Register** and Code of Federal Regulations.
3. The important elements of typical **Federal Register** documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: September 24, 2002—9:00 a.m. to noon

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538; or
info@fedreg.nara.gov

Contents

Federal Register
Vol. 67, No. 177
Thursday, September 12, 2002

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1470.....57719
Proposed Rules:
1405.....57759

12 CFR
Proposed Rules:
1750.....57760

15 CFR
Proposed Rules:
806.....57767

16 CFR
Proposed Rules:
1610.....57770

29 CFR
1926.....57722

30 CFR
260.....57737

32 CFR
220.....57739

33 CFR
165.....57742
Proposed Rules:
117.....57773

40 CFR
52.....57744
180.....57748
300.....57753
Proposed Rules:
52 (2 documents) 57775, 57776
300.....57778
451.....57872

47 CFR
Proposed Rules:
73 (4 documents) 57779, 57780, 57781

50 CFR
648.....57758
Proposed Rules:
17 (2 documents) 57783, 57784
622.....57785

Rules and Regulations

Federal Register
Vol. 67, No. 177
Thursday, September 12, 2002

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

RIN 0560–AG63

Apple Market Loss Assistance Payment Program II

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the Apple Market Loss Assistance Payment Program II (AMLAP–II). The program is designed to provide relief to apple producers for the loss of markets during the 2000 crop year. The payments provided by this rule will offset a portion of the per-bushel losses producers have incurred marketing apples in the U.S. Those eligible will receive an immediate payment to help pay operating expenses and meet other financial obligations.

DATES: Effective September 12, 2002.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Price Support Division, FSA/USDA, Stop 0512, 1400 Independence Ave., SW., Washington, DC, 20250–0512; telephone (202) 720–1919; facsimile (202) 690–3307; e-mail: *Danielle_Cooke@wdc.fsa.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking on the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with this rule. Before any judicial action may be brought concerning this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking on the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies are:

10.075—Special Apple Program

Paperwork Reduction Act

A notice with request for comments on the information collection was part of the proposed rule. No comments were received from the public during the 60-day comment period regarding the information collection. In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request to OMB for the approval of a reinstatement, with change, or a previously approved collection for which approval has expired for the Apple Market Loss Assistance Payment Program application, as necessary for the proper functioning of the program. A regular information collection package will be submitted to OMB.

Information Collection

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program implemented under this rule are not yet fully implemented for the public to conduct business with FSA electronically. However, the application form will be available electronically through the USDA eForms web site at *http://www.sc.egov.usda.gov* for downloading. The regulation will be available at FSA's Price Support Division internet site at *http://www.fsa.usda.gov/dafp/psd*. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available because signatures from multiple producers with shares in the apple operations production are required. Still, full implementation of electronic submission is underway.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Public Comments

This rule finalizes the proposed rule published in the **Federal Register** at 67 FR 139 on July 19, 2002. The comment period for the proposed AMLAP-II rule closed on August 19, 2002. Comments were received from two agricultural

trade associations and one farm bureau. Two comments received expressed the urgency for USDA to administer this critical assistance to apple growers. FSA recognizes the immediate need of the financial assistance this program will offer to the nation's apple growers and are undertaking measures to expedite the dispersal of funds and relieve some of the economic stress from production losses experienced by growers in the apple industry.

The other comment received directed concern toward inconsistencies in how the rule establishes eligible production. Their concern was that the rule, as written, would confuse program participants. The respondent indicated that the definition of "eligible production" in section 1470.103 should be changed to include harvested production, so it is consistent with section 1470.101(b), which indicates that payments shall be available only for apples produced and harvested. The respondent also noted that there were other areas in the rule that referenced eligible production as only having to be produced during the 2000 crop year rather than produced and harvested during the 2000 crop year. The Agency agrees that this clarification is useful and adopted the appropriate changes in this final rule to state explicitly in section 1470.103, as well, that eligible apple production must be produced and harvested during the 2000 crop year.

List of Subjects in 7 CFR Part 1470

Administrative practice and procedure, Apples, Grant programs-agriculture, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR part 1470 is amended as follows:

PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

1. The authority citation for part 1470 is revised to read as follows:

Authority: Sec. 811, Pub. L. 106–387, 114 Stat. 1549; Sec. 741, Pub. L. 107–76, 115 Stat. 704; Sec. 102, Pub. L. 107–117, 115 Stat. 2230.

2. Redesignate §§ 1470.1 through 1470.16 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Apple Market Loss Payment Program

3. Add subpart B to part 1470 to read as follows:

Subpart B—Apple Market Loss Assistance Payment Program II

Sec.

Subpart B—Apple Market Loss Assistance Payment Program II

§ 1470.101 Applicability.

(a) The regulations in this subpart are applicable to producers of the 2000 crop of apples. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program II in accordance with section 741 of Public Law 107–76, as amended by Public Law 107–117. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

§ 1470.102 Administration.

(a) The Apple Market Loss Assistance Payment Program II shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

§ 1470.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Apple Market Loss Assistance Payment Program II established by this subpart.

Administrator means the FSA Administrator.

Apple operation means any person or group of persons who, as a single unit as determined by CCC, produces and market apples in the United States.

Application means Form CCC–891, the Apple Market Loss Assistance Payment Application.

Application period means the date established by the Deputy Administrator for producers to apply for program benefits.

CCC means the Commodity Credit Corporation.

County committee means the FSA county committee.

County office means the local FSA office.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Eligible production means apples that were produced and harvested in the

United States anytime during the 2000 crop year, up to a maximum of 5,000,000 pounds per apple operation.

Payment pounds means the pounds of apples for which an operation is eligible to be paid under this subpart.

Person means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

§ 1470.104 Time and method of application.

(a) Apple producers may obtain an application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the application at *http://www.sc.egov.usda.gov.*

(b) A request for benefits under this subpart must be submitted on a completed application as defined in § 1470.103. Applications should be submitted to the FSA county office serving the county where the apple operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in the risk of an apple operation's total production must certify to the information on the application before the application will be considered complete.

(d) The apple operation requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 1470.105 Eligibility.

(a) To be eligible to receive a payment under this subpart, an apple operation must:

(1) Have produced and harvested apples in the United States at some time during the 2000 crop year;

(2) Not have been compensated for the same market loss by any other Federal programs, except an indemnity provided under a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Apply for payments during the application period.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution, or their duly authorized representatives must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) All payments under this part are subject to the availability of funds.

§ 1470.106 Proof of production.

(a) Apple operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced and harvested during the 2000 crop year to verify production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The 2000 crop year production must be documented using actual records.

(b) All persons involved in such apple operation producing apples during the 2000 crop year shall provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on the application. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, apple operations will be determined ineligible for benefits.

§ 1470.107 Availability of funds.

The total available program funds shall be $75 million as provided by section 741 of Public Law 107–76 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

§ 1470.108 Applicant payment quantity.

(a) The applicant's payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced and harvested by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5,000,000 pounds per operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

§ 1470.109 Payment rate and apple operation payment.

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and shall be calculated, to the extent practicable, by dividing the $75 million available for the Apple Market Loss Assistance Payment Program II by the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is expended.

§ 1470.110 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart in

accordance with the provisions of 7 CFR part 1403.

§ 1470.111 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

§ 1470.112 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

§ 1470.113 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.117(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1470.114 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1470.115 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

§ 1470.116 Maintenance and inspection of records.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this subpart to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1470.117 Refunds; joint and several liability.

(a) In the event of an error on an application, a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this chapter.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

Signed in Washington, DC, on August 30, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–23074 Filed 9–11–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket #S–018]

RIN 1218–AB88

Safety Standards for Signs, Signals, and Barricades

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising the construction industry safety standards to require that traffic control signs, signals, barricades or devices protecting workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1–1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD).

DATES: This final rule will become effective December 11, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 11, 2002.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor of Labor, U.S. Department of Labor, Room S–4004, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

For copies of this **Federal Register** document contact: OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1888. Electronic copies of this **Federal Register** document, as well as other relevant documents, can be obtained from OSHA's Web page on the Internet at *http://www.osha.gov.*

How to Obtain Copies of the MUTCD: The Federal Highway Administration partnered with three organizations to print copies of the Millennium Edition Manual of Uniform Traffic Control Devices for sale. The organizations are: (1) American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406–1022; Telephone: 1–800–231–3475; FAX: (540) 368–1722; *www.atssa.com*; (2) Institute of Transportation Engineers, 1099 14th Street, NW., Suite 300 West, Washington, DC 20005–3438; FAX: (202) 289–7722; *www.ite.org*; and (3) American Association of State Highway and Transportation Officials; *www.aashto.org*; Telephone: 1–800–231–3475; FAX: 1–800–525–5562.

On-line copies of the Millennium Edition are available for downloading from DOT's Web site: *http://mutcd.fhwa.dot.gov/kno-millennium.htm*. On-line copies of the 1988 Edition of the Manual on Uniform Traffic Control Devices (Revision 3, dated 9/93, with the November 1994 Errata No. 1) are available for downloading from OSHA's Web site: *http://www.osha.gov/doc/highway_workzones*. In addition, both documents are available for viewing and copying at each OSHA Area Office.

FOR FURTHER INFORMATION CONTACT: *General Information and Press Inquiries*—Bonnie Friedman, Director, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. *Technical Information*—Nancy Ford, Office of Construction Standards and Construction Services, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2345.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule addresses the types of signs, signals, and barricades that must be used to protect construction employees from traffic hazards. The vast majority of road construction in the United States is funded through Federal transportation grants. As a condition to receiving Federal funding, the U.S. Department of Transportation's (DOT's) Federal Highway Administration requires compliance with its MUTCD.

In furtherance of OSHA's statutory mandate to protect the health and safety of employees, OSHA also requires employers that are within the scope of its authority to comply with the MUTCD. However, OSHA's current standard incorporates the 1971 version of the MUTCD, which FHWA has since updated. The purpose of this final rule is to update OSHA's standard.

II. Procedural History

On April 15, 2002, OSHA published a direct final rule and a companion proposed rule to update 29 CFR 1926 subpart G—Signs, Signals, and Barricades [67 FR 18091]. The Agency explained that unless a significant adverse comment is received within a specified period of time, the rule would become effective. Alternatively, if significant adverse comments are received, the agency would withdraw the direct final rule and treat the comments as comments to the proposed rule. Direct final rulemaking is used where the agency anticipates that the rule will be non-controversial.

The Agency stated that, for purposes of the direct final rule published on April 15, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment would necessitate withdrawal of this direct final rule, OSHA would consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. A comment recommending an addition to the rule would not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the addition. If timely significant adverse comments were received, the agency would publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than July 15, 2002.

In the companion proposed rule, which is essentially identical to the direct final rule [67 FR 18145], OSHA stated that in the event the direct final rule were withdrawn because of significant adverse comment, the agency could proceed with the rulemaking by addressing the comment and again publishing a final rule. The comment period for the proposed rule ran concurrently with that of the direct final rule. Any comments received under the companion proposed rule were to be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule would be considered as comments to the companion proposed rule; the agency would consider such comments in developing a subsequent final rule.

On July 15, 2002, OSHA published a notice withdrawing the direct final rule [67 FR 46375], explaining that of the eight comments that had been submitted, the Agency was treating two as significant adverse comments. Both comments challenged the August 13, 2002 effective date of the rule. The two comments are being treated as comments on the companion proposed rule, and are addressed below. In response to the comments, OSHA has set the effective date at December 11, 2002.

III. Background

Currently, under 29 CFR part 1926 subpart G—Signs, Signals, and Barricades, OSHA requires that employers comply with the 1971 MUTCD. Specifically, employers must ensure that the following conform to the 1971 MUTCD: traffic control signs or devices used to protect construction workers (29 CFR 1926.200(g)(2)); signaling directions by flagmen (29 CFR 1926.201); and barricades for the protection of workers (29 CFR 1926.202).

In contrast, a DOT rule, 23 CFR 655.601 through 655.603, requires that such traffic control signs or devices conform to a more recent version of the MUTCD. DOT regulations provide that the MUTCD is the national standard for all traffic control devices on streets, highways and bicycle trails. DOT's rule requires that traffic control devices on roads in which federal funds were involved be in substantial conformance with its MUTCD. In effect, the MUTCD has become a national benchmark for all roads.

Under Title 23 of the U.S. Code, sections 109(d) and 402(a), the Secretary of Transportation is authorized to promulgate and require compliance with uniform guidelines to reduce injuries and fatalities from road accidents. Specifically, section 109(d) authorizes DOT to require (through its approval of State highway department requirements) all highway projects in which Federal funds are involved to comply with these types of uniform rules. Highways are broadly defined under section 101(a)(11) of the DOT statute, and include roads, streets and parkways. Under section 402(a), DOT is authorized to require each State to have a highway safety program, including uniform standards for traffic safety, approved by DOT. In accordance with this authority, DOT promulgated 23 CFR part 655, subpart F (Traffic Control Devices on Federal-Aid and Other Streets and Highways). In section 655.603(a), DOT established its MUTCD as "the national standard for all traffic

control devices installed on any street, highway, or bicycle trail open to public travel * * * " Under subpart F, the States were required to adopt Revision 3 for federally funded highways within two years of its issuance. The effective date of the final rule that adopted Revision 3 was January 10, 1994 [58 FR 65084 (December 10, 1993)]. A two-year period for transition to full compliance with Revision 3 expired January 10, 1996. Transition to full compliance with the Millennium edition must be completed by January 2003. Consequently, employers have already been required to comply with Revision 3 for all federal-aid highways. In addition, all States have required compliance with Revision 3 for most roads (although there is some variation among the States regarding the extent to which compliance is required on municipal, county, and private roads).

In the early 1970s, the FHWA assumed from ANSI responsibility for publishing the MUTCD. The FHWA substantially rewrites the MUTCD every 10 to 20 years, and amends it every two to three years. Until the Millennium Edition was published in December 2000, the most recent edition was the 1988 edition. The 1988 edition consisted of 10 parts, including part VI, "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations." The FHWA substantially revised and reissued part VI in 1993 (Revision 3). There are substantial differences both in substance and format between Revision 3 and the 1971 MUTCD. The most recent edition of the MUTCD, the Millennium Edition published in December 2000, contains some substantive changes and a new, easier to use format. States are required to adopt the Millennium Edition or its equivalent by January 2003.

Several stakeholders asked OSHA to update subpart G, because they had to meet the outdated OSHA requirements in addition to the DOT rule. They pointed out that Revision 3 and the Millennium Edition reflect updated standards and technical advances based on 22 years of experience in work zone traffic control design and implementation, as well as human behavior research and experience. The National Committee on Uniform Traffic Control Devices ("NCUTCD"), consisting of various national associations and organizations interested in highway construction or highway safety, including the American Road and Transportation Builders Association, the Association of American Railroads, the American Automobile Association, the National Association of Governor's Highway Safety Representatives, and the National Safety Council, unanimously resolved in January 1999 to request that OSHA adopt Revision 3 in place of the 1971 MUTCD. In May 2000, OSHA's Advisory Committee on Construction Occupational Safety and Health ("ACCSH") also expressed support for adopting a more recent edition of the MUTCD as the OSHA standard for the construction industry.

OSHA reviewed the differences between the 1971 version, Revision 3 and the Millennium Edition and concluded that compliance with the more recently published manuals would provide all the safety benefits (and more) of the 1971 version. The differences between OSHA's regulations that reference the 1971 MUTCD and DOT's modern regulations create potential industry confusion and inefficiency, without in any respect advancing worker safety. Accordingly, in an interpretation letter dated June 16, 1999, to Cummins Construction Company, Inc., OSHA stated that it would accept compliance with Revision 3 in lieu of compliance with the 1971 MUTCD referenced in section 1926.200(g) through its *de minimis* policy.

The numerous and various changes to the 1971 MUTCD reflected in Revision 3 and the Millennium Edition stem from over 20 additional years of experience in temporary traffic control zone design, technological changes, and contemporary human behavior research and experience. Revision 3 and the Millennium Edition provide highway work zone planners more comprehensive guidance and greater flexibility in establishing effective temporary traffic control plans based on type of highway, traffic conditions, duration of project, physical constraints and the nature of the construction activity. Revision 3 and the Millennium Edition, accordingly, better reflect current practices and techniques to best ensure highway construction worker safety and health.

Accordingly, OSHA is amending the safety and health regulations for construction to adopt and incorporate Revision 3 (and the option to comply with the Millennium Edition), instead of the 1971 MUTCD, and to make certain editorial changes. The amendment deletes the references in 29 CFR 1926.200(g)(2) and 1926.202 to the 1971 MUTCD and inserts references to Revision 3 (and the option to comply with the Millennium Edition). The amendment clarifies and abbreviates 29 CFR 1926.201(a), by simply adopting the requirements of Revision 3 (and the option to comply with the Millennium Edition) with regard to the use of flaggers. The amendment also makes certain editorial corrections, replacing the term workers for the term workmen and the term flaggers for the term flagmen in 29 CFR 1926.200(g)(2) and 1926.201(a).

Updating OSHA's rule eliminates the technical anomaly of having to meet both OSHA's outdated requirement to comply with the 1971 version and DOT's more modern requirements. Instead, OSHA's final rule requires compliance with Revision 3 (or, at the option of the employer, the Millennium edition). In addition to harmonizing OSHA's requirements with those of DOT, the final rule's additional safety measures (described below) will be enforceable as OSHA requirements. With the current emphasis on rebuilding the Nation's highways and improving safety in work zone areas, OSHA's update is particularly appropriate.

IV. Discussion of Changes

Format and Style

Both the 1971 MUTCD and Revision 3 were written in narrative form with "must/shall," "should," and "may" sentences indicating mandatory requirements, guidance, and options, respectively. These verbs were often intermixed within a single paragraph, leading to some confusion. In the Millennium Edition, each subsection is organized by "standard," "guidance," and "options" categories. An additional category, titled "support," is also included. This format clarifies what is expected of employers and the basis for those requirements. Pursuant to the requirements of 29 CFR 1926.31, only the mandatory language of standards that are incorporated through reference are adopted as OSHA standards. Therefore, the summary of changes below will focus primarily on the revisions that impose new requirements, or modify already existing requirements. The summary does contain short discussions on traffic control plans and tapers which, while not required by MUTCD, reflect industry practice.

The 1988 edition of the MUTCD eliminated the term "flagmen" and "workmen" and replaced them with the more inclusive "flaggers" and "workers." The final rule amends 29 CFR 1926.200(g)(2), 1926.201(a) and 1926.203 to be consistent with these changes.

In the Millennium Edition, the FHWA also changed the title of part 6 from "Standards and Guides for Traffic

Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations" to "Temporary Traffic Control." The new title is more succinct and more accurately describes the contents of the section.

Sections 6A Through 6B (Introduction and Fundamental Principles)

Revision 3 and the Millennium Edition describe an overall "guiding philosophy" of "fundamental principles" for good temporary traffic control, which is not explicitly set out in part VI of the 1971 MUTCD. Although these principles do not formally establish new requirements, they provide a framework for understanding requirements set out in the remainder of part VI. In the corresponding section, the 1971 ANSI standard required that all temporary traffic control devices be removed as soon as practical when they are no longer needed. Revision 3 downgraded this requirement to a recommendation. This issue was revisited during the drafting of the Millennium Edition, which once again requires the removal of signs when they are no longer needed. The Millennium Edition requires that employers remove temporary traffic control devices that are no longer appropriate, even when the work is only suspended for a short period of time.

Section 6C (Temporary Traffic Control Elements)

The 1971 MUTCD does not discuss traffic control plans (TCPs), which are used by industry to describe traffic controls that are to be implemented in moving vehicle and pedestrian traffic through a temporary traffic control zone. Revision 3 emphasizes the importance of TCPs in facilitating safe and efficient traffic flow. Revision 3 recognizes that different TCPs are suitable for different projects and does not detail specific requirements. The Millennium Edition offers expanded guidance and options for TCPs, but it adds no requirements. In both Revision 3 and the Millennium Edition, a TCP is recommended but not required. Revision 3 and the Millennium Edition also discuss the "temporary traffic control zone," comprised of several areas known as the "advance warning area," "transition area," "activity area," and "termination area." In addition, Revision 3 and the Millennium Edition explain the need for differing traffic control measures in each control zone area.

The 1971 MUTCD only briefly describes "tapers" and provides a formula for calculating the appropriate taper length. However, Revision 3 defines and discusses five specific types of tapers used to move traffic in or out of the normal path of travel. It illustrates each of them, and sets out specific formulae for calculating their appropriate length. In all three editions, information relating to tapers is limited to guidance and contains no mandatory requirements.

All versions of the MUTCD require the coordination of traffic movement, when traffic from both directions must share a single lane. Revision 3 and the Millennium Edition describe five means of "alternate one-way traffic control," adding the "Stop or Yield Control Method" to the methods described in the 1971 MUTCD. The "Stop or Yield Control Method" is appropriate for a low-volume two-lane road where one side is closed and the other side must serve both directions. It calls for a stop or yield sign to be installed on the side that is closed. The approach to the side that is not closed must be visible to the driver who must yield or stop.

Section 6D (Pedestrian and Worker Safety)

Revision 3 adds a lengthy section, not found in the 1971 MUTCD, that provides guidance and options on pedestrian and worker safety. Under Revision 3, the key elements of traffic control management that should be considered in any procedure for assuring worker safety are training, worker clothing, barriers, speed reduction, use of police, lighting, special devices, public information, and road closure. Revision 3 recommends that these traffic control techniques be applied by qualified persons exercising good engineering judgment. The Millennium Edition makes this recommendation a requirement. The Millennium Edition also requires advance notification of sidewalk closures.

Section 6E (Hand Signaling or Flagger Control)

Revision 3 and the Millennium Edition require that a flagger wear an orange, yellow, or "strong yellow green" (called "yellow-green" in Millennium Edition) vest, shirt, or jacket, instead of an "orange vest and/or an orange cap," as directed in the 1971 ANSI standard. For nighttime work, Revision 3 requires that the outer garment be retro-reflective orange, yellow, white, silver, or strong yellow-green, or a fluorescent version of one of these colors. This clothing must be designed to identify clearly the wearer as a person, and the clothing must be visible through the full range of body motions. For nighttime work, the Millennium Edition requires that the colors noted above be retro-reflective, but does not mandate that the clothing be visible through the full range of body motions. Both Revision 3 and the Millennium Edition allow the employer more flexibility in selecting colors.

Under the 1971 ANSI standard, the flagger was required to be visible to approaching traffic at a distance that would allow a motorist to respond appropriately. Revision 3 and the Millennium Edition contain more specific requirements. Under both versions, flaggers must be visible at a minimum distance of 1,000 feet. In addition, Revision 3 and the Millennium Edition list training in "safe traffic control practices" as a minimum flagger qualification.

Revision 3 and the Millennium Edition depart significantly from the 1971 ANSI standard by requiring that "Stop/Slow" paddles, not flags, be the primary hand-signaling device. The paddles must have an octagonal shape on a rigid handle, and be at least 18 inches wide with letters at least six inches high. The 1971 ANSI standard recommended a 24-inch width. Revision 3 and the Millennium Edition require that paddles be retro-reflectorized when used at night. Flags would still be allowed in emergency situations or in low-speed and/or low-volume locations. Revision 3 and the Millennium Edition differ in that Revision 3's recommendations for flag and paddle signaling practice are requirements in the Millennium Edition. In addition, the Millennium Edition applies several new requirements when flagging is used. The flagger's free arm must be held with the palm of the hand above shoulder level toward approaching traffic and the flagger must motion with the flagger's free hand for road users to proceed. These requirements were guidance in Revision 3, and options in the 1971 ANSI standard.

Section 6F (Devices)

Revision 3 and the Millennium Edition reflect numerous differences in the design and use of various traffic control devices, such as signs, signals, cones, barricades and markings, used in temporary traffic control zones. Several signs or devices are described that are not mentioned in Part VI of the 1971 ANSI standard. These signs and devices, along with their location in Revision 3 and the Millennium Edition, can be found in Table 1.

TABLE 1.

New signs and devices	Revision 3	Millennium edition
Portable Changeable Message Signs	6F–2	6F.52.
Arrow Displays	6F–3	6F.53.
High-Level Warning Device or Flag Tree	6F–4	6F.54.
Temporary Raised Islands	6F–5h	6F.63.
Impact Attenuators	6F–8a	6F.76.
Portable Barriers	6F–5g and 8b	6F.75.
Temporary Traffic Signals	6F–8c	6F.74.
Rumble Strips	6F–8d	6F.78.
Screens	6F–8e	6F.79.
Opposing Traffic Lane Divider	6F–8f	6F.64.
Shoulder Drop-Off	6F–1b(19)	6F.41.
Uneven Lanes	6F–1b(20)	6F.42.
No Center Stripe	6F–1b(21)	6F.43.
Be Prepared to Stop	VI–8c sign W20–7b	6F.15, W3–1a.
Detour Marker and End Detour	6F–1c(4)	6F.15.
Various Other Warning Signs	V1–8a, signs W1–4bR, W1–4cR, W1–8, W3–3, W4–1 and W4–3 and V1–8b, signs W5–2a and W8–3a.	

The dimensions, shape, legends or use of various signs have changed. Those changes are reflected in Table 2.

TABLE 2.

New signs	Revision 3	Millennium edition
Turn Off 2-Way Radios and Cellular Telephones.	6F–1b(18a) and (18b)	6F.15, W22–2.
Stop Ahead and Yield Ahead	VI–8a, signs W3–1a and W3–2a	6F.15, W3–1a & W3–2a.
Road Narrows and Narrow Bridge	VI–8a, signs W5–1 and W5–2	6F.15, W5–1 & W5–2.
Right Lane Ends	VI–8c, sign W9–1	6F.15, W9–1.
Length of Work	6F–1c(2)	6F.15, G20–1.
End Road Work	6F–1c(3)	6F.15, G20–2a.

Also, Revision 3 and the Millennium Edition offer expanded options for the color of temporary traffic control signs. Signs that under the 1971 ANSI standard were required to have orange backgrounds may now have fluorescent red-orange or fluorescent yellow-orange backgrounds.

The 1971 ANSI standard required that signs in rural areas be posted at least five feet above the pavement; signs in urban areas were required to be at least seven feet above the pavement. Revision 3 eliminated the distinction between urban and rural areas, and downgraded the requirement to a recommendation. It recommended that signs in all areas have a minimum height of seven feet. In the Millennium Edition, the FHWA returned to the 1971 ANSI requirements. The Millennium Edition also introduced the requirement that signs and sign supports be crashworthy.

The Millennium Edition introduced and clarified mandatory requirements for the design of the following signs: Weight Limit, Detour, Road (Street) Closed, One Lane Road, Lane(s) Closed, Shoulder Work, Utility Work, signs for blasting areas, Shoulder Drop-Off, Road Work next XX KM (Miles), and Portable Changeable Message.

The dimensions, color or use of certain channelizing devices have also changed. "Channelizing devices" include cones, tubular markers, vertical panels, drums, barricades, temporary raised islands and barriers. The 1971 ANSI standard required that traffic cones and tubular markers be at least 18 inches in height and that the cones be predominantly orange. Revision 3 raised the minimum height for traffic cones and tubular markers to 28" "when they are used on freeways and other high speed highways, on all highways during nighttime, or whenever more conspicuous guidance is needed." (6F–5b(1), 5c(1)) Revision 3 also expanded the color options for cones to include fluorescent red-orange and fluorescent yellow-orange. The Millennium Edition maintained these requirements.

Revision 3 and the Millennium Edition require that vertical panels be 8 to 12 inches wide, rather than the 6 to 8 inches required by the 1971 ANSI standard. Under Revision 3 and the Millennium Edition, drums must be made of lightweight, flexible and deformable materials, at least 36 inches in height, and at least 18 inches in width. Steel drums may not be used. The Millennium Edition adds the requirement that each drum have a minimum of two orange and two white stripes with the top stripe being orange. Revision 3 and the Millennium Edition require that delineators only be used in combination with other devices, be white or yellow, depending on which side of the road they are on, and be mounted approximately four feet above the near roadway edge.

The 1971 ANSI standard required warning lights to be mounted at least 36 inches high. Revision 3 and the Millennium Edition reduced the minimum height to 30 inches and introduced new requirements for warning lights. Type A low intensity flashing warning lights and Type C steady-burn warning lights must be maintained so as to allow a nighttime visibility of 3000 feet. Type B high intensity flashing warning lights must be visible on a sunny day from a distance of 1000 feet.

Revision 3 and the Millennium Edition contain an additional requirement, not found in the 1971 ANSI standard, that requires employers to remove channelizing devices that are damaged and have lost a significant amount of their retro-reflectivity and effectiveness. Revision 3 and the

Millennium Edition also specifically prohibit placing ballast on the tops of drums or using heavy objects such as rocks or chunks of concrete as barricade ballast.

Revision 3 and the Millennium Edition address in greater detail the appearance and use of pavement markings and devices used to delineate vehicle and pedestrian paths. They require that after completion of the project, pavement markings be properly obliterated to ensure complete removal and a minimum of pavement scars. Whereas Revision 3 requires that all temporary broken-line pavement markings be at least four feet long, the Millennium Edition sets the minimum at two feet.

Section 6G (Temporary Traffic Control Zone Activities)

This section, not found in the 1971 ANSI standard, provides information on selecting the appropriate applications and modifications for a temporary traffic control zone. The selection depends on three primary factors: Work duration, work location, and highway type. Section 6G in both Revision 3 and the Millennium Edition emphasizes that the specific typical applications described do not include a layout for every conceivable work situation and that typical applications should, when necessary, be tailored to the conditions of a particular temporary traffic control zone.

Among the specific new requirements in Revision 3 and the Millennium Edition are the following: retro-reflective and/or illuminated devices in long term (more than three days) stationary temporary traffic control zones; warning devices on (or accompanying) mobile operations that move at speeds greater than 20 mph; warning sign in advance of certain closed paved shoulders; a transition area containing a merging taper in advance of a lane closure on a multi-lane road; temporary traffic control devices accompanying traffic barriers that are placed immediately adjacent to the traveled way; and temporary traffic barriers or channelizing devices separating opposing traffic on a two-way roadway that is normally divided.

The Millennium Edition includes several additional requirements in Section 6G. It requires the use of retro-reflective and/or illuminated devices in intermediate-term stationary temporary traffic control zones. A zone is considered intermediate-term if it is occupying a location more than one daylight period up to three days, or if there is nighttime work in the zone lasting more than one hour. The Millennium Edition also requires a transition area containing a merging taper when one lane is closed on a multi-lane road. When only the left lane on undivided roads is closed, the merging taper must use channelizing devices and the temporary traffic barrier must be placed beyond the transition area channelizing devices along the centerline and the adjacent lane. In addition, when a directional roadway is closed, inapplicable WRONG WAY signs and markings, and other existing traffic control devices at intersections within the temporary two-lane two-way operations section, must be covered, removed, or obliterated.

Revision 3 Section 6H (Application of Devices)

Revision 3 and the Millennium Edition provide an extensive series of diagrams illustrating Atypical applications' of the temporary traffic control requirements. These illustrations are intended as practical guides on how to apply all the factors discussed in other chapters and displayed on Figures and Tables throughout Part VI.

Effective Date

In the direct final rule, OSHA set an effective date of August 13, 2002. In two of the eight comments received in response to the direct final rule and proposed rule, commenters asserted that the effective date needed to be delayed by one year. The Agency is treating those two comments as significant adverse comments.

The National Electrical Contractors Association (NECA) asserted that an additional year was needed to "allow enough time for industry organizations to notify their constituents of their new compliance responsibilities and for contractors to achieve full compliance." (EX 2–3). Specifically, NECA stated:

> Most construction contractors not involved in routine highway construction are unaccustomed to the details [of the updated MUTCD] * * * Utility contractors performing progressive removal and/or installation of electrical and communication line, piping, sewer system are not usually involved in the construction and maintenance of roadways * * * There could be a shortage of traffic control devices from suppliers and manufacturers to meet expanded requests if there is an abrupt need to achieve full compliance among a broader construction audience than expected. This could potentially lead to unpredicted non-compliance among highway construction contractors as well as among non-highway contractors. For example, a representative of a major manufacturer of temporary traffic lane marking recently told NECA that the company's typical months for producing the tape for the upcoming construction season are February and March, suggesting a possible shortage of material until well after the proposed OSHA effective compliance date of August 2002. Available material and equipment supply may not meet a rapid demand. Manufacturers and suppliers should be allowed time to expand their inventory in anticipation of expanded demand.

(EX 2–3).

The National Association of Homebuilders (NAHB) submitted similar comments (EX–2–7), asserting that:

> Most residential construction is not involved in routine highway construction and therefore, most are not aware of the requirements of the MUTCD. * * * [T]here may be a shortage of traffic control devices and equipment that could lead to significant cost increases or non-compliance with the new standard if these are unavailable. This would add additional costs to residential construction projects that are currently in progress or for contracts for construction endeavors that are already in place.

(EX 2–7).

The Agency finds that these assertions fail to demonstrate a need for a one-year delay in the effective date. Implicit in the comments is the assumption that the MUTCD has applied only to employers engaged in road work, while OSHA is now seeking to apply the revised MUTCD to contractors engaged in non-road work affected by road traffic hazards. The assumption that the requirements of the 1971 MUTCD were limited to the construction/repair of roads is incorrect. In section 6A–3 ("Application of Standards") of the 1971 MUTCD, "construction and maintenance operations" covered by the manual are described as including "encroachments by adjacent building construction."

Also, with respect to NECA's comment, as stated in section 6A–2 (Scope) of the 1971 MUTCD, the requirements have applied specifically to "utility work." Additionally, in 29 U.S.C. 1926 subpart V (Power Transmission and Distribution), section 1926.955(b)(7) requires that in metal power transmission/distribution tower construction, adequate traffic control must be maintained when crossing highways with equipment as required by the provisions of 1926.200 (g)(2)—which had incorporated the 1971 MUTCD. This Subpart V requirement has been in place since 1973. Therefore, employers other than just those constructing/repairing roads have had to comply with the 1971 MUTCD for approximately 30 years.

As discussed below, in analyzing the costs of updating the rule, OSHA estimates that the overwhelming majority of roads in the United States

are subject to DOT requirements to comply with Revision 3 or the Millennium Edition. Consequently, the percentage of worksites where equipment is now going to be required for the first time is small. Furthermore, it is unlikely that many construction employers work exclusively on sites subject to DOT jurisdiction. As long as some of their work has been subject to DOT requirements, they have had to have the equipment necessary to comply with the updated MUTCD since 1996. Therefore, it is unlikely that whatever new demand there is for equipment will be significant relative to current industry production levels.

The NAHB and NECA also stated that more time is needed to train both the industry and OSHA compliance officers on the updated MUTCD. In light of the fact that most affected employers have been required to comply with the updated MUTCD since 1996, it appears that a one-year extension in the effective date, which was requested by these commenters, is not necessary. However, to facilitate the Agency's emphasis on outreach efforts, OSHA has added 120 days to the original proposed effective date; the new effective date is December 11, 2002. This will also accommodate the small number of employers affected by this rule that have not until now been required to comply with the updated MUTCD requirements.

Regulatory Planning and Review

Executive Order 12866 (Regulatory Planning and Review)

Relationship to Existing DOT Regulations

Through this rule, OSHA is requiring that traffic control signs, signals, barricades or devices conform to Revision 3 or Part VI of the Millennium Edition, instead of the ANSI MUTCD. The ANSI MUTCD was issued in 1971. In 1988 the FHWA substantially revised and reissued the MUTCD. Since that time, FHWA has published several updates, including a 1993 revision to Part VI—Revision 3. In December 2000, FHWA published a Millennium Edition of the MUTCD that changed the format and revised several requirements. Employers that receive Federal highway funds are currently required to comply with Revision 3 and have up until January 2003 to bring their programs into compliance with the Millennium Edition.

This is a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866. OSHA has determined that this action is not an economically significant regulatory action within the meaning of Executive Order 12866. Revision 3 of the MUTCD adds to the ANSI requirements some new, alternative traffic control devices and expanded provisions and guidance materials, including new typical application diagrams that incorporate technology advances in traffic control device application. Part VI of the Millennium Edition includes some alternative traffic control devices and only a very limited number of new or changed requirements. However, the activities required by compliance with either Revision 3 or the Millennium Edition would not be new or a departure from current practices for the vast majority of work sites. All of these requirements are now or have been part of DOT regulations that cover work-related activities on many public roadways.

According to DOT regulations, the MUTCD is the national standard for streets, highways and bicycle trails. While OSHA's de minimus policy is applied to situations in which there is failure to comply with the 1971 ANSI MUTCD when there is compliance with Revision 3, this action will reduce any confusion created by the current requirement for employers to comply both with the 1971 ANSI MUTCD and DOT's MUTCD.

Percentage of Roads Covered Under OSHA's Standard Versus the DOT Standard

The majority of U.S. roads are currently covered by DOT regulations and their related State MUTCDs. DOT regulations cover all federal-aid highways, which carry the majority of traffic. Moreover, many states extend MUTCD coverage to non-federal-aid and private roads. Thus, the requirements imposed by this OSHA final rule will be new only for the small percentage of the work that is not directly regulated by DOT or state transportation agencies.

Federal-Aid Highways. Employers must comply with Revision 3 for all construction work respecting federal-aid highways. Although federal-aid highways constitute a minority of all public highways as measured by length, these highways carry the great majority of traffic. According to OSHA's analysis, 84 percent of vehicle-miles are driven on federal-aid highways (*see* Table 1). Though not a perfect measure, vehicular use corresponds more directly than length of road to the need for construction, repair, and other work activities addressed by the MUTCD. This suggests that most of these activities occur with respect to federal-aid highways. Conforming to the standards of the MUTCD during these work activities is a clear requirement of receiving federal highway funds and is therefore regulated by DOT.

State, Local, County and Municipal Roads (not Receiving Federal Aid). The available data suggest that work respecting most non-federal-aid roads are required to comply with the MUTCD. Many states choose to regulate public roadways that are not federal-aid highways and thereby extend the coverage of the MUTCD. For example, OSHA reviewed the practices of nine states (Alabama, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Michigan, North Carolina, and Texas), which include 23 percent of all U.S. public roads. In conducting this review, OSHA found that eight of the states require MUTCD standards on all state roads, while the ninth state requires MUTCD standards on state roads if the state contracts the work to be done. Five of these states also require that MUTCD standards be met on all county and municipal roads. For the sample of nine states, individual state coverage of public roads by state MUTCDs ranges from 12 percent to 100 percent (*see* Table 2). OSHA found that, on average, MUTCD coverage of all public roads in these nine states is 84 percent. (OSHA computed the average across the nine states by weighting by total highway miles.)

Private Roads. OSHA also examined MUTCD coverage of private roads. Although data on the extent of private roads is very limited, the best available information indicates that about 20 percent of the total mileage is accounted for by private roads (*see* Table 2). Some of these private roads are covered by State MUTCD standards. Of the nine states examined by OSHA, one state included private roads under the MUTCD standards if the state enforced traffic laws on these roads (*e.g.*, roads in gated communities). Another state extended MUTCD standards to private roads if the state was involved in road design or approval. A third state deferred coverage to municipal ordinances, which may require meeting MUTCD standards on private roads. Thus, although it is clear that some local governments extend coverage to private roads, no data are available to specify with precision the extent to which this is the case.

Additional Incentives To Comply With the MUTCD

The estimates of the percentage of roads and highways covered by the MUTCD presented above are conservative. States, localities and their contractors have additional incentives to comply with the MUTCD when it is

not required. OSHA policy reinforces these incentives because OSHA does not enforce compliance with the ANSI MUTCD when there is compliance with Revision 3.

Under 23 U.S.C. 402(a), states must have highway safety programs that are approved by the Secretary of Transportation. The Secretary is directed to promulgate guidelines for establishing these programs. Those guidelines state that programs "should" conform with the MUTCD. DOT does not have the authority to require compliance with the MUTCD on roads that do not receive federal aid, but recommends it. In light of this, and the statement that the MUTCD is "the national standard for all traffic control devices" (23 CFR 655.603(a)), the MUTCD has become the standard of care for litigation purposes. Thus, when a state or local government engages in a road construction project, it will likely seek to meet a reasonable standard of care (*i.e.* compliance with a recent edition of the MUTCD). If it does not, it could face substantial liability if the construction on its roads is a contributing factor in an accident. While compliance with the MUTCD does not insulate a state or locality from liability, it significantly reduces its exposure.

Moreover, many of the contractors who conduct work on covered roads are likely to conduct work on non-covered roads as well. In the interest of efficiency, these contractors are likely to consistently apply the current version of the MUTCD to all work, rather than switch back to the ANSI version for a small percentage of their overall business.

Finally, as is discussed below, signs and devices meeting 1993 specifications are often less expensive than signs meeting 1971 ANSI specifications. This has provided contractors involved in road construction and repair operations with a natural incentive to replace old and worn signs with signs meeting the more up-to-date standard.

Costs Associated With the DOT Standard

DOT has consistently found that their revisions to the MUTCD as a whole and to its various parts have not given rise to new annual costs of compliance that are significant within the meaning of that term as used in Executive Order 12866. The **Federal Register** Notice (December 10, 1993) on the final amendment to the Manual on Uniform Traffic Control Devices (MUTCD); Work Zone Traffic Control states:

> The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. As previously discussed in the above sections on 'Changed Standards' and 'New Devices,' this revision of Part VI adds some new, alternative traffic control devices, and only a very limited number of new or changed requirements. Most of the changes included in this version of part VI are expanded guidance materials, including many new Typical Application Diagrams. The FHWA expects that application uniformity will improve at virtually no additional expense to public agencies or the motoring public. Therefore, based on this analysis a full regulatory evaluation is not required.

58 FR 65084, 65085.

The Federal Register Notice (December 18, 2000) on the final amendment to the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) states:

> The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. Most of the changes in this final rule provide additional guidance, clarification, and optional applications for traffic control devices. The FWHA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and the safety of roadways at little additional expense to public agencies or the monitoring public. Therefore, a full regulatory evaluation is not required.

65 FR 78923, 78957.

Moreover, OSHA has conducted detailed comparisons of the various versions of the MUTCD. The OSHA comparative analysis indicates that the majority of changes to the 1971 version offered increased flexibility, were advisory in nature, or changed mandatory requirements to non-mandatory provisions. Table 3 summarizes the differences between the 1971 ANSI MUTCD and the 1993 Revision that either potentially increase costs or lead to increased flexibility. In cases of increased flexibility and changes to non-mandatory provisions, it is likely that the effect will be to decrease the costs of compliance.

In a few instances, however, the 1993 Revision mandated sign or device changes that could lead to cost increases because contractors would need to purchase new signs for some projects. Table 4 summarizes these cases, which include specifications for stop/slow paddles, no parking signs, "road narrows" and other warnings, and reflective traffic drums. The table lists the changes in specifications as well as presents prices for the 1971 versus the 1993 version of the sign or device. Excluded from Table 4 are "approach warning signs," which are additional signs required by the 1993 MUTCD in highly vulnerable areas.

For stop/slow paddles, the more recent MUTCD version of sign (18″ by 18″) is less expensive than the older, ANSI version (24″ by 24″), with vendors reporting a price difference of $31.50 per sign. No parking signs that include the international "no parking" symbol (as required in the 1993 MUTCD) but do not include a legend are only $0.80 more than the older ANSI version of the signs containing only a legend (the 1993 MUTCD does not require a legend). For "road narrows" and other warning signs, the MUTCD version (36" by 36") is $31 more than the ANSI-specification in the most direct comparison that OSHA identified ($90, as compared to $59). One vendor, however, sold a version of the new sign using an alternative metal for less than $47. Regarding reflective traffic drums, one vendor reported that reflective 55-gallon metal drums (1971 ANSI standard) are no longer produced. When they were last available they sold for $45 to $60 each. A reflective traffic drum meeting the MUTCD standard is $68.

To summarize, prices for signs meeting 1993 MUTCD specifications are not significantly higher than prices for signs meeting 1971 ANSI specifications; in fact, the prices are often lower. Moreover, for devices such as reflective traffic drums, it is not even possible to replace old and worn items with items meeting 1971 standards. This suggests that contractors involved in road construction and repair operations have had an incentive to update to 1993 specifications as their equipment has worn out. The primary effect of the OSHA standard, will be to speed the process of switching to 1993 specifications for contractors who have not already chosen to switch.

To further gauge the potential burden of updating to 1993 MUTCD specifications, OSHA examined the forty-four colored illustrations of the different types of typical highway construction work zones presented in Sections 6G through 6H of the 1993 MUTCD. The majority of examples of work zones presented in the MUTCD represent situations that are currently covered by DOT regulations, and would not be affected by the OSHA standard. However, OSHA was able to identify three examples of situations that may not fall under DOT regulations, but would be included in the scope of the OSHA standard.

The first example examined was a "Lane closure on minor street,"

illustrated by Figure TA–18 (*see* page 142–3 of the MUTCD). In this example, compliance with the 1993 MUTCD would require no changes. Requirements would be met using signs and devices meeting the 1971 ANSI specifications. Consequently, no incremental costs would be attributable to compliance with the 1993 MUTCD.

The second example examined was a "Lane closure for one lane-two way traffic control," illustrated by Figure TA–10 (*see* page 126–7 of the MUTCD). In this setting, compliance with the 1993 MUTCD is achieved by adding two flagger signs and four advance warning signs (two "Right [Left] Lane Closed Ahead" and two "Road Construction XXX Ft") to the 1971 ANSI requirement. In addition, two flagger hand signaling devices (sign paddles) meeting the 1993 dimensions (24″ by 24″) are needed. A Flagger sign can be purchased for about $34, while the "Right [Left] Lane Closed Ahead" and "Road Construction XXX Ft" signs can be purchased for about $47 each. The two sign paddles are $67.[1] Thus, compliance with the 1993 MUTCD would involved a one-time expenditure of $323.

Finally, OSHA examined a third situation, "Lane closure on low-volume two-lane road," illustrated by Figure TA–11 (*see* page 128–9 of the MUTCD). It is important to note that this situation would likely apply to a county or state road, and most states already extend the coverage of the MUTCD in this setting (*see* OSHA review of 9 states presented below). Here, compliance with the 1993 MUTCD is achieved through the use of two "Right [Left] Lane Closed Ahead" and two "Road Construction XXX Ft") to the 1971 ANSI requirement, which can be purchased for about $47 each.[2] In addition, one advance warning sign with the international symbol for "yield" is needed. These can be purchased for roughly $100.[3] Thus, compliance with the 1993 MUTCD would involve a one-time expenditure of $288. If it is assumed that contractor chooses to use 20 drums instead of 20 cones, this would involve a one-time additional expenditure of $1,360, increasing compliance costs to $1,648.

In sum, DOT has consistently found that changes and revisions to the MUTCD do not lead to significant compliance costs. OSHA's comparative assessment of the 1971 ANSI requirements and the 1993 MUTCD tends to support DOT's findings. Because the OSHA regulation applies the MUTCD as developed by DOT, the costs of compliance with the OSHA regulation will be insignificant as well.

Costs Attributable to the OSHA Standard

The analysis discussed above indicates that the costs of compliance for OSHA's proposed action will not be significant under Executive Order 12866. As DOT has estimated, the costs associated with the various versions of the MUTCD and its revisions are small. OSHA's comparative analysis of the 1971 ANSI and 1993 MUTCD supports DOT's estimates. In addition, the overwhelming majority of public roads are already covered by DOT regulations and their related State MUTCDs. As discussed above, OSHA estimated that more than 80 percent of work performed on U.S. roads is covered by DOT regulations and their related State MUTCDs. Due to the extension of MUTCD requirements to non-federal-aid and private roads as well as additional incentives to comply with the MUTCD in situations where compliance is not mandatory, the percentage of work already covered is likely to be much higher than 80 percent. The costs of compliance for those directly regulated by OSHA will, therefore, be substantially lower than those estimated for compliance with DOT regulations.

The differences between OSHA's current regulations that reference the ANSI MUTCD and DOT's regulations create potential industry confusion and inefficiency. OSHA's comparative analysis of the 1971 ANSI and 1993 MUTCD indicated that the majority of changes offered increased flexibility, were advisory in nature, or changed mandatory requirements to non-mandatory provisions. Since the costs of the proposed action are so minimal, it is possible that they will be completely offset by eliminating the inefficiency associated with inconsistent OSHA and DOT regulations as well the direct cost savings from enhanced flexibility and changes to non-mandatory provisions embodied in the 1993 MUTCD.

Technological and Economic Feasibility

The MUTCD is a standard that has been routinely updated for decades by DOT and in fact predates the federal highway program. The process used to update this standard is for DOT to work with state highway officials, who provide federal officials with information on the evolving nature of traffic control devices and industry practices. The federal role consists primarily of compiling this evolving set of practices and devices into a national manual—the MUTCD—that includes standards, guidance, and options. As noted by a DOT official,[4] the MUTCD essentially codifies current industry practice. Thus, most potentially affected parties—local governments, highway and utility contractors, and others—already apply the MUTCD, which clearly demonstrates that doing so is both technologically and economically feasible.

Regulatory Flexibility Screening Analysis

In order to determine whether a regulatory flexibility analysis is required under the Regulatory Flexibility Act, OSHA has evaluated the potential economic impacts of this action on small entities. Table 5 presents the data used in this analysis to determine whether this regulation would have a significant impact on a substantial number of small entities. For purposes of this analysis, OSHA used the Small Business Administration (SBA) Small Business Size Standard and defined a small firm as a firm with $27.5 million or less in annual receipts.

OSHA guidelines for determining the need for regulatory flexibility analysis require determining the regulatory costs as a percentage of the revenues and profits of small entities. The analysis presented here is in most respects a worst-case analysis. OSHA examined the situation of a small firm with less than 20 employees all of whose employees work on projects not previously covered by Revision 3 or the Millennium Edition. OSHA further assumed that the firm previously complied only with the existing OSHA rule (1971 ANSI MUTCD). OSHA derived estimates of the profits and revenues per firm for establishments with fewer than 20 employees for "Highway and Street Construction" (SIC 1611) using data from Census and Dun and Bradstreet. Compliance costs were estimated using the third situation examined under Costs Associated with the DOT Standard ("Lane closure on low-volume two-lane road") and assuming the worst-case scenario, where compliance costs were $1,648. This value served as OSHA's estimate for upper-bound compliance costs per construction crew. OSHA assumed that a highway construction crew consists of four employees and computed an estimate of average total cost of the regulation per establishment of $2,161. Annualized compliance costs were $308 per establishments for small entities,

[1] Prices are from Newman Signs (*http://www.newmansigns.com*)

[2] Prices are from Newman Signs (http://www.newmansigns.com/).

[3] Prices are from Newman Signs (http://www.newmansigns.com/).

[4] Personal communication between Rudolph Umbs, Federal Highway Administration, and John Duberg, TechLaw, December 12, 2000.

amounting to 0.03 percent of revenue and 0.85 percent of profit. Based on this worst-case evaluation, OSHA certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

TABLE 1.—FEDERAL AID HIGHWAY LENGTH, LANE-MILES AND VEHICLE-MILES

System	Length of roadway (Miles) [1]	Lane-Miles [2]	Annual Vehicle-Miles [3]
Interstate Highways	46,564	208,649	648,124
Other National Highways	113,995	333,355	546,028
Total National Highways	160,559	542,004	1,194,152
Other Federal-Aid	797,783	1,719,703	1,093,975
Total Federal-Aid Highways	958,342	2,261,707	2,288,127
Non Federal-Highways	2,973,673	5,947,348	420,201
Total Highways	3,932,015	8,209,055	2,708,328
Federal-Aid as a Percent of Total	24%	28%	84%

[1] FHWA, Highway Statistics: 1999, Section V, Table HM–16.
[2] FHWA, Highway Statistics: 1999, Section V, Table HM–48.
[3] FHWA, Highway Statistics: 1999, Section V, Table VM–3.

TABLE 2.—HIGHWAY MILES COVERED BY FEDERAL OR STATE MUTCDS: SELECTED STATES

State	Federal agency[1]	State agency	County	Town, township, municipal	Other[2]	Total miles covered	Total miles	Covered miles as a share of total (percent)
Alabama[3]	733	10,869				11,602	94,246	12
Arkansas[4]	2,135	16,366	65,347	13,710	1	97,559	97,559	100
Colorado[4]	6,969	9,071	55,447	12,363	1,299	85,149	85,149	100
Connecticut[4]	4	3,717		16,807	260	20,788	20,788	100
Delaware[5]	7	5,065				5,072	5,748	88
Kentucky[6]	1,013	27,477				28,490	74,120	38
Michigan[4]	2,083	9,725	89,344	20,570		121,722	121,722	100
North Carolina[7]	2,361	78,103				80,464	99,301	81
Texas[4]	454	79,164	142,285	78,488	116	300,507	300,507	100
9 State Total	15,759	239,557	352,423	141,938	1,676	751,353	899,140	84
U.S. Total	118,391	773,904	1,766,396	1,206,925	66,401		3,932,017	
9 States as a % of U.S. Total	13%	31%	20%	12%	3%		23%	

Source: FHWA, Highway Statistics: 1999, Section V, Table HM–10
[1] Roadways in Federal parks, forests, and reservations that are not part of the State and local highway systems.
[2] Includes State park, State toll, other State agency, other local agency, and other roadways not identified by ownership.
[3] County, other local public, and private roads are covered if the state was part of design work or road approval.
[4] All state, county, and municipal roads are covered.
[5] Municipal and private roads are not covered.
[6] All state, county, and municipal roads are covered if the state contracts the work.
[7] NC has no county road; municipalities "should" use the MUTCD.
[8] States for which OSHA reviewed MUTCD requirements.

TABLE 3.—CHANGES IN 1993 MUTCD (VS. 1971 ANSI) THAT LEAD TO POTENTIAL COST DECREASES OR INCREASES

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of change(s)
6E–3 *Flagmen:*	6E–3: *High Visibility Clothing:*	
The use of an orange vest, and/or an orange cap shall be required for flagmen.	1. For daytime work, the flagger's vest, shirt, or jacket shall be orange, yellow, strong yellow green or fluorescent versions of these colors.	Mandatory provisions offer more flexibility—wider range of acceptable garments and colors.
For nighttime * * * garments shall be reflectorized.	For nighttime work, * * * the garments shall be retroreflective: 1. Orange, yellow, white, silver, strong yellow-green, or a fluorescent version of one of these. 2. Shall be visible at a minimum distance of 1,000 feet. 3. Shall be designed to identify clearly the wearer as a person and be visible through the full range of body motions.	Clarification of visibility distance requirements. Millennium Edition no longer requires visibility through full range of body motions.

TABLE 3.—CHANGES IN 1993 MUTCD (VS. 1971 ANSI) THAT LEAD TO POTENTIAL COST DECREASES OR INCREASES—Continued

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of change(s)
6E–2. *Hand-Signaling Devices:* Sign paddles should be at least 24 inches wide * * *	6E–4. *Hand-Signaling Devices:* The standard STOP/SLOW sign paddle shall be 18 inches square.	Sign change.
6E–5. *Flagger Stations:* * * * distance is related to approach speed and physical conditions at the site; however, 200 to 3000 feet is desirable.	6E–6. *Flagger Stations:* Table VI–1, Guidelines for length of longitudinal buffer space, may be used for locating flagger stations in advance of the work space. (Pg. 13: lengths start at 35 feet for 20MPH speed to 485 feet for 65 MPH))	Guidance provisions that offer more flexibility.
	Footnote to the guidelines in Table VI indicate that distances apply on wet and level pavements. Employers will have to purchase the AASHTO (1990) document (A Policy on Geometric Design of Highways and Streets, AASHTO) for recommended adjustments for the effect of grade on stopping and variation for trucks. Also, 6E–6 references the same AASHTO document (1990), Table III–2 for "distance may be increased for downgrades." The reference to the 1990 document is outdated. Employers may purchase AASHTO: A Policy on Geometric Design of Highways and Streets, 2001. Member Price: $80 or Non Member Price: $102	Contractors that perform work on steep downgrades most likely have referenced the document under projects covered by DOT regulations. OSHA should be able to include this information in the FEDERAL REGISTER or on the web.
Figure 6–12 depicts 14 commonly used regulatory signs.	Figure VI–7A and VI–7b includes the 14 commonly used regulatory signs depicted in 1971 ANSI plus 7 additional signs: R3–1 (24″×24″) International symbol: no right turn R3–2 (24″×24″) International symbol: no left turn R3–5 (30″×36″) left curve only R3–6 (30″×36″) International symbol: left lane bear left	The additional signs allow greater flexibility.
R4–7: international symbol with additional plaque that reads Keep Right (24″×18″).	R3–7 (30″×30″) Left lane must turn left R3–8 (30″×30″) Multi-turn left lanes *Two of the 14 signs depicted in ANSI 1971 were modified:* R4–7: additional plaque (24″x18″) is no longer required.	
R8–3 (24″x30″) "No Parking" sign.	R8–3 (24″x24″) Letter sign was revised to reflect the international symbol for no parking.	Sign change.
6B–8 Road (Street) Closed Sign The Road (Street) Closed sign shall be used where the roadway is closed to all traffic except contractors' equipment * * * and shall be accompanied by appropriate detour signing.	*6–F.1.a(4):* The "shall" provisions for Road (Street) Closed signs, etc., have been changed to "should."	Changed to non-mandatory.
6B–10 Weight Limit Signs Weight restrictions must be consistent with State or local regulations * * *	*6–F.1a.(6):* Weight restrictions should be consistent with State or local regulations. One weight limit sign (R12–5 (30″x36″) was added for optional use.	Changed to non-mandatory.
"Flagman 500 Ft" sign.	A Sign changed to international symbol for flagger (48″x48″)—this sign may be used in conjunction with other warning signs.	Changed to non-mandatory.
"Road Work 1 Mile" sign.	This sign is omitted.	
"Road Narrows" W5–1: 30″×30″	Dimensions changed to 36″×36″	Sign change.
"Narrow Bridge" W5–2: 30″×30″	Dimensions changed to 36″×36″	Sign change.
"Right Lane Ends" W9–1: 30″×30″	Dimensions changed to 36″×36″	Sign change.
International symbol signs require descriptive plaques: (1) W6–1 with plaque: Divided Highway (24″×18″) (2) W6–2 with plaque: Divided Highway Ends (24″×18″) (3) W12–2 with plaque: Low Clearance (24″×18″) (4) W8–5 plaque: Slippery When Wet (24″×18″)	International symbol signs no longer require descriptive plaques:	Greater flexibility. Reduction in requirements.
	6–F.1 b.(4): Other approach warning signs. Certain conditions require other advance warning signs, such as limited sight distance or because an obstruction may require a motorist to stop. There are no specified standards for such signs. The determination of the sign or signs to be used *shall be based on an engineering study* using the following sections as guidelines. As an alternative to a specific distance on these advance warning signs, the word AHEAD may be used. Blasting Zone Ahead: W22–1: Previously, "Blasting Zone 1000 ft." Turn off Two-way Radios and Cellular Telephones: W22–2. "and Cellular Telephones" was added.	Greater flexibility.
	New signs available for selection: Shoulder Drop Off: W8–9a Uneven Lanes: W8–11 No Center Strip: W8–12	Greater flexibility.

TABLE 3.—CHANGES IN 1993 MUTCD (VS. 1971 ANSI) THAT LEAD TO POTENTIAL COST DECREASES OR INCREASES—Continued

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of change(s)
	Lane curves: W1–4bR; W1–4cR Bear right: W1–8 Signal ahead: W3–3 Right lane traffic merging: W4–1; W4–3 Lane narrows: W5–2a International symbol for "pavement ends": W8–3a Truck crossing: W8–6 Loose gravel: W8–7 Rough road: W8–7 Shoulder Drop off: W8–9a Be Prepared to Stop: W20–7b	
	6F–2. Portable Changeable Message Signs (PCMS).	PCMS is most frequently on high-density, urban freeways.
	* * * used most frequently on high-density, urban freeways, * * * or where highway alignment, traffic routing problems or other conditions require advance warning and information.	These situations are most likely to be covered by DOT regulations, and thus, not affected by the OSHA standard.
	6F–3. Arrow Displays. * * * intended to provide additional warning and directional information to assist in merging and controlling traffic through or around a temporary traffic control zone. Type A: appropriate for use on low-speed urban streets. Type B: for intermediate-speed facilities and for maintenance or mobile operations on high-speed roadways. Type C: used on high-speed, high volume traffic control projects. Arrow display panels shall be mounted on a vehcile, a trailer, or other suitable support. Arrow display shall not be used on a two-lane, two-way roadway for temporary one-lane operation. An arrow display shall not be used on a multilane roadway to laterally shift all lanes of traffic, because unnecessary lane changing may result.	The Arrow Displays is an optional means (non-mandatory) for employers to supplement other traffic control devices. It is popular because it can be highly mobile (mounted on a vehicle, trailer, *etc.*) and easily repositioned as the job progresses.
	6F–4. High-level warning device (flag tree). * * * most commonly used in urban high-density traffic situations to warn motorists of short-term operations * * * may supplement other traffic control devices in temporary traffic control zones. * * * shall consist of: —minimum of two flags with or without a Type B, high intensity, flashing warning light. —distance from the road way to the bottom of the lens of the light and to the lowest point of the flay material shall be no less than 8 feet. —flags shall be 16 inches square or larger and shall be orange or fluorescent versions of orange in color.	The high level warning device, also referred to as the flag tree, is another option (non-mandatory) for employers to use in addition to other traffic control devices.
6C–3 Cone Design	*6F–5 Channelizing Devices*	Projects on freeways and high-speed highways are likely to fall under DOT regulations, and thus, are unaffected by the OSHA standard.
These shall be a minimum of 18 inches in height	*6F–5b Cones* * * * shall be a minimum of 18 inches-except when used on freeways and other high-speed highways they shall be 28 inches in height. Retroreflection of 28-inch or larger cones shall be provided by a white band 6 inches wide, no more than 3 to 4 inches from the top of the cone, and an additional 4-inch wide white band a minimum of 2 inches below the 6-inch band.	
6C–5 Vertical Panels Design	*6F–5d Vertical Panels*	Projects on expressways, freeways, and high-speed highways are likely to fall under DOT regulations, and thus, are unaffected by the OSHA standard.
* * * shall consist of at least one panel, 6 to 8 inches in width * * *	* * * shall be 8 to 12 inches wide * * * Vertical panels used on expressways, freeways and other high-speed roadways shall have a minimum of 270 square inches of retro reflective area facing traffic.	
6C–4 Drum Design Drums are normally metal drums, of 30 to 55 gallon capacity * * *	*6F–5e Drums* Drums * * * shall be constructed of lightweight, flexible, and deformable materials and be a minimum of 36 inches in height; and have at least an 18 inch minimum width, regardless of orientation. Steel drums shall not be used.	Device change.

TABLE 3.—CHANGES IN 1993 MUTCD (VS. 1971 ANSI) THAT LEAD TO POTENTIAL COST DECREASES OR INCREASES—Continued

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of change(s)
	6F–8 Other devices New section added to reflect current technology. 1. 6F–8a. Impact Attenuators. 2. 6F–8b. Portable Barriers. 3. 6F–8c. Temporary Traffic Signals. 4. 6F–8d. Rumble Strips. 5. 6F–8e. Screens. 6. 6F–8f. Opposing Traffic Lane Divider.	Offers greater flexibility. Impact Attenuators, portable barriers, etc. are new devices added to reflect common practices among highway construction and repair contractors.

TABLE 4.—PRICES FOR TRAFFIC WARNING SIGNS AND DEVICES CHANGED BY THE 1993 MUTCD REQUIREMENTS

Sign/Device	Summary of Change	Source	Price	Applicable standard
'Stop/Slow' Sign Paddle.	1971 ANSI width requirements were (at least) 24 inches; Changed to 18 inches square in 1993 MUTCD.	Pac Sign Co. (G–hs–12)	$65.00	1971 ANSI
		John M. Warren, Inc. (TC1006).	33.50	1993 MUTCD
'No Parking Any Time'	Changed to reflect international symbol for No Parking.	John M. Warren, Inc. (TS1011).	12.95	1971 ANSI
No Parking international symbol, without written legend.		Newman Signs (R7–31A)	12.05	1993 MUTCD
		Newman Signs (R8–3A)	8.47	1993 MUTCD
'No Parking' with international symbol below legend.		Pac Sign Co. (G–r–101be5)	16.00	1993 MUTCD
		Pac Sign Co. (G–r–101ra5)	22.00	1993 MUTCD
'Narrow Bridge'; 'Right Lane Ends'; 'Road Narrows'.	Dimensions changed from 30x30 in 1971 to 36x36 in 1993.	Pac Sign Co. (G–w5–2ara22; G–w9–1ra22; G–w5–1ra22).	59.00	1971 ANSI
'Right Lane Closed Ahead'.		Pac Sign Co. (G–w20–5rra27).	90.00	1993 MUTCD
		Newman Signs (W20–5R–A)	46.63	1993 MUTCD
Reflective Traffic Drum.	1971 ANSI requirement: metal drums of 30–55 gallon capacity.	1971 ANSI version no longer produced; Northeast Traffic Control Company.	45 to 60 when last available; estimate by sales representative.	1971 ANSI
	1993 MUTCD requirement: constructed of lightweight, flexible, and deformable materials," 36 inch height minimum, 18 inch width minimum.	Bent Manufacturing Superdome Drum.	68.00	1993 MUTCD

Notes:
Price data were obtained from the following Web sites:
John M. Warren, Inc., Mobile, AL
http://www.johnmwarren.com/item.asp?cat=1&ThisPage=0&maxPage=0&prodID=140
http://parkingsignsbypac.safeshopper.com/501/cat501.htm
http://www.johnmwarren.com/item.asp?cat=2&ThisPage=2&maxPage=2&prodID=290
Newman Signs
http://www.newmansigns.com/
Pac Sign Co., Binghamton, NY
http://parkingsignsbypac.safeshopper.com/226/cat226.htm?239
http://parkingsignsbypac.safeshopper.com/544/cat544.htm?239
http://parkingsignsbypac.safeshopper.com/542/cat542.htm?239
http://parkingsignsbypac.safeshopper.com/383/cat383.htm?239
Bent Manufacturing, Huntington Beach, CA
http://www.bentmfg.com/drums.htm

TABLE 5.—DATA AND CALCULATIONS FOR REGULATORY FLEXIBILITY ANALYSIS

Data type/Calculation	Amount/Result
Receipts (1,000) [1]	$9,807,978
Median return on sales [2] (in percent)	3.00
Estimated profit for 1997	$294,239,340
Total employment [1]	42,501
Number of establishments [1]	8,104
Employment per establishment (Total employment divided by number of establishments)	5.24

TABLE 5.—DATA AND CALCULATIONS FOR REGULATORY FLEXIBILITY ANALYSIS—Continued

Data type/Calculation	Amount/Result
Receipts per establishment (Receipts divided by number of establishments)	$1,210,264
Profit per establishment (Profit divided by number of establishments)	$36,308
Number of crews per establishment (Employment per establishment divided by 4, assuming 4-person crew)	1.31
Worst-case one-time cost per crew (from economic analysis)	$1,648
Total one-time cost per establishment (Worst-case one-time cost per crew multiplied by number of crews per establishment)	$2,161
Annualization factor (10 year life, 7% interest) [3]	0.14
Annualized cost per establishment (Total one-time cost per establishment multiplied by annualization factor)	$308
Cost as a percentage of receipts per establishment (Annualized cost per establishment divided by receipts per establishment)	0.03
Cost as a percentage of profit per establishment (Annualized cost per establishment divided by profit per establishment)	0.85

Notes:
[1] Data from the U.S. Bureau of Census, "Number of Firms, Number of Establishments, Employment, Annual Payroll, and Receipts by Employment Size of the Enterprise for the United States, All Industries—1997,"(*http://www.census.gov/csd/susb/susb2.htm#go97*) for SIC 1611, Highway and Street Construction (Enterprises with less than 20 employees).
[2] Data from Dun and Bradstreet, "Industry Norms & Key Business Ratios, 1998–1999," for SIC 1611, Highway and Street Construction.
[3] Annualization factor (Af) computed using the formula following this footnote.

$$Af = \frac{i(1+i)^n}{(1+i)^n + 1}$$

where i is the interest rate and n is the useful life of the equipment.

Response to Comments Related to Regulatory Analysis

Comments received from the National Association of Home Builders (NAHB), the National Electrical Contractors Association (NECA) and the South Carolina Department of Transportation (SCDOT) confirm the existence of situations where: (1) federal funds for road construction are not used and (2) state regulations do not mandate adherence to the Millennium version of the MUTCD. OSHA's economic analysis both acknowledged and estimated the degree to which these situations are likely to occur. The comments did not challenge OSHA's estimates. Thus, comments received do not substantively affect the original economic analysis.

Both NAHB and NECA raised the concern that the original date of compliance could lead to a shortage of traffic control devices. Since the overwhelming majority of job sites are already required to comply with Millennium version of the MUTCD, the devices are widely available. In fact, OSHA's research indicated that devices used to comply with the 1971 MUTCD often are no longer manufactured. Thus, for some devices, compliance with the Millennium edition is much easier than compliance with the 1971 edition of the MUTCD.

Other comments also centered around August 2002 deadline for implementation. NECA suggests that such an immediate deadline could create a burden by disrupting contracts and work already in progress, since the new requirements may not have been incorporated. OSHA has addressed these concerns directly by extending the effective date. Postponement of the effective date will ensure that the cost of complying with the standard (which OSHA has estimated to be quite small) will be even smaller.

In sum, the conclusion of OSHA's original regulatory analysis remains. The cost of complying with the standard will not represent a significant impact on small or large firms. This conclusion holds even in the unlikely case where the costs come entirely in the form of a decline in profits. In many cases, firms will be able to pass on at least some of the costs, further reducing the regulatory burden. Moreover, any costs attributable to the standard are short run in nature. As old contracts expire, new contracts will incorporate the costs of the new standard directly.

Unfunded Mandates

This final rule, which amends Subpart G—Signs, Signals, and Barricades (29 CFR 1926.200(g)(2), 201(a), 202 and 203) has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). For the purposes of the UMRA, the Agency certifies that this final rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

Federalism

OSHA has reviewed this final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health (OSH) Act (29 U.S.C. 651 *et seq.*) expresses Congress' intent to preempt State laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. 29 U.S.C. 667. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce their own requirements for road-construction safety.

Although Congress has expressed a clear intent for OSHA standards to preempt State job safety and health rules in areas involving the safety and health of road-construction workers, this final rule has only a minimum impact on the states. DOT requires compliance with the MUTCD for "application on any highway project in which Federal highway funds participate and on projects in federally administered areas where a Federal department or agency controls the highway or supervises the traffic operations." 23 CFR 655.603(a). For this work, which represents the majority of road construction work in every State, all States must require compliance with the current edition of the MUTCD or another manual that substantially conforms to the current edition. States

have been required to enforce Revision 3 or their own substantially conforming manual since 1994. DOT regulations allow States until January 2003 to adopt the Millennium Edition, or another manual that substantially conforms to the Millennium Edition. *See* 23 CFR 655.603(b). In addition, States must have highway safety programs that are approved by the Secretary of Transportation, even for roads that do not receive Federal aid. The Secretary is directed to promulgate guidelines for establishing these programs. 23 U.S.C. 402(a). Those guidelines state, *inter alia*, that programs should conform with the current edition of the MUTCD. Accordingly, most States require compliance with the latest edition of the MUTCD even on roads that receive no Federal funding. The requirements described in this document are new requirements only for the very small percentage of employers that are not already covered by the DOT regulations or corresponding State requirements. Therefore, the required state plan adoption of the provisions of Revision 3 or the Millennium Edition or an equivalent standard will also effectively impose a new regulation only on that extremely small percentage of employers. (*See* economic analysis) OSHA concludes that this action does not have a significant impact on the states.

State Plan Standards

The 26 States or territories with OSHA-approved occupational safety and health plans must adopt an equivalent amendment or one that is at least as protective for employees within six months of the publication date of this final standard. These states are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (for State and local government employees only), New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

Paperwork Reduction Act

This action does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

List of Subjects in CFR Part 29

Incorporation by reference, MUTCD, Occupational Safety and Health, Traffic control devices.

Authority and Signature

This document was prepared under the direction of John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 29 CFR part 1911.

Signed at Washington, DC, this 6 day of September, 2002.

John Henshaw,

Assistant Secretary of Labor.

Part 1926 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below:

PART 1926 B—[AMENDED]

1. The authority citation for Subpart G of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017) as applicable, 29 CFR part 1911.

Subpart G—[Amended]

2. Paragraph (g)(2) of § 1926.200 is revised to read as follows:

§ 1926.200 Accident prevention signs and tags.

* * * * *

(g) * * *

(2) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the Manual of Uniform Traffic Control Devices (AMUTCD"), 1988 Edition, Revision 3, September 3, 1993, FHWA-SA–94–027 or Part VI of the Manual on Uniform Traffic Control Devices, Millennium Edition, December 2000, FHWA, which are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Millennium Edition from the following organizations: American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406–1022; Telephone: 1–800–231–3475; FAX: (540) 368–1722; *www.atssa.com;* Institute of Transportation Engineers, 1099 14th Street, NW., Suite 300 West, Washington, DC 20005–3438; FAX: (202) 289–7722; *www.ite.org;* and American Association of State Highway and Transportation Officials; *www.aashto.org;* Telephone: 1–800–231–3475; FAX: 1–800–525–5562. Electronic copies of the MUTCD 2000 are available for downloading at *http://mutcd.fhwa.dot.gov/kno-millennium.* Electronic copies of the 1988 Edition MUTCD, Revision 3, are available for downloading at *http://www.osha.gov/doc/highway_workzones.* Both documents are available for inspection at the OSHA Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

3. Paragraph (a) of § 1926.201 is revised to read as follows:

§ 1926.201 Signaling.

(a) *Flaggers.* Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers shall conform to Part VI of the Manual on Uniform Traffic Control Devices, (1988 Edition, Revision 3 or the Millennium Edition), which are incorporated by reference in § 1926.200(g)(2).

* * * * *

4. Section 1926.202 is revised to read as follows:

§ 1926.202 Barricades.

Barricades for protection of employees shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3 or Millennium Edition), which are incorporated by reference in § 1926.200(g)(2).

5. Paragraph (c) of § 1926.203 is revised to read as follows:

1926.203 Definitions applicable to this subpart.

* * * * *

(c) *Signals* are moving signs, provided by workers, such as flaggers, or by devices, such as flashing lights, to warn of possible or existing hazards.

* * * * *

[FR Doc. 02–23142 Filed 9–11–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 260

RIN 1010–AC94

Outer Continental Shelf Oil and Gas Leasing—Clarifying Amendments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule clarifies amendments to regulations on Outer Continental Shelf (OCS) bidding systems. The amendments make explicit that water depth and production timing on leases issued after 2000 and located in a field with leases issued earlier do not result in any modifications in the way we determine the royalty suspension volume (RSV) available to a field's eligible leases issued between 1996 and 2000. Specifically, this rule clarifies that RSV production from a lease issued after 2000 that is part of a field that was granted royalty relief under the Deep Water Royalty Relief Act (DWRRA) counts toward the total eligible field relief.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economics Division, (703) 787–1536.

SUPPLEMENTARY INFORMATION: On February 12, 2002, we published a proposed rule (67 FR 6454) that added clarifying amendments to the regulations on OCS Oil and Gas Leasing under 30 CFR 260.114 and 260.124. The minor changes we make here to those final regulations affect persons acquiring or holding deepwater oil and gas leases under 43 U.S.C. 1337(a).

The intent of the DWRRA was to grant one maximum royalty suspension volume per field to jump start development of technology and resource production in the deepwater Gulf of Mexico. We have been implementing the DWRRA to be consistent with that intent by stipulating that production from all leases that were issued with royalty suspension volume terms on a field counts against the volume on which royalties are suspended for that field. Wording in the current regulation says that only production occurring after an eligible lease (one issued from 1996 through 2000 with royalty suspension terms) starts production, counts against the royalty suspension volume for the field. After the five-year window (1996 through 2000) covered by the DWRRA, we exercised our discretionary authority to issue leases, which we call royalty suspension leases (RS leases), with a definite but smaller royalty suspension volume independent of field status. Though it is unlikely, a newer RS lease could begin production before any older eligible lease on the same field. To account for that possibility, we need to change the regulation in two places to ensure that the total royalty suspension volume on a field does not surpass the levels set by Congress in the DWRRA.

In 30 CFR 260.114(d), we adjust the scope of the field subject to rules governing use of the field's royalty suspension volume so that it can consist of more than eligible (DWRRA-era) leases. We do this by striking the qualifying phrase "consisting only of eligible leases" from the reference to the kind of field on which production from an eligible lease establishes the field's royalty suspension volume. We continue the practice of not counting against the field's royalty suspension volume any production from a lease on the field that was not issued with royalty suspension terms. In the same subparagraph, we also add a phrase to specify that the water depth of the deepest eligible lease on the field when an eligible lease starts production determines the size of the field's royalty suspension volume.

We change 30 CFR 260.124(b)(1) by striking the word "remaining" from the phrase describing the situation in which the production on an RS lease that is subject to royalty suspension counts as part of the field's royalty *suspension* volume. This change ensures that all such production on an RS lease issued with a definite royalty suspension volume (after the five-year DWRRA window), not just production occurring after an eligible lease starts production, counts as part of the field's royalty suspension volume.

For example, suppose a field consists of five eligible leases and one RS lease and the RS lease has a 10-million-barrel royalty suspension volume. The RS lease begins production first and goes through its entire royalty suspension volume. When an eligible lease begins production thereafter and the field is in a water depth that has a royalty suspension volume of 87.5 million barrels, the royalty suspension volume remaining on the field is 77.5 million barrels. This results because the RS lease has already taken its 10 million barrels of royalty suspension. Thus, the field can produce royalty-free up to 87.5, not 97.5, million barrels.

This final rule makes this situation clear, so that there will be no basis to misinterpret or contest the royalty suspension volume available to eligible leases on the field.

Response to Comments

We received two comments from one oil and gas company in response to our request for written comments on our proposed rulemaking. Copies of all written comments we received are available on our Web site at *http://www.mms.gov/federalregister/PublicComments/rulecomm.htm.*

Comment: The first comment suggested the rule apply only to leases issued after the final rule takes effect.

Response: The implication is that the eligible leases, later followed by RS leases issued prior to this rule, may have been acquired under the assumption that any RS lease production occurring before eligible lease production would not count against the field's RSV. However, it was fully explained in the final rule we published on January 16, 1998 (63 FR 2626), that royalty relief applies to the field upon which the leases issued under the DWRRA reside. Certainly, during this time it was envisioned that leases would be issued after 2000 that could be placed on a field that already received royalty relief. It was always intended, and we thought clear in our regulations, that all such leases, plus those issued under the DWRRA, would have to share the relief volume set forth in the DWRRA intended for new fields.

Moreover, any RS lease production is royalty free up to the lease-specific royalty suspension volume with which it was issued. Only the maximum royalty suspension volume available for eligible leases is affected, and these eligible leases were acquired before we introduced the concept of an RS lease. Thus, for these reasons, the manner in which we treat RS lease production could not have affected bidder's assumptions under which eligible leases were acquired.

Comment: The second comment requested confirmation that if an eligible lease produces before an RS lease on a field with an RS lease and five existing eligible leases, then the RS lease is still eligible to receive its volume suspension, as stipulated in the lease agreement.

Response: This final rule keeps § 260.124(b)(2) as originally written and, thus, does not change the aforementioned circumstance. RS leases get their full royalty suspension volume regardless of what eligible leases do. Such RS lease production does count against the field's suspension volume and, hence, may affect the royalty relief available to eligible leases if total

production on the leases exceeds the field's royalty suspension volume.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, jobs, the environment or other units of government. This action avoids confusion and possible conflict in the rare situation when a deepwater RS lease, that happens to be in a field with deepwater eligible leases, is the first lease to produce in the field. This event should be rare because the eligible leases pre-date the RS lease, meaning the eligible leases were deemed the better prospect, and their owners have had more time to explore and develop their potential. Further, the royalty status only of production that occurs probably 10 or more years after the start of production on the field would be affected by this rare event because of the large size of the field suspension volumes relative to annual production on typical leases. Finally, any royalty-free production shifted from the eligible leases to the RS lease on the one or two fields where this event may occur would total only about $20 to $30 million, only a portion of which would occur in any one year.

b. This rule will not create inconsistencies with other agencies' actions because there are no changes in requirements from the existing rule.

c. This rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule will not raise novel legal or policy issues. This action protects the original intent of the DWRRA, should a rare and unlikely situation arise. We propose to handle this situation in a manner that is parallel to our established treatment of the same field when the normal situation of the eligible lease starting producing first occurs.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule will limit automatic royalty relief to deepwater fields to the amount established by the DWRRA, regardless of the water depth and production timing of RS leases on the field. New regulatory provisions will rarely apply and when they do will affect firms, large and small, the same way. Firm size should have no effect on whether RS or eligible leases on the same field start production first.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The proposed rule closes a possible loophole, the use of which may never be attempted. Even if a situation were to arise where this provision applies, the amount of royalties involved is a small fraction of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Oil prices are not based on the production from any one region, but are based on worldwide production and demand at any point in time. While gas prices are more localized, they correlate to oil prices. The rule does not change any existing leasing policies, so it should not cause prices to increase.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to residents of the United States or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA)

The revisions do not contain any information collection requirements subject to the PRA. We will not submit a form OMB 83–I to OMB for review and approval under section 3507(d) of the PRA.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This rule may affect the collection of royalty revenues from lessees in the deepwater Gulf of Mexico, all of which is outside State jurisdiction. States have no role in this activity with or without this rule. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the deepwater royalty relief programs.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict a bidders right to acquire OCS leases.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. This clarification rule does not have a significant effect on energy supply, distribution, or use because it reduces uncertainty in a rare circumstance relating to the order of drilling of different vintages of leases on a deepwater field having royalty relief. Greater certainty about how a particular sequence of drilling affects both the fields' and leases' applicable RSVs serves to focus lessee effort towards solving development and production challenges rather than to contesting the ultimate size of an already generous RSV awarded to them.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. The rule describes the

policies for OCS leases issued with different royalty suspension amounts that happen to be on the same field. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship with Tribes

According to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

List of Subjects for 30 CFR Part 260

Bidding system, Continental shelf, Oil and gas leasing, Reporting requirements, Restricted joint bidder, Royalty suspension.

Dated: August 29, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 260 as follows:

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

Subpart B—[Amended]

2. In § 260.114, paragraph (d) is revised to read as follows:

§ 260.114 How does MMS assign and monitor royalty suspension volumes for eligible leases?

* * * * *

(d) When production (other than test production) first occurs from any of the eligible leases in a field, we will determine what royalty suspension volume applies to the lease(s) in that field. We base the determination for eligible lease(s) on the royalty suspension volumes specified in paragraph (b) of this section and the water depths of eligible leases specified in § 260.117(a).

* * * * *

3. In § 260.124, paragraph (b)(1) is revised to read as follows:

§ 260.124 How will royalty suspension apply if MMS assigns a lease issued in a sale held after November 2000 to a field that has an eligible or pre-Act lease?

* * * * *

(b) * * *

(1) Royalty-free production from your RS lease shares from and counts as part of any royalty suspension volume under § 260.114(d) for the field to which we assign your lease; and

* * * * *

[FR Doc. 02–23146 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[0720–AA67]

Collection From Third Part Payers of Reasonable Charges for Health Care Services

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the National Defense Authorization Act for Fiscal Year 2000, which amended the statutory obligation of the third payers to replace the "reasonable cost" basis of the Third Party Collection Program with a "reasonable charge" basis, and also authorized methods to be used for the computation of reasonable charges. DoD is adopting the "reasonable charge" basis and generally will use CHAMPUS payment rates as the reasonable charges under the Program. This rule also implements Section 732 of the National Defense Authorization Act for Fiscal Year 2002. This section specifically addresses the charging of fees for care to civilians who are not covered beneficiaries.

EFFECTIVE DATE: This rule is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Lt Col Linnes Chester, Uniform Business Office, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, Resource Management, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, (703) 681–8910.

SUPPLEMENTARY INFORMATION: In keeping with our intention to adopt a rate structure more consistent with the civilian health insurance industry practice, this rule adopts an itemized methodology for outpatient services.

Our analysis indicates that the transition from reasonable costs to reasonable charges will most likely not increase the amount of money collected for the services provided. We undertook an analysis comparing our current rate structure based on cost data with the charges based on the CHAMPUS Maximum Allowable Charge (CMAC) rates. An initial sample of 500 patient encounters was obtained from Military Treatment Facilities across all three Services from various regions. These patient encounters were priced with the national average CMAC pricing scale as well as the current all-inclusive methodology. The average of both pricing schemes found the totals to be within a ten-dollar range of each other. Thus, we anticipate billing at approximately the same aggregate level. The benefit of the change in methodology is that each bill will be much more appropriate for the actual services provided to the patient and will be itemized in the manner to which the health insurance industry is accustomed. Therefore, although it is not based on actual DoD costs (because our cost accounting systems do not have patient level specification), we believe adoption of the CMAC rates is more representative of actual costs specific to the services provided to a patient than is our current aggregated clinic visit rate.

The format of line-item charges will more closely resemble that currently used by facilities of the Department of Veterans Affairs.

This approach is also consistent with the newly enacted 10 U.S.C. 1079b, which reaffirms the authority of the Secretary of Defense to "implement procedures under which a military medical treatment facility may charge civilians who are not covered beneficiaries (or their insurers) fees representing the costs, as determined by the Secretary, of trauma and other medical care provided to such civilians." It is the Secretary's determination that the CHAMPUS payment rates best represent the costs of providing care to all patients in Military Treatment Facilities.

Public Comments

This rule is based on a proposed rule published in the **Federal Register** March 29, 2002 (67 FR 15140–15143). We received two public comments from health insurance associations. One commenter urged that we accept a third party payer's "usual, customary, and reasonable charges" or, if under a Medigap plan, Medicare charges as reasonable charges under the Third Party Collection Program. We have not made a change to the rule in relation to this comment. Our regulation (§ 220.8(i)) includes a process for an alternative determination of reasonable charges based on similar payments made by the third party payer. In the Medigap context, the CHAMPUS rates, which form the basis of our reasonable charges, are generally quite similar to Medicare payment rates. The other commenter recommended that DoD establish through the Center for Medicare and Medicaid Services an arrangement for Medicare contractors to produce something comparable to an explanation of Medicare benefits (EOMB) that Medigap carriers could then use to facilitate the adjudication of claims from DoD for their Medigap beneficiaries. This is an interesting idea, but does not provide a basis for any change to the regulation. A third party payer's obligation under the statute is not dependent upon the presentation of something comparable to an EOMB and there would be significant issues to address concerning the feasibility of creating such a system. Nonetheless, DoD is open to exploring this idea further.

Changes to the Proposed Rule

We have made only minor changes to the proposed rule, such as to adjust the effective dates for implementing the reasonable charges billing rates under § 220.8 in order to assure effective implementation.

Rulemaking Procedures

We have reviewed this rule in accordance with the provisions of Executive Order of 12866, the Congressional Review of Agency Rulemaking Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule has been designated as a significant rule and has been reviewed by the Office of Management and Budget as required under the provisions of Executive Order 12866. It is not a significant regulatory action or a major rule, and it would not have a significant impact on a substantial number of small entities. Nor does this rule affect matter addressed by the Unfunded Mandates Reform Act (Pub. L. 104–4) or Executive Order 13132 concerning Federalism. Also, this rule does not involve new information collection requirements under the Paperwork Reduction Act (44 U.S.C. chapter 35). This rule will align DoD closer to civilian industry practices for healthcare billing and collections; it will have no significant economic or regulatory impact on any entity.

List of Subjects in 32 CFR Part 220

Claims, Healthcare, Health insurance.

For the reasons stated in the preamble, 32 CFR part 220 is amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE CHARGES FOR HEALTHCARE SERVICES

1. The authority citation for 32 CFR part 220 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. The title of 32 CFR part 220 is revised as shown above.

3. Section 220.1 is revised to read as follows:

§ 220.1 Purpose and applicability.

(a) This part implements the provisions of 10 U.S.C. 1095, 1097b(b), and 1079b. In general, 10 U.S.C. 1095 establishes the statutory obligation of third party payers to reimburse the United States the reasonable charges of healthcare services provided by facilities of the Uniformed Services to covered beneficiaries who are also covered by a third party payer's plan. Section 1097b(b) elaborates on the methods for computation of reasonable charges. Section 1079b addresses charges for civilian patients who are not normally beneficiaries of the Military Health System. This part establishes the Department of Defense interpretations and requirements applicable to all healthcare services subject to 10 U.S.C. 1095, 1097b(b), and 1079b.

(b) This part applies to all facilities of the Uniformed Services; the Department of Transportation administers this part with respect to facilities to the Coast Guard, not the Department of Defense.

(c) This part applies to pathology services provided by the Armed Forces Institute of Pathology. However, in lieu of the rules and procedures otherwise applicable under this part, the Assistant Secretary of Defense (Health Affairs) may establish special rules and procedures under the authority of 10 U.S.C. 176 and 177 in relation to cooperative enterprises between the Armed Forces Institute of Pathology and the American Registry of Pathology.

4. Section 220.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 220.2 Statutory obligation of third party payer to pay.

(a) *Basic rule.* Pursuant to 10 U.S.C. 1095(a)(1), a third party payer has an obligation to pay the United States the reasonable charges for healthcare services provided in or through any facility of the Uniformed Services to a covered beneficiary who is also a beneficiary under the third party payer's plan. The obligation to pay is to the extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

(b) *Application of cost shares.* If the third party payer's plan includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount the United States may collect from the third party payer is the reasonable charge for the care provided less the appropriate deductible or copayment amount.

* * * * *

5. Section 220.4 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 220.4 Reasonable terms and conditions of health plan permissible.

* * * * *

(c) * * *

(2) * * *

(iii) Such provisions are not permissible if they would not affect a third party payer's obligation under this part. For example, concurrent review of an inpatient hospitalization would generally not affect the third party payer's obligation because of the DRG-based, per-admission basis for calculating reasonable charges under § 220.8(a) (except in long stay outlier cases, noted in § 220.8(a)(4)).

* * * * *

6. Section 220.8 is amended by revising the section heading and paragraphs (a), (b), (c), (e), (f), (h), (i), and (j) and by removing paragraphs (k) and (l) as follows:

§ 220.8 Reasonable charges.

(a) *In general.* (1) Section 1095(f) and section 1097b(b) both address the issue of computation of rates. Between them, the effect is to authorize the calculation of all third party payer collections on the basis of reasonable charges and the computation of reasonable charges on

the basis of per diem rates, all-inclusive per-visit rates, diagnosis related groups rates, rates used by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) program to reimburse authorized providers, or any other method the Assistant Secretary of Defense (Health Affairs) considers appropriate and establishes in this part. Such rates, representative of costs, are also endorsed by section 1079(a).

(2) The general rule is that reasonable charges under this part are based on the rates used by CHAMPUS under 32 CFR 199.14 to reimburse authorized providers. There are some exceptions to this general rule, as outlined in this section.

(b) *Inpatient hospital and professional services on or after April 1, 2003.* Reasonable charges for inpatient hospital services provided on or after April 1, 2003, are based on the CHAMPUS Diagnosis Related Group (DRG) payment system rates under 32 CFR 199.14(a)(1). Certain adjustments are made to reflect differences between the CHAMPUS payment system and the Third Party Collection Program billing system. Among these are to include in the inpatient hospital service charges adjustments related to direct medical education and capital costs (which in the CHAMPUS system are handled as annual pass through payments). Additional adjustments are made for long stay outlier cases. Like the CHAMPUS system, inpatient professional services are not included in the inpatient hospital services charges, but are billed separately in accordance with paragraph (e) of this section. In lieu of the method described in this paragraph (b), the method in effect prior to April 1, 2003 (described in paragraph (c) of this section), may continue to be used for a period of time after April 1, 2003, if the Assistant Secretary of Defense (Health Affairs) determines that effective implementation requires a temporary deferral.

(c) *Inpatient hospital and inpatient professional services before April 1, 2003.* (1) *In general.* Prior to April 1, 2003, the computation of reasonable charges for inpatient hospital and professional services is reasonable costs based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average charge per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under CHAMPUS pursuant to 32 CFR 199.14(a)(1). The method in effect prior to April 1, 2003 (as described in this paragraph (c)), may continue to be used for a period of time after April 1, 2003, if the Assistant Secretary of Defense (Health Affairs) determines that effective implementation requires a temporary deferral of the method described in paragraph (b) of this section.

(2) *Standard amount.* The standard amount is determined by dividing the total costs of all inpatient care in all military treatment facilities by the total number of discharges. This produces a single national standardized amount. The Department of Defense is authorized, but not required by this part, to calculate three standardized amounts, one for large urban, other urban/rural, and overseas area, utilizing the same distinctions in identifying the first two areas as is used for CHAMPUS under 32 CFR 199.14(a)(1). Using this applicable standardized amount, the Department of Defense may make adjustments for area wage rates and indirect medical education costs (as identified in paragraph (c)(4) of this section), producing for each inpatient facility of the Uniformed Services a facility-specific "adjusted standardized amount" (ASA).

(3) *DRG relative weights.* Costs for each DRG will be determined by multiplying the standardized amount per discharge by the DRG relative weight. For this purpose, the DRG relative weights used for CHAMPUS pursuant to 32 CFR 199.14(a)(1) shall be used.

(4) *Adjustments for outliers, area wages, and indirect medical education.* The Department of Defense may, but is not required by this part, to adjust charge determinations in particular cases for length-of-stay outliers (long stay and short stay), cost outliers, area wage rates, and indirect medical education. If any such adjustments are used, the method shall be comparable to that used for CHAMPUS hospital reimbursements pursuant to 32 CFR 199.14(a)(1)(iii)(E), and the calculation of the standardized amount under paragraph (a)(2) of this section will reflect that such adjustments will be used.

(5) *Identification of professional and hospital charges.* For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, inpatient billings are subdivided into two categories:

(i) Hospital charges (which refers to routine service charges associated with the hospital stay and ancillary charges).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

* * * * *

(e) *Reasonable charges for professional services.* The CHAMPUS Maximum Allowable Charge rate table, established under 32 CFR 199.14(h), is used for determining the appropriate charge for professional services in an itemized format, based on Healthcare Common Procedure Coding System (HCPCS) methodology. This applies to outpatient professional charges only prior to implementation of the method described in paragraph (b) of this section, and to all professional charges, both inpatient and outpatient, thereafter.

(f) *Miscellaneous Healthcare services.* Some special services are provided by or through facilities of the Uniformed Services for which reasonable charges are computed based on reasonable costs. Those services are the following:

(1) The charge for ambulance services is based on the full costs of operating the ambulance service.

(2) With respect to inpatient hospital charges in the Burn Center at Brooke Army Medical Center, the Assistant Secretary of Defense for Health Affairs may establish an adjustment to the rate otherwise applicable under the DRG payment methodology under this section to reflect unique attributes of the Burn Center.

(3) Charges for dental services (including oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics) will be based on a full cost of the dental services.

(4) With respect to service provided prior to January 1, 2003, reasonable charges for anesthesia services will be based on an average DoD cost of service in all Military Treatment Facilities. With respect to services provided on or after January 1, 2003, reasonable charges for anesthesia services will be based on an average cost per minute of service in all Military Treatment Facilities.

(5) The charge for immunizations, allergin extracts, allergic condition tests, and the administration of certain medications when these services are provided in a separate immunizations or shot clinic, are based on CHAMPUS prevailing rates in cases in which such rates are available, and in cases in which such rates are not available, on the average full cost of these services, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each

immunization, injection or medication administered.

(6) The charges for pharmacy, durable medical equipment and supplies are based on CHAMPUS prevailing rates in cases in which such rates are available, in cases in which such rates are not available, on the average full cost of these items, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each item provided.

(7) Charges for aero-medical evacuation will be based on the full cost of the aero-medical evacuation services.

* * * * *

(h) *Special rule for TRICARE Resource Sharing Agreements.* Services provided in facilities of the Uniformed Services in whole or in part through personnel or other resources supplied under a TRICARE Resource Sharing Agreement under 32 CFR 199.17(h) are considered for purposes of this part as services provided by the facility of the Uniformed Services. Thus, third party payers will receive a claim for such services in the same manner and for the same charges as any similar services provided by a facility of the Uniformed Services.

(i) *Alternative determination of reasonable charges.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the charges prescribed under this section may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for those services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

(j) *Exception authority for extraordinary circumstances.* The Assistant Secretary of Defense (Health Affairs) may authorize exceptions to this section, not inconsistent with law, based on extraordinary circumstances.

7. Section 220.10 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 220.10 Special rules for Medicare supplemental plans.

* * * * *

(c) *Charges for Healthcare services other than inpatient deductible amount.* (1) The Assistant Secretary of Defense (Health Affairs) may establish charge amounts for Medicare supplemental plans to collect reasonable charges for inpatient and outpatient copayments and other services covered by the Medicare supplemental plan. Any such schedule of charge amounts shall:

* * * * *

8. Section 220.12 is amended by revising paragraph (a)(1) to read as follows:

§ 220.12 Special rules for preferred provider organizations.

(a) *Statutory requirement.* (1) Pursuant to the general duty of third party payers to pay under 10 U.S.C. 1095(a)(1) and the definitions of 10 U.S.C. 1095(h), a plan with a preferred provider organization (PPO) provision or option generally has an obligation to pay the United States the reasonable charges for healthcare services provided through any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under the plan.

* * * * *

9. Section 220.13 is amended by revising paragraph (a) to read as follows:

§ 220.13 Special rules for workers' compensation programs.

(a) *Basic rule.* Pursuant to the general duty of third party payers under 10 U.S.C. 1095(a)(1) and the definitions of 10 U.S.C. 1095(h), a workers' compensation program or plan generally has an obligation to pay the United States the reasonable charges for healthcare services provided in or through any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under a workers' compensation program due to an employment related injury, illness, or disease. Except to the extent modified or supplemented by this section, all provisions of this part are applicable to any workers' compensation program or plan in the same manner as they are applicable to any other third party payer.

* * * * *

10. Section 220.14 is amended by revising the definitions of "covered beneficiaries" and "third party payer" to read as follows:

§ 220.14 Definitions.

* * * * *

Covered beneficiaries. Covered beneficiaries are all healthcare beneficiaries under chapter 55 of title 10, United States Code, except members of the Uniformed Services on active duty (as specified in 10 U.S.C. 1074(a)). However, for purposes of § 220.11 of this part, such members of the Uniformed Services are included as covered beneficiaries.

* * * * *

Third party payer. A third party payer is any entity that provides an insurance, medical service, or health plan by contract or agreement. It includes but is not limited to:

(1) State and local governments that provide such plans other than Medicaid.

(2) Insurance underwriters or carriers.

(3) Private employers or employer groups offering self-insured or partially self-insured medical service or health plans.

(4) Automobile liability insurance underwriter or carrier.

(5) No fault insurance underwriter or carrier.

(6) Workers' compensation program or plan sponsor, underwriter, carrier, or self-insurer.

(7) Any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for healthcare services or products.

* * * * *

Dated: August 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–23244 Filed 9–11–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–060]

RIN 2115–AA97

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Port of Baltimore, Maryland for the USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the dead ship tow of the vessel from its mooring, to the Patapsco River, and return. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River.

DATES: This rule is effective from 8:30 a.m. on September 13, 2002 to 12:30 p.m. on September 14, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the

docket, are part of docket CGD05–02–060 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The USS CONSTELLATION will be towed "dead ship," which means that the vessel will be underway without the benefit of mechanical or sail propulsion. For this reason it is imperative that there be a clear transit route and a safe buffer zone around the USS CONSTELLATION and the vessels towing her. In addition, the Coast Guard expects a large spectator fleet. For safety concerns, it is in the public interest to have a safety zone in place for the event, since immediate action is needed to protect mariners against potential hazards associated with the turn-around of the USS CONSTELLATION.

Background and Purpose

The USS CONSTELLATION Museum is sponsoring its annual "turn-around" of the historic sloop-of-war USS CONSTELLATION in Baltimore, Maryland. The event is part of the ongoing maintenance and care of the ship, making sure that it weathers evenly on both sides. Planned events include the "dead ship" tow of the USS CONSTELLATION and an onboard salute with navy pattern cannon while off Fort McHenry National Monument and Historic Site.

The Coast Guard anticipates a large recreational boating fleet during this event. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating in the specified areas of the Port of Baltimore.

Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

Discussion of Rule

The historic sloop-of-war USS CONSTELLATION is scheduled to conduct an annual "turn-around" on September 13, 2002. The USS CONSTELLATION is scheduled to be towed from its berth, to Fort McHenry, and return, along a route of approximately 2.5 nautical miles (5 nautical miles total) that includes specified waters of the Inner Harbor, Northwest Harbor and Patapsco River.

The safety of dead ship tow participants requires that spectator craft be kept at a safe distance from the intended route during these vessels' movement. The Coast Guard proposes establishing a temporary moving safety zone around the USS CONSTELLATION annual "turn-around" participants on September 13, 2002 to ensure the safety of participants and spectators immediately prior to, during, and following the dead ship tow.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

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

The primary impact of this rule will be on vessels wishing to transit the affected waterways during the USS CONSTELLATION annual turn-around on September 13, 2002. Although this rule prevents traffic from transiting a portion of the Inner Harbor, Northwest Harbor, and Patapsco River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River in the Port of Baltimore, Maryland. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for a limited duration, affect only limited areas, and allow vessel traffic to pass safely around the safety zone. Before the effective period, we will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule 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.

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 is categorically excluded from further environmental documentation. By controlling vessel traffic during this event, this rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels. 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 recordkeeping 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.

2. From 8:30 a.m. on September 13, 2002 to 12:30 p.m. on September 14, 2002, add a temporary § 165.T05–060 to read as follows:

§ 165.T05–060 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) *Definitions.*

(1) *Captain of the Port.* The Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *USS CONSTELLATION "turn-around" participants.* Includes the USS CONSTELLATION and its accompanying towing vessels.

(b) *Location.* The following area is a moving safety zone: all waters within 200 yards ahead of or 100 yards outboard or aft of the historic sloop-of-war USS CONSTELLATION, while operating on the Inner Harbor, Northwest Harbor and Patapsco River, Baltimore, Maryland.

(c) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port or his designated representative. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (410) 576–2693.

(3) No vessel movement is allowed within the safety zone unless expressly authorized by the Captain of the Port or his designated representative.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. to 12:30 p.m. on September 13, 2002. If the event is postponed due to weather conditions, this section will be enforced from 8:30 a.m. to 12:30 p.m. on September 14, 2002.

Dated: September 3, 2002.

R.B. Peoples,

Captain, U.S. Coast Guard, Captain of the Port of Baltimore.

[FR Doc. 02–23275 Filed 9–10–02; 10:35 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0021a, UT–001–0041a; FRL–7264–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Vehicle Inspection and Maintenance Program; Utah County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan revision submitted by the Governor of Utah on December 7, 2001. This SIP submittal consists of a revision to Utah's rule R307–110–34 and section X, Vehicle Inspection and Maintenance (I/M) Program, Part D, Utah County. This SIP submittal satisfies one of the conditions of EPA's June 9, 1997 interim approval of Utah County's improved vehicle I/M program SIP. The other condition of EPA's interim approval was submittal of a demonstration that Utah County's decentralized I/M program can obtain the same emission reduction credits as a centralized I/M program. The State submitted such a demonstration on May 20, 1999. These submittals meet the requirements of section 348 of the National Highway System Designation

Act, which allows States to claim additional credit for their decentralized I/M programs. In this case, Utah has demonstrated that Utah County's improved vehicle I/M program is entitled to 100% emissions reduction credit.

DATES: This direct final rule is effective on November 12, 2002 without further notice, unless the EPA receives adverse comments by October 15, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mail code 8P–AR, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, EPA, Region VIII, (303) 312–6493.

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

Table of Contents

I. Summary of EPA's Actions

We are taking direct final rulemaking action to approve a State Implementation Plan (SIP) revision submitted by the Governor of Utah on December 7, 2001. This SIP revision updates Utah's rule R307–110–34 and section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, which satisfies one of the conditions of our June 9, 1997 interim approval of Utah County's improved vehicle I/M program, effective December 30, 1997 (62 FR 31349 and 63 FR 414). The other condition of our interim approval was submittal of a demonstration that Utah County's decentralized I/M program can obtain the same emission reduction credits as a centralized I/M program. Utah submitted this demonstration on May 20, 1999. These submittals meet the requirements of section 348 of the National Highway System Designation Act (NHSDA), which allows States to claim additional credit for their decentralized I/M programs. Utah County implements a test and repair I/M network and has demonstrated that its program achieves the same effectiveness as a test-only network and qualifies for full credit under the NHSDA.

II. Background

On November 6, 1991, we designated Utah County, Utah as a moderate non-attainment area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) (56 FR 56694). Therefore, under section 182 of the Clean Air Act (Act) Utah County is required to implement an I/M program that is at least as effective as the Federal Basic I/M performance standard as specified in 40 CFR 51.352. Vehicle I/M programs are designed to reduce motor vehicle emissions by requiring vehicles to periodically pass a tailpipe emissions test or, depending on the model year of the vehicle, a check of the On-Board Diagnostic (OBD) system. Vehicle emissions are reduced when vehicles are repaired in order to pass these tests.

A. What Is Utah County's Improved Vehicle Inspection and Maintenance Program?

Utah County's improved vehicle I/M program is a basic, decentralized, test and repair network. The network consists of 140 permitted stations which test all 1968 and newer model year light duty vehicles, light duty trucks, and heavy duty trucks registered in Utah County. Motorcycles, electric powered vehicles, farm vehicles and equipment, construction equipment and other off-road vehicles are exempt from the I/M program. The program also includes technician training, I/M repair station certification, illegal registration investigation, repair effectiveness assessments, stringent waiver requirements, and remote sensing program implementation. Utah County also implements an anti-tampering component of the I/M program which entails checking the air pump systems, catalytic converters, exhaust gas re-circulation (EGR) valves, evaporative systems, positive pressure crankcase valves (PCV), and gas caps. Utah County's improved vehicle I/M program exceeds the Federal Basic I/M performance standard established in 40 CFR part 51, subpart S ("Inspection/Maintenance Program Requirements for CO non-attainment areas.")

B. What Is I/M Program Credit?

When areas submit SIPs for our approval, we evaluate the effectiveness of the control measures and determine the amount of emissions that can be reduced upon full implementation of these measures. The more effective the I/M program, the more credit we would give a State towards achieving the emissions reductions needed to show attainment or maintenance.

We allow States to customize their I/M program and award different credits for different programs. Audits conducted by the General Accounting Office in 1991, revealed that decentralized programs (test and repair networks) were not as effective as centralized programs (test-only networks). This was due to higher tampering rates and the inherent conflict of interest in allowing garages to inspect their own emission repairs. When we released the mobile emissions model, Mobile5, we automatically discounted the amount of emissions reduction credit areas could claim for decentralized I/M programs by 50%. This 50% emission reduction credit is the default value in Mobile5.

C. Summary of EPA's June 9, 1997 Interim Final Rule

On June 9, 1997, we published in the **Federal Register** an interim final rule (62 FR 31349) approving Utah County's improved I/M program SIP revision, submitted March 15, 1996. This March 15, 1996 SIP revision was submitted under the authority of both the NHSDA and the Act. The effective date of this rule was later corrected to December 30, 1997 to be consistent with the Congressional Review Act (63 FR 414). The NHSDA included a key change to our previously developed I/M program

requirements. Section 348 of the NHSDA allows I/M programs to bypass the 50% emissions reduction credit that is automatically given to decentralized I/M programs. Instead, on the basis of a good faith estimate by a State, the NHSDA allows for presumptive equivalency of such decentralized networks to the benchmark of centralized programs. Under section 348 of the NHSDA, we are required to grant interim approval to such decentralized programs, for an 18-month period, at the end of which each affected state must submit an evaluation of the actual effectiveness of the improved program.

Our June 9, 1997, interim final rule (62 FR 31349) established two requirements that Utah County would have to meet before we would grant full final approval of Utah County's improved I/M program:

(a) The submittal of an evaluation confirming that the program achieved the appropriate amount of program credit claimed by the State/County, and

(b) The submittal of final program regulations for our approval.

III. Evaluation of Utah County's NHSDA Equivalency Demonstration, Dated May 20, 1999

As noted above, pursuant to section 348 of the NHSDA, in March of 1996, Utah submitted a "good faith estimate" to support its claims for 100% emissions reduction credit for its decentralized test and repair program, when compared to a centralized test-only network. Section 348 of the NHSDA required Utah to submit a demonstration, based upon program data collected during the interim approval period, to support its good faith estimate and to demonstrate that the credits claimed for the decentralized program were appropriate. On May 20, 1999, Utah submitted a report to us entitled, "Evaluation of the Utah County Inspection/Maintenance Program," that describes Utah's efforts to ensure that the program is operating as effectively as originally proposed.

Utah's evaluation compares Utah County's decentralized I/M program to Phoenix, Arizona's centralized I/M program. The first step was for Utah County to develop a correlation between a two-speed idle test, used in Utah County, and an I/M240 test, as implemented in Phoenix. Utah County procured 454 vehicles and subjected them to an I/M240 test in a laboratory from December 1998 through May 1999. Then, they took the two-speed idle test results from September 1997 through December 1998 from Utah County's database. Using "Development of a Proposed Procedure for Determining the Equivalency of Alternative Inspection and Maintenance Programs," prepared for U.S. EPA, by Sierra Research, July 22, 1997, and a memo from Lee Cook, Regional and State Programs Division, Office of Mobile Sources, to I/M Stakeholders titled, "Guidance on Alternative I/M Program Evaluation methods," Utah was able to develop a correlation between the two different tests and calculate an average emissions level. Next, Utah took a random, 2% sample of Phoenix's database, from 1997, converted the data to correct for altitude, fuel, and calendar year, and calculated an average emissions level. Utah was then able to calculate and compare the benefits of each I/M program using Mobile5.

The results of the analysis show that for light duty gasoline vehicles, the Utah County emission estimates are similar to Phoenix's emission estimates and the percent emission reductions are comparable. Utah's evaluation contains audit results of Utah County's program in Appendix A, "Utah County's Environmental Council of the States (ECOS)/State and Territorial Air Pollution Program Administrators (STAPPA) I/M Evaluation Factor Results." ECOS/STAPPA conducted both overt and covert audits of Utah County's program. Overt, or administrative, audits consisted of verifying certifications, documentation and calibration of test equipment. The results of the overt audits showed that centralized networks faired better than decentralized networks. However, none of the infractions were of a serious nature. Types of problems encountered were analyzer malfunctions, printer ribbons needing to be changed, and missing emission manuals. All infractions were corrected upon written or verbal correction notices.

The covert, or undercover, audits consisted of setting the vehicle to fail beforehand by removing the catalytic converter, or tampering with the air system, and taking the vehicle to be tested. The test-only stations passed failing vehicles 31% of the time, whereas the test and repair stations passed failing vehicles or performed improper repairs only 16% of the time. ECOS/STAPPA concluded that based on these audits, there is no difference between the emissions inspections performed by either type of testing facility.

Utah County has demonstrated that its decentralized I/M program provides equal emission reductions when compared to a centralized test-only program. Utah submitted this analysis to us on May 20, 1999. We find Utah's analysis to be adequate and conclude that 100% credit is appropriate.[1]

IV. Evaluation of Utah's Rule R307–110–34 and Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, Dated December 7, 2001

A. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the Act addresses our action on submissions of revisions to a SIP. The Act requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the Act requires that each SIP revision be adopted by the State, after reasonable notice and public hearing, and prior to the revision being submitted by a State to us.

The Utah Air Quality Board (UAQB) held a public hearing on June 21, 2001, to include Rule R307–110–34 and section X, Vehicle Inspection and Maintenance Program, Part D, Utah County in the Utah SIP. The UAQB adopted the revisions on August 1, 2001. This SIP revision became State effective on October 2, 2001, and was submitted by the Governor of Utah to us on December 7, 2001.

We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the Act. As required by section 110(k)(1)(B) of the Act, we reviewed the SIP revision materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's submittal was administratively and technically complete. We sent our completeness determination on February 20, 2002 (letter from Jack W. McGraw, Acting Regional Administrator, to Governor Michael O. Leavitt).

B. Evaluation of the State's Regulation

Utah's Rule R307–110–34 and section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, consist of program improvements such as technician training, I/M repair station certification, illegal registration investigation, repair effectiveness assessments, stringent waiver requirements, and remote sensing program implementation. Furthermore, Utah County has improved their vehicle

[1] In a July 26, 1999, letter to Ms. Ursula Trueman, we indicated our view that the Utah County evaluation was adequate and that we would be able to grant final approval of 100% emission reduction credit upon our final approval of a State-adopted SIP revision embodying the Utah County improved I/M program.

I/M program by changing to Utah 2000 analyzers for emissions, requiring emission inspectors to check the On-Board Diagnostic (OBD) systems in 1996 and newer vehicles, and downloading data daily from the emission analyzers. We have reviewed the State's submittal and find that it meets our requirements for a Basic I/M program as well as the requirements of section 348 of the NHSDA. We note that the Governor's December 7, 2001, submittal supercedes and replaces the version of Utah County's I/M program that we approved on March 8, 1989 (54 FR 9796). The Governor had submitted other revisions to R307–110–34 prior to December 7, 2001, that we never approved and note that the Governor's December 7, 2001, submittal also supersedes and replaces these other revisions to R307–110–34.

V. Final Action

We are approving the State of Utah's December 7, 2001 SIP submittal which consists of a revision to Utah's Rule R307–110–34 and section X, Vehicle Inspection and Maintenance Program, Part D, Utah County. We are also approving the State's May 20, 1999 demonstration that its decentralized I/M program is capable of achieving emissions reductions equivalent to a centralized I/M program. With our approval of these submittals, our June 9, 1997, interim approval of Utah County's improved vehicle I/M program becomes a full approval, and Utah County can claim 100% emissions reduction credit for their improved vehicle I/M program.

We are publishing this rule without prior proposal because we view this action as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 12, 2002 without further notice unless the Agency receives adverse comments by October 15, 2002. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule, in the **Federal Register**, informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 12, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 13, 2002.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671 *et seq.*

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(50) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(50) The Governor of Utah submitted Rule R307–110–34 and Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County as part of the Utah State Implementation Plan on December 7, 2001.

(i) Incorporation by reference.

(A) Rule R307–110–34 and Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, including appendices 1 through 6, as adopted by the Utah Air Quality Board on August 1, 2001, effective October 2, 2001, published in the Utah State Bulletin issue of September 1, 2001.

(ii) Additional Material.

(A) Letter dated December 7, 2001 from Governor Michael O. Leavitt submitting Utah County's inspection and maintenance program state implementation plan revision.

(B) Evaluation of the Utah County Inspection/Maintenance Program, dated May 20, 1999.

3. Section 52.2348 is amended by redesignating the existing paragraph as paragraph (a). adding paragraph (b) to read as follows:

§ 52.2348 National Highway Systems Designation Act Motor Vehicle Inspection and Maintenance (I/M) Programs.

* * * * *

(b) On May 20, 1999, the State of Utah submitted an evaluation of the Utah County inspection and maintenance program. On December 7, 2001, the Governor of Utah submitted Rule R307–110–34 and Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County. These submittals satisfy the interim approval requirements specified under section 348 of the National Highway Systems Designation Act of 1995 (62 FR 31351, 63 FR 414). Under the authority of section 110 of the Clean Air Act, EPA is removing the interim status of Utah County's improved inspection and maintenance program and granting Utah County full final approval of their improved inspection and maintenance program.

[FR Doc. 02–23084 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0226; FRL–7196–5]

Thiophanate-methyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of thiophanate-methyl and its metabolite (methyl 2-benzimidazoyl carbamate (MBC)) in or on citrus and blueberry. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on citrus and blueberries. This regulation establishes maximum permissible levels for residues of thiophanate-methyl in these food commodities. The tolerances will expire and are revoked on June 30, 2004.

DATES: This regulation is effective September 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0226, must be received on or before November 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0226 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9356; e-mail address: *conrath.andrea@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 categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have 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 Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to 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.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0226. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are

physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the fungicide thiophanate-methyl and its metabolite (methyl 2-benzimidazoyl carbamate (MBC)), in or on citrus at 0.5 part per million (ppm), and blueberry at 1.5 ppm. These tolerances will expire and are revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Thiophanate-methyl on Citrus and Blueberries and FFDCA Tolerances

Citrus. Post-bloom fruit drop (PFD) poses a significant economic threat to the citrus industry throughout the humid, subtropical areas of the U.S. (including Florida and Louisiana). Benomyl, which has historically been used to manage PFD in citrus, was recently canceled by the registrant, and available alternatives do not provide effective control. Significant economic losses are expected without the requested use of thiophanate-methyl. EPA has authorized under FIFRA section 18 the use of thiophanate-methyl on citrus for control of PFD fruit drop disease in Florida and Louisiana. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

Blueberries. Benomyl has historically been used in blueberry production to control several important fungal pathogens, including Phomopsis Twig Blight and Canker (*Phomopsis vaccinii*), Fusicoccum Canker (*Fusicoccum putrefaciens*), Botryosphaeria Blight (*Monilinia vaccinii-corymbosi*), Anthracnose Fruit Rot (*Colletotrichum acutatum*), Mummy Berry Disease (*Botryosphaeria dothidea*). The registrant's recent cancellation of benomyl has left blueberry growers without sufficient means to control these diseases, as available alternatives do not provide adequate control. Significant economic losses are expected without the requested use of thiophanate-methyl. EPA has authorized under FIFRA section 18 the use of thiophanate-methyl on blueberries for control of a variety of important blueberry diseases in Connecticut, Indiana, Michigan, New Jersey, New York, Ohio, and Pennsylvania. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of thiophanate-methyl in or on citrus and blueberry. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is establishing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on citrus and blueberry after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed the level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether thiophanate-methyl meets EPA's registration requirements for use on citrus and blueberry or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of thiophanate-methyl by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than those listed above to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for thiophanate-methyl, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of thiophanate-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of thiophanate-methyl in or on citrus and blueberry at 0.5 and 1.5 ppm, respectively. The most recent estimated aggregate risks resulting from the use of thiophanate-methyl, are discussed in the **Federal Register** of August 28, 2002 (67 FR 55137) (FRL–7192–1), final rule establishing tolerances for residues of thiophanate-methyl in/on grape, pear, potatoe, canola, and pistachio, because in that prior action, risk was estimated assuming tolerance level residues in all commodities for established tolerances, as well as those being proposed, such as the citrus and blueberry exemption uses. Refer to the August 28, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for thiophanate-methyl for use in human risk assessment is discussed in Unit III. of the final rule mentioned above, published in the **Federal Register** of August 28, 2002 (67 FR 55137).

For thiophanate-methyl, the Agency recently modified the tolerance expression, so that the residues to be regulated in plant and animal commodities for purposes of tolerance enforcement will consist of the residues of thiophanate-methyl and its metabolite MBC, expressed as thiophanate-methyl. Exposure from the use of benomyl, another pesticide which degrades under environmental conditions to MBC was not included in this assessment because the only basic registrant of benomyl requested voluntary cancellation of all benomyl-containing products in April 2001. Product cancellations were effective in early 2001 with sales and distribution of benomyl containing products ending by December 31, 2001. However, the Agency conducted a dietary assessment using U.S. Department of Agriculture Pesticide Data Program (PDP) monitoring data for benomyl, measured as MBC to estimate residues of thiophanate-methyl because MBC is a common metabolite of both benomyl and thiophanate-methyl. PDP data were available for apples, bananas, beans, cucurbits, peaches, and strawberries. The PDP analytical method employs a hydrolysis step that converts any benomyl present to MBC. MBC is then quantitated and corrected for molecular weight, and results are measured as the sum of benomyl and MBC. Therefore, using MBC data to estimate thiophanate-methyl residues may be a conservative approach in that it may overestimate thiophanate-methyl residues.

EPA assessed risk scenarios for thiophanate-methyl under acute, chronic, and short- and intermediate-term exposures.

The Dietary Exposure Evaluation Model (DEEM)™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

For the acute exposure assessments, maximum percent crop treated estimates and anticipated residue estimates were used. Using these exposure assumptions, EPA concluded that acute dietary exposure to thiophanate methyl uses 10% of the aPAD for the general U.S. population and 25% of the acute Population Adjusted Dose (aPAD) for the most highly exposed population subgroup of concern, infants, (less than 1 year). For MBC, the acute dietary risk estimate uses 4% of the aPAD for the general U.S. population and 89% of the aPAD for the population subgroup of concern, infants, (less than 1 year). The total thiophanate-methyl plus MBC acute dietary risk estimate for the only population subgroup of concern, females (13-50 years) uses 51% of the aPAD. The drinking water assessment, based on simultaneous dietary exposure to both MBC and thiophanate-methyl which was converted to MBC equivalents resulted in the following Drinking Water Levels of Concern (DWLOCs): Infants (less than 1 year) 18 ppb; children (1–6 years) 57 ppb; females (13-50 years) 150 - 170 ppb; and general U.S. population 5,700 ppb. The lowest DWLOC for the population subgroup, infants (less than 1 year) does not exceed the Estimated Environmental Concentration (EEC) for ground water (0.033 ppb); however, the DWLOC does exceed the EEC for surface water (25 ppb). Although the EEC is exceeded, the DWLOC is greatly inflated as 50% of the aPAD percentage is consumed by citrus which is a limited emergency use only. When citrus is removed from the DWLOC estimation, the DWLOC becomes 94 ppb which is well above the EEC of 25 ppb. The DWLOC is significantly lowered by the addition of citrus because field trial data was used-which results in an overly conservative estimation.

Another indication that the addition of citrus based on field trial data results in an over estimation is the fact that benomyl PDP data available for citrus indicated that there were zero hits out of 689 Florida samples of orange juice. These data were not used to refine the DWLOC estimation as the benomyl application rate is somewhat lower than the rate approved for thiophanate methyl in this year's emergency exemption. However, the Agency believes that most growers used the previously registered benomyl rate, because the emergency exemption was approved later in the use season and thus fewer applications than were authorized were actually used. Furthermore, if the higher rate were used, the impact would be lessened by the fact that juice is a blended commodity. Therefore, although the DWLOC is exceeded, the acute dietary risk from food and water does not exceed the Agency's level of concern.

For the chronic exposure assessments, average residues from field trial data and average percent crop treated estimates were used.

Using these exposure assumptions, EPA has concluded that exposure to thiophanate-methyl and MBC will utilize the following percentages of the chronic Population Adjusted Dose (cPAD) for the U.S. population: Thiophanate-methyl - 0.7%; MBC - 1.0% and total thiophanate-methyl plus MBC - 1.7%. The major identifiable subgroup with the highest aggregate exposure is children (1–6 years) and EPA has concluded that aggregate dietary exposure to thiophanate-methyl and MBC will utilize the following percentages of the cPAD: thiophanate-

methyl - 2.3%; MBC - 26% and total thiophanate-methyl plus MBC - 28%. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The aggregate chronic DWLOCs are as follows: 858 ppb for the general U.S. population; 69 ppb for females (13–50 years); 22 ppb for infants (less than 1 year); and 18 ppb for children (1–6 years). The aggregate surface water EEC for thiophanate-methyl is 0.7 ppb; 14 ppb for MBC and 14.7 ppb for thiophanate-methyl plus MBC. Therefore, the chronic aggregate risks do not exceed the Agency's level of concern.

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiophanate-methyl and MBC are currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for thiophanate-methyl and MBC.

All residential exposures are considered to be short-term. The Margins of Exposure (MOEs) (converted to MBC equivalents) for aggregate short-term exposure to thiophanate-methyl are as follows: Oral exposure of children (1-6 years) is 670; dermal exposure of children (1-6 years) is 1,000; and dermal exposure of females (13-50 years) is 1,315. The MOEs for aggregate exposure to MBC from the use of MBC as an in-can preservative are 670 for dermal exposure and 770 for exposure via inhalation. The MOEs (converted to MBC equivalents) for the total thiophanate-methyl and MBC aggregate exposure are as follows: 630 for oral and dermal exposure of children (1-6 years); 770 for exposure via inhalation for females (13-50 years); and 620 for oral and dermal exposure for females (13-50 years). Although the MOEs below 1,000 exceed the Agency's level of concern, when considering the conservative method of exposure estimation previously discussed, and the negotiated risk mitigation whereby the registrant has agreed to conduct hand-press studies to help refine this assessment, the risks do not exceed the Agency's level of concern.

Aggregate cancer risk for U.S. population. The total thiophanate-methyl and MBC dietary cancer risk is 8.5×10^{-7} for existing and new uses. The cancer risk from non-occupational residential exposure is 3.7×10^{-7}. The aggregate cancer risk is 1.2×10^{-6}. This risk estimate includes cancer risk from both thiophanate-methyl and MBC on food including all pending uses and section 18 uses, thiophanate-methyl exposure from treating ornamentals, thiophanate-methyl exposure from performing post-application lawn activities, and exposure from applying paint containing MBC. This is considered to be a high-end risk scenario since it is not expected that someone would treat ornamentals, perform high exposure post-application activities, and apply paint containing MBC every year for 70 years. Therefore, this estimate is considered to be a conservative estimate. Additionally, the cancer risk estimate based on the highest EEC (thiophanate-methyl plus MBC EEC) is 9.6×10^{-7}. This is also a very high-end risk estimate as it is based on the maximum rate being applied every season for 70 years. Thus, food plus water (assuming that the modeled surface water EEC is equivalent to concentrations in finished drinking water) plus non-occupational residential cancer risk is 2.2×10^{-6} which is still within the range considered as negligible. In addition, the cancer risk estimates using benomyl/MBC PDP monitoring data to estimate thiophanate-methyl residues are below 1×10^{-6} for thiophanate-methyl existing uses, new uses, and the amortized section 18 use on citrus and blueberry. Therefore, the risks do not exceed the Agency's level of concern.

Based on these risk assessments, 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 thiophanate-methyl and MBC residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov*.

B. International Residue Limits

The Codex Alimentarius Commission has established maximum residue limits (MRLs) for thiophanate-methyl residues in/on various plant and animal commodities. Codex MRLs for thiophanate-methyl are currently expressed as MBC. The Codex MRL residue definition and the U.S. tolerance definition, previously expressed as only thiophanate-methyl, have been incompatible and will remain incompatible even with the recent revision of the U.S. tolerance definition, since the revised tolerance definition includes both thiophanate-methyl and MBC.

C. Conditions

A 30–day plant back interval is required for crops without labeled uses of thiophanate-methyl.

1. *Citrus.* Three to four applications (depending upon rate) may be made at a rate of 1.05 to 1.4 pound of active ingredient per acre (lb a.i./acre) using ground equipment. A maximum of 4.2 lb a.i./acre may be applied per year.

2. *Blueberry.* Up to three applications may be made at a rate of 0.7 lb a.i./acre. No more than three applications may be made, prior to the harvest of the berries; do not exceed a total of 2.1 lb a.i./acre per season.

VI. Conclusion

Therefore, the tolerances are established for residues of thiophanate-methyl and its metabolite, (methyl 2-benzimidazoyl carbamate (MBC), expressed as thiophanate-methyl, in or on citrus at 0.5 ppm and blueberry at 1.5 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number

OPP–2002–0226 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket ID number OPP–2002–0226, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 final 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 under 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 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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 final 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 FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This 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 rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: September 3, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is 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 374.

2. Section 180.371 is amended by adding text and a table to paragraph (b) to read as follows:

§ 180.371 Thiophanate-methyl; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of thiophanate-methyl and its metabolite (methyl 2-benzimidazoyl carbamate (MBC)) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/revocation date
Blueberry	1.5	6/30/04
Citrus	0.5	6/30/04

* * * * *

[FR Doc. 02–23266 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7373–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Republic Steel Quarry Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is publishing a direct final notice of deletion of the Republic Steel Quarry Superfund Site (Site), located in Elyria, Ohio, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Ohio, through the Ohio Environmental Protection Agency, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not necessary at this time.

DATES: This direct final deletion will be effective November 12, 2002, unless EPA receives adverse comments by October 15, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Sheila Sullivan, Remedial Project Manager (RPM) (SR–6J), (*sullivan.sheila@epa.gov*) U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL, USA 60604–3590, (mail code: SR–6J) or at (312) 886–5251 or 1–800–621–8431 Monday through Friday 9 a.m. to 4 p.m.

Information Repositories: Comprehensive information about the Site and the site deletion docket are available for viewing and copying at the Site information repositories located at: 1. EPA Region 5 Administrative Records, 77 West Jackson Blvd., Seventh Floor, Chicago, IL, USA 60604–3590, (312) 886–0900, Monday through Friday 8 a.m. to 4 p.m.; 2. Elyria Public Library, 320 Washington Ave., Elyria, OH 44035, (440) 323–5747, Monday through Thursday 9 a.m. to 8:30 p.m., Friday through Saturday 9 a.m. to 5:30 p.m., Sunday 1 to 4 p.m.; 3. Ohio Environmental Protection Agency—Northeast District Office, 2110 E. Aurora Road, Twinsburg, OH 44087, (330) 963–1200, Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Sheila Sullivan, Remedial Project Manager at (312) 886–5251, *Sullivan.Sheila@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov*, or 1–800–621–8431, U.S. EPA Region 5 (SR–6J), 77 W. Jackson Blvd., Chicago, IL, USA, 60604–3590, Monday through Friday 9 a.m. to 4 p.m.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 5 is publishing this direct final notice of deletion of the Republic Steel Quarry Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is proceeding without prior publication of a notice of intent to delete. This action will become effective November 12, 2002, unless EPA receives adverse comments by October 15, 2002, on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Republic Steel Quarry Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State of Ohio on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of Ohio concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of intent to delete, published today in the "Proposed Rules" section of the **Federal Register**, is also being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA prepared a site deletion docket which contain copies of documents supporting the deletion. The site deletion docket has been placed in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with a decision on the deletion based on the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Republic Steel Quarry (RSQ) Site is located in the City of Elyria, Ohio, and is situated east of West River Road and west of the west branch of the Black River. The City of Elyria is located southwest of Cleveland in Lorain County in northeastern Ohio, and can be found on the Grafton USGS quadrangle map in Township 6 North, Range 17 West. The Site consists of a four-acre water-filled quarry that is surrounded by seven acres of densely vegetated land. A fence now surrounds the Site perimeter. The water depth of the quarry is approximately 60 feet and the sides of the quarry rise to about 25 feet above the water surface. The quarry walls are formed by Berea Sandstone at and below the quarry water level. Above the Berea Sandstone, the walls consists of large vertically stacked sandstone blocks that were used as retaining walls during quarrying operations. Water from the quarry discharges via an outlet directly into the Black River.

Site History

The RSQ Site was operated as a sandstone quarry during an unknown period of time prior to 1950. From 1950 to 1975, the Republic Steel Corporation discharged about 200,000 gallons per day of waste pickle liquor and rinse water from steel pickling operations to the quarry. The waste pickle liquor, consisting largely of sulfuric acid and dissolved metal oxides, was pumped through an aboveground pipe to a ditch which flows into the quarry. Republic Steel Corporation was later acquired by LTV Steel Corporation, which is presently operating the steel plant south of the quarry. In 1976, the discharge ditch leading to the quarry was dammed. The City of Elyria purchased the quarry and the seven surrounding acres of land from Republic Steel Corporation in 1977, with the intention of establishing a municipal park on the property in the future. In 1983, a site investigation by the U.S. EPA Field Investigation Team (FIT) detected heavy

metals in the groundwater. The Site was subsequently proposed for the National Priorities List (NPL). Both the City of Elyria and LTV Steel Corporation challenged the Site's placement on the NPL, which was finalized in 1986 and later upheld by the court in 1990. A Remedial Investigation (RI), conducted between 1987 and 1988, indicated that onsite soils were contaminated. To a lesser degree, the groundwater, quarry sediments and surface water, and potentially fish tissue had also been impacted. A Record of Decision (ROD) memorializing the selected remedial action (RA) for the Site was issued in September 1988. The ROD determined that the focus of the RA would be the excavation and disposal of contaminated soil. In addition to the soil removal, the ROD called for further studies of fish tissue and groundwater, which were to be addressed in a Supplemental Investigation for the Site. Both components of the RA were completed in 1990. In 1993, EPA entered into a settlement with LTV Steel in bankruptcy court. The U.S. EPA settled with the City of Elyria in 1993.

Remedial Investigation and Feasibility Study (RI/FS)

The RI revealed that all contamination caused by Republic Steel's disposal practices was limited to quarry sediments, the pickle liquor discharge ditch and several soil locations around the quarry's edge. As part of the RI, a baseline risk assessment was performed in which human health risks were evaluated with respect to carcinogenic and noncarcinogenic risk under various current and future exposure scenarios. The risks were driven by carcinogenic polynuclear aromatic hydrocarbons (cPAHs) and heavy metals—the major Site contaminants. Both the quarry and the Black River, which borders the Site on the east, are used for recreational purposes such as swimming and fishing. Drinking water is currently supplied to surrounding residents via the City of Elyria municipal water supply system.

A Feasibility Study (FS) typically succeeds the RI and is conducted to determine the best approach to cleaning up a site using nine specific criteria. An FS was not conducted for this Site because the contaminants exceeding risk-based action levels in the soils were limited in volume and distribution to specific areas or hotspots. The contaminated sediments are confined to the quarry bottom and are not readily accessible to humans, except via the fish consumption pathway. In addition, the groundwater was not being used as a potable water source.

Record of Decision

The ROD was issued in September 1988 and prescribed the excavation and removal of 100 cubic yards of combined sediment and soils exceeding an Action Level of 300 ppb for cPAHs. These soils were primarily located in the pickle liquor discharge ditch and the boat ramp areas around the southern edge of the quarry. The quarry and the surrounding land were to be fenced. The ROD also specified that a fish species survey, fish tissue bioassays and groundwater resampling be conducted during a Supplemental Investigation in order to recalculate the risks using actual fish tissue data and more recent groundwater data. Since groundwater at the time was not used as a potable water supply, nor was it expected to be used in the future, the ROD did not include groundwater treatment. The contaminated quarry sediments were to be left in place since they lay below the mixing zone and fish were not likely to come in contact with them. U.S. EPA further concluded that quarry remediation would likely entrain contaminated sediments in the water, thereby increasing the likelihood of exposure to the contaminants by fish. Humans consuming the fish would also be subject to increased risk.

Characterization of Risk

As part of RI process, a baseline risk assessment was conducted for the Site. The assessment considered all exposures likely to result from current and future uses of the Site. For current uses, such as trespassing, recreational fishing and swimming, one exposure scenario—the ingestion of fish from the quarry, produced significant carcinogenic and noncarcinogenic risks. Significant carcinogenic and noncarcinogenic risks are respectively defined as an upper bound excess lifetime cancer risk exceeding 1×10^{-6} and a Hazard Index (HI) exceeding one. The maximum carcinogenic risks were driven by the potential uptake of cPAHs and mercury from the quarry sediment to fish tissue. These risks were determined to be nearly four times greater, or 4×10^{-6}, than the above-stated thresholds for significant carcinogenic risk.

Under future use conditions, the RI baseline risk assessment of residential exposures resulted in an upper bound excess lifetime cancer risk greater than 1×10^{-6}. This risk was driven by direct contact and incidental ingestion of soil and groundwater. With regard to the groundwater ingestion pathway, the maximum carcinogenic and noncarcinogenic respective risks, 3×10^{-5} and an HI exceeding one, were based on the detection of methylene chloride and acetone in groundwater during the RI; however, a second sampling did not confirm their presence. These chemicals were assumed to be present for the purposes of producing a protective baseline risk assessment. The conflicting results necessitated a third sampling event which failed to detect and confirm the presence of these chemicals.

Response Actions

The Remedial Action (RA) was completed by U.S. EPA in 1990 and was implemented in two phases. The first phase focused on resolving the risk issues concerning groundwater and fish tissue that were raised during the RI baseline risk assessment. This involved determining the requirements for the upcoming fish/biota species survey and fish tissue bioassays, and additional groundwater monitoring for the Supplemental Investigation. The second phase involved addressing the contaminated soil and sediments.

Obtaining data for the first phase was critical because time constraints had prevented the collection and analysis of actual fish tissue samples during the RI itself. Instead, the fish tissue concentrations had to be estimated using a conservative sediment to fish tissue model that incorporated quarry sediment data collected during the RI. According to the exposure conditions in the baseline risk assessment, if the Site were not remediated, then fish caught and consumed on a regular basis from the quarry would pose an unacceptable noncarcinogenic risk to humans due to the levels of cPAHs and mercury. This risk needed to be verified using actual fish tissue samples. The tissue samples and fish species survey were further warranted because the Ambient Water Quality Criteria (AWQC), which are used to define risk-based acceptable surface water concentrations for the protection of aquatic organisms, were exceeded for mercury, manganese and copper in the quarry water. The subsequent 1990 Supplemental Investigation risk recalculation found that the previous assumptions made during the modeling of mercury and cPAHs concentrations in fish tissue, in lieu of actual data, were too conservative and unreliable. The recalculated maximum carcinogenic and noncarcinogenic risks to humans from consumption of fish tissue were based on the more recent fish tissue data obtained during the Supplemental Investigation. These risks, which were respectively revised to an upper bound excess lifetime risk of 6×10^{-7} and a

HI of one, fall within the acceptable risk range. Because the risk recalculations performed during the Supplemental Investigation confirmed that no unacceptable risks were posed to humans consuming fish from either the quarry or the Black River, U.S. EPA did not recommend to the Ohio Department of Health that a fish advisory be issued.

The additional groundwater monitoring was performed because beryllium and bis(2-ethylhexyl)phthalate had been reassigned higher cancer potency factors by U.S.EPA since the completion of the RI baseline risk assessment. During the Supplemental Investigation, the risks from groundwater were recalculated using the semi-volatile and inorganic contaminants previously identified in the RI, but omitted the two unconfirmed chemicals, methylene chloride and acetone. The carcinogenic and noncarcinogenic groundwater risks respectively increased to 3×10^{-4} and exceeded one for the HI, due to the higher cancer potency factor assigned to beryllium and the inclusion of bis(2-ethylhexyl)phthalate as a groundwater contaminant in the recalculation. There are currently no users of groundwater at the Site or within at least one-half mile of the Site, hence there was no imminent risk presented to humans at the time from groundwater. Further, the groundwater is not expected to be used as a potable water source in the future because in-place deed restrictions prohibit the use of the groundwater on the property. This is detailed in the "Operations and Maintenance" section of this notice.

U.S. EPA performed the second phase of the RA addressing contaminated soil and sediments after the potentially responsible parties declined to perform the cleanup. U.S. EPA's Technical Assistance Team delineated the extent of soil contamination in 1989. The affected areas involved soils from the pickle liquor discharge drainage ditch and the boat launch areas at the southern edge of the quarry. In February 1990, 150 cubic yards of material were removed from these identified hotspots. In June 1990, an additional 40 cubic yards of soil from the pickle liquor ditch were removed after confirmatory sampling indicated that the RA cleanup goal of 300 ppb for cPAHs had not been achieved. The soils were to be disposed of offsite according to Resource Conservation and Recovery Act Land Disposal Restrictions (57 FR 2676). Although not specified in the ROD, the quarry and the surrounding land were to be fenced.

Cleanup Standards

The cleanup standards used in the 1988 ROD were determined by risk-based chemical-specific legally applicable or relevant and appropriate requirements (ARARs). The ROD established that the cleanup should primarily focus on soils. The soil removal criterion designated that all soils for which the sum of the four cPAHs, i.e., benzo(a)anthracene, chrysene, benzo(b)fluoranthene and benzo(k)fluoranthene, exceeded 300 ppb—the Action Level for cPAHs, should be removed. This Action Level was based on a 1×10^{-6} excess lifetime cancer risk from incidental ingestion and skin contact exposure to soil. Since the Supplemental Investigation risk recalculation of 1990, the toxicity criteria for cPAHs have been revised to less stringent values. Therefore, the excess lifetime cancer risk from exposure to cPAHs in the soils is below 1×10^{-6} and is considered to be within the acceptable risk range. Acceptable groundwater concentrations were defined by the primary and secondary drinking water standards or maximum contaminant levels (MCLs). At the time of the RI and Supplemental Investigation, the mean and maximum concentrations of beryllium and iron exceeded their respective MCLs. Also, the mean and maximum concentrations of manganese and phenol exceeded Ohio Water Quality Standards. Since there has been no human exposure to groundwater, nor are future exposures anticipated, these contaminant levels are not considered hazardous to human health. The AWQC were used to define acceptable surface water concentrations for the protection of aquatic organisms in the quarry and the Black River. The average and maximum concentrations of manganese and mercury exceeded the AWQC for the consumption of fish, however mercury was not detected in the surface water samples. Finally, risk-based criteria for the evaluation of sediment contaminants were developed by modeling the sediment to fish tissue uptake of quarry contaminants. Mercury concentrations were calculated using a conservative sediment/water partitioning mode, hence contaminant concentrations in the water column were expected to be less than the predicted values.

Operation and Maintenance

The RSQ Site is currently owned and maintained by the City of Elyria. An existing state-superfund contract with the Ohio EPA indicates that Ohio EPA will assure all future Operation and Maintenance (O&M) of the RA for the expected life of the actions. To date, it has not been necessary for the Ohio EPA to directly undertake O&M activity at the RSQ Site because the City of Elyria has assumed this responsibility. The State will be responsible for O&M in any subsequent phase, if necessary. Since issuing the first Five-Year Review for the Site on September 28, 1998, the U.S. EPA and the Ohio EPA have determined that while the 1988 ROD has been protective and minimal exposure to remaining Site contaminants has occurred, the remedy needs to be expanded to include institutional control measures at the Site. The Ohio EPA further supported the application of enforceable institutional controls in order to facilitate its future O&M responsibilities at the Site. In September 2001, U.S. EPA issued an Explanation of Significant Differences (ESD) to the ROD which memorialized the addition of institutional controls and deed restrictions to the RA. Since becoming part of the RA, the implementation of the institutional controls and restrictions is also subject to O&M. As the local authority and Site owner, the City of Elyria will continue to assume responsibility for the observance of the institutional controls and deed restrictions. The City's commitment to observe and implement the institutional controls and deed restrictions is memorialized in documents which are located in the two Site information repositories and the Site Administrative Record.

Five-Year Review

From 1997 to 1998, the first statutory Five-Year Review was conducted by EPA at the Site because concentrations of contaminants exceeding health-based levels remained in the deep quarry sediments. The findings of the Five-Year Review investigation, which involved sampling of all Site media, provided the basis for recommending significant changes to the ROD. The results of the investigation indicated that while the Site has no formal use, trespassing is well established. The fence would normally limit access, however, frequent vandalism has reduced its effectiveness. The Five-Year Review risk recalculation indicated that no unacceptable onsite or offsite risks are posed to casual trespassers. This finding is consistent with the results of the 1990 Supplemental Investigation risk recalculation. Thus, while cPAH concentrations in onsite soil exceed the ROD-designated Action Level of 300 ppb in certain areas of the Site enclosed by the fence, the revised toxicity criteria for cPAHs indicate that the soil concentrations of cPAHs pose less

carcinogenic risk than previously thought.

Under current Site conditions, the maximum carcinogenic risk estimate for a trespasser exposed to on-site soils is $2 \times 10^{7-6}$. This risk was driven by the potential for ingestion of arsenic which was detected during the investigation, in the on-site soil at lower than background soil concentrations. Regular or habitual use of the quarry via swimming or fish consumption may present unacceptable noncarcinogenic risks. The potential risks from the quarry water are attributable to the presence of iron and manganese near the bottom of the 60-foot water column. It was assumed that exposure to these contaminants via swimming is negligible since swimmers are unlikely to frequent the deep water. The potential noncarcinogenic risk due to quarry fish consumption is driven by mercury in fish tissue.

Under future recreational and residential use, the groundwater consumption and soil ingestion pathways would each pose unacceptable risks. Future park patrons (children) would be at risk from soil ingestion due to arsenic and iron concentrations. Iron toxicity was not assessed in the previous risk calculations because no toxicity criteria were available at the time and iron is an essential human nutrient. The noncarcinogenic risks attributable to the groundwater ingestion pathway are due to antimony, iron, thallium, manganese and arsenic. Antimony, iron, manganese and thallium exceeded their respective MCLs in two of the monitoring wells. Arsenic and beryllium presented an unacceptable cumulative carcinogenic risk via the ingestion pathway; however, individually these contaminants did not exceed their respective MCLs. Bis(2-ethylhexyl phthalate, a contaminant previously evaluated in the Supplemental Investigation, was not included in the Five-Year Review risk recalculation because it was not detected above its MCL. The Five-Year Review investigation confirmed the 1990 Supplemental Investigation conclusion that groundwater must not be made available as a potable water source since this would present a risk to any and all users.

The Five-Year Review ecological risk assessment determined that the Black River, including the region located near the quarry discharge outfall, has not been impacted by the RSQ Site and the Ohio Water Quality Standards are being met. This finding applies to surface water, sediment, and aquatic organisms, including fish and aquatic receptors, such as piscivorus birds and terrestrial organisms inhabiting the vicinity of the Black River. The benthic organisms inhabiting the quarry sediments are currently subject to adverse impacts from the sediment contaminants, however, these impacts would be intensified by sediment remediation due to the unavoidable resuspension of contaminants.

The recommendations of the Five-Year Review for limiting or preventing such exposures included restoring the fence to functional condition, posting warning signs, and conducting monthly inspections of the fence, with increased vigilance in warm weather, to detect and repair vandalism to the fence and signs. The Review further recommended that groundwater monitoring be performed during future Five-Year Reviews to determine whether contaminant levels are increasing or decreasing in the groundwater with respect to the MCLs. However, since there are no current or anticipated future exposures to groundwater due to the availability of the Elyria municipal water supply, no human health risks are presented. The U.S. EPA recommended that the City of Elyria enact land use restrictions so that no residential development could occur and that the use of groundwater as a potable water source would be prohibited for current and future commercial/industrial or public purposes.

In response to U.S. EPA's recommendation, the City of Elyria passed an emergency Resolution of Intent on November 1, 1999 to prohibit certain uses of the Site as a result of the Five-Year Review findings. In September 2001, U.S. EPA issued an ESD to the ROD which memorialized the addition of institutional controls and deed restrictions to the RA. The ESD specifically set forth the following eight conditions: (1) Restrict property use of the to H–I (Heavy Industrial) uses only; (2) prohibit the use of groundwater as a source of drinking water; (3) require the use of the City of Elyria municipal water supply as the source of potable water for any industrial or commercial development or public use; (4) post warning signs to keep off the quarry Site; (5) maintain the perimeter fence; (6) prohibit fishing, swimming and boating in the quarry; (7) prohibit public access or use of the quarry, its sediments and soil; and, (8) conduct and sufficiently inspect the Site to ensure that the previous controls are complied with.

The City of Elyria enacted a Declaration of Restrictions for the RSQ Site on June 21, 2002, authorized by Elyria City Ordinance No. 2002–119. The Declaration institutionalized the preceding eight conditions of the ESD and will run with the land, binding all current and future owners. Should a violation of the ordinance occur, the City will be able to take the appropriate enforcement action. U.S. EPA believes that the addition of institutional controls and deed restrictions will prevent or appropriately limit human contact with the Site, thereby enhancing the remedy's overall protectiveness. The next (second) Five-Year Review is scheduled for completion by September 30, 2003. The second Five-Year Review investigation will include, but will not be limited to the collection and analysis of samples from the RSQ Site groundwater, soil, surface water and fish tissue. A Five-Year Review Report documenting the results of the remedy assessment will be made available in the Site information repositories after September 30, 2003.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with the concurrence of the State of Ohio, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and Five-Year Reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is proceeding without prior publication. This action will be effective November 12, 2002, unless EPA receives adverse comments by October 15, 2002. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and as appropriate, continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Dated: August 28, 2002.

Norman Niedergang,

Acting Regional Administrator, Region V.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under Ohio ("OH") by removing the site name "Republic Steel Corp. Quarry" and the city "Elyria".

[FR Doc. 02–22981 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032–2127 02; I.D. 082702D]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Adjustment to 2002 Quotas; Commercial Quota for New York

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

ACTION: Commercial quota adjustment

SUMMARY: NMFS issues this notification announcing an adjustment to the 2002 commercial Atlantic bluefish quota for the State of New York. This action complies with regulations implementing the Fishery Management Plan for Atlantic Bluefish (FMP), which requires that landings in excess of a state's commercial quota be deducted from a state's respective quota the following year. The public is advised that a quota adjustment has been made and is informed of the revised quota for the affected state.

DATES: Effective September 12, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing Atlantic bluefish management measures are found at 50 CFR part 648, subpart J. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160. The final specifications for the 2001 Atlantic bluefish fishery set a total commercial quota equal to 9.58 million lb (4.35 million kg)(66 FR 23625; May 9, 2001). New York's quota share was calculated to be 995,204 lb (451,544 kg). However, in 2001, New York received an addition to its quota of 200,000 lb (90,704 kg) via transfers from other states under provisions at § 648.160(f). Therefore, New York's final adjusted 2001 quota was 1,195,204 lb (542,289 kg).

Section 648.160(e)(2) provides that all landings in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year.

Based on dealer reports and other available information, NMFS has determined that the State of New York landed 1,411,268 lb (640,231 kg) of Atlantic bluefish in 2001, thus exceeding its 2001 adjusted commercial quota by 216,064 lb (98,033 kg). Landings for other states were below their respective quotas.

On June 6, 2002, final specifications for the 2002 commercial Atlantic bluefish became effective (67 FR 38909). Total commercial harvest was specified at 10.5 million lb (4.76 million kg). New York's share of the commercial quota for 2002 totaled 1,090,436 lb (494,753 kg). Consistent with the regulations regarding the disposition of overages, New York's 2002 Atlantic bluefish commercial quota is hereby reduced by 216,064 lb (98,033 kg) from 1,090,436 lb (494,753 kg) to 874,372 lb (396,721 kg).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: september 5,2002.

Virginia M. Fay,

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

[FR Doc. 02–23098 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 177
Thursday, September 12, 2002

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 AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1405

RIN 0560–AG69

Disqualification for Crop Insurance Fraud

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule implements statutory provisions which render a producer ineligible for certain benefits if that person is found to be engaged in crop insurance fraud.

DATES: Comments must be received on or before November 12, 2002 to be assured of consideration.

ADDRESS: Comments should be directed to, Sandy Bryant, Branch Chief, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–4380.

FOR FURTHER INFORMATION CONTACT: Sandy Bryant, (202) 720–4380.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule was reviewed in conformance with Executive Order 12866, has been determined to be not significant, and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule.

Environmental Evaluation

An environmental evaluation was performed and determined that this rule will not impact the quality of the human environment. Thus, the Agency is not required to prepare an environmental assessment or Environmental Impact Statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This final rule preempts any State law that is inconsistent with its provisions. Before any legal action may be brought concerning this rule, all administrative remedies provided must be exhausted.

Executive Order 12372

Executive Order 12372 requires consultation by Federal Agencies with State and local officials when providing funds or assistance that may require non-Federal input. The programs affected by this rule were excluded from the scope of this Executive Order in the Notice related to 7 CFR part 3015 published at 48 FR 29115 on June 24, 1983.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates as defined in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This rule has no effect on the information collection requirements of the Agency.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Producer Disqualification

This proposed rule implements section 121(a) of the Agricultural Risk Protection Act of 2000 (ARPA) (Pub. L. 106–224), signed June 20, 2000. ARPA amended section 515(h)(3)(B) of the Federal Crop Insurance Act (7 U.S.C. 1514) to provide that a producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit produced under each of the following:

- ARPA (Pub. L. 106–224).
- The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including Noninsured Crop Disaster Assistance Program under section 196 of that act (7 U.S.C. 7333).
- The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).
- The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).
- The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).
- Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).
- The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).
- Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities.

ARPA provided that the disqualification of the program participant was at the discretion of the Secretary of Agriculture based on the gravity of the violation, the type and amount of the sanction to be imposed.

Covered benefits under the statute include crop insurance benefits administered by the Federal Crop Insurance Corporation (FCIC). FCIC will make the basic finding of violation and thus the basic disqualification decision. This rule simply provides for applying the disqualification to programs either administered by the Department of Agriculture's Farm Service Agency or conducted using funds of the Commodity Credit Corporation. The period of disqualification would automatically be that found right by FCIC for its own program. This will allow for consistent results between agencies and allowed for one hearing process to resolve all issues.

List of Subjects in 7 CFR Part 1405

Loan Programs–agricultural, Price support programs.

Accordingly, it is proposed that 7 CFR part 1405 be amended as follows:

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for part 1405 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

2. Part 1405 is amended by adding § 1405.7 to read as follows:

§ 1405.7 Disqualification due to Federal Crop Insurance fraud.

(a) Section 1515(h) of the Federal Crop Insurance Act (FCIA) provides that

a person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 1515 (h)(3). In section 1515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) Title V of the FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the noninsured crop disaster assistance producer under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

(7) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations in this connection are made by FCIC. However, upon notice from FCIC to the Commodity Credit Corporation (CCC) that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person shall be considered ineligible for payments administered by the Farm Service Agency (FSA) or made using Commodity Credit Corporation funds for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

Signed in Washington, DC, on September 3, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–23234 Filed 9–11–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

12 CFR Part 1750

RIN 2550–AA26

Office of Federal Housing Enterprise Oversight; Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing to make technical and correcting amendments to Appendix A to Subpart B of 12 CFR Part 1750 Risk-Based Capital. The proposed amendments are intended to enhance the accuracy of the calculation of the risk-based capital requirement for the Enterprises.

DATES: Comments regarding this Notice of Proposed Rulemaking must be received in writing on or before September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Pomeranz, Senior Accounting Specialist, Office of Risk Analysis and Model Development, telephone (202) 414–3796 or Jamie Schwing, Associate General Counsel, telephone (202) 414–3787 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test on September 13, 2001, 12 CFR part 1750 (the Rule), which formed the basis for determining the risk-based capital requirement for the federally sponsored housing enterprises-Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1]

This document proposes to make minor technical corrections to the Rule and to update the treatment of Financial Accounting Standard 133 (FAS 133)[2] in the Rule. These changes relate to:

(1) Capital classification, which would be updated to cross reference to the Prompt Supervisory Response and Corrective Action regulation, 12 CFR part 1777;

(2) Out-of-date third party sources of information related to interest rate indexes (*e.g.* 30-year CMT, Bloomberg Tickers), which would be updated to reflect currently available indexes. Specifically, the 30-year constant maturity yield is no longer reported by the Federal Reserve in the H.15 Release. In its place, the U.S. Treasury Department has developed a methodology using its "Long-Term Average Rate" and "Extrapolation Factors" designed to generate a substitute for the 30-year CMT yield series discontinued in February 2002. Similarly, the Bloomberg tickers for the Federal Agency Cost of Funds would be updated. Table 3–18 would be amended to reflect these changes;

(3) Credit Ratings in Table 3–30, which would be updated to include certain credit ratings used in the marketplace that were not listed in the original table. Specifically, Moody assigns an additional rating from VMIG1 through VMIG3 to quantify the risks of the demand feature, and Standard & Poor's rates short term issuances as SP–1+, SP–1, SP–2, and SP–3;

(4) Paragraph 3.6.3.4.3.1[a]3.a on single family default and prepayment explanatory variables, which would be replaced in full, including equations, to correct the parenthetical (q= -7, -6,...0,1,...40);

(5) Table 3–35, in which the explanatory variable categories for Relative Spread (RS_q) in the explanatory variable column were identified incorrectly;

(6) The equation related to mortgage credit enhancement procedures at paragraph 3.6.3.6.4.3, which would be corrected to reflect the fact that in extreme circumstances (*i.e.*, when defaults are zero), an equation in section 3.6.3.6.4.3 Morgtgage Credit Enhancement Procedures produces "divide by zero" errors in the computer code;

(7) Table 3–56 and 3–57, with respect to the definition for "unamortized balance" for the RBC input for single class MBS cash flows;

(8) Table 3–59, which incorrectly reported values for the weighted average Original LTV, rather than the weighted average Amortized Original LTV (AOLTV) of the combined Enterprise portfolios by Original LTV category, as of 2Q2000. Also, the specific amounts would be removed from column 2 and column 3 of the table, because OFHEO plans to update this table annually. A footnote to the table notes that this information will be updated according

[1] Risk-based Capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750, *as amended*, 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002).

[2] Financial Account Standards Board Statement of Financial Accounting Standard 133, "Accounting for Derivative Instruments and Hedging Activities," June 1998.

to OFHEO guideline #404 and will be available on the OFHEO website;[3]

(9) The equation in 3.7.3.1.g.2 for calculating haircuts for mortgage backed securities, which mistakenly specified an addition sign (+) rather than a multiplication sign (×) in the **Federal Register** version of the document;

(10) Table 3–68, which would be revised to reflect that the Table relates to long caps and floors;

(11) The calculation of common stock dividends to reflect the effects of FAS 133 adjustments on after tax income; and

(12) The calculation of the risk-based capital requirement to account for the effects of FAS 133 on Total Capital.

All of the proposed amendments address provisions of the Rule that are out-of-date, incorrect, or contain typographical errors. Most of the amendments do not materially impact the risk-based capital requirement for either Enterprise and would improve the accuracy of the calculation of the risk-based capital requirement for each Enterprise.

The change to the calculation of the risk-based capital requirement to account for the effect of FAS 133 on Total Capital will impact the risk-based capital requirement in any particular quarter, but will not consistently raise or consistently lower capital requirements for the Enterprises. If the change had been applied in the first quarter of 2002, Freddie Mac's risk-based capital requirement would have increased by approximately $1.652 billion (an amount that would have left Freddie Mac with a $14.028 billion surplus) and Fannie Mae's requirement would have increased by about $121 million (an amount that would have left Fannie Mae with a $5.941 billion surplus) if the adjustments had been made at that time. Depending upon the market value of an Enterprise's derivative portfolio, however, the proposed change could decrease, rather than increase an Enterprise's capital in a particular quarter.

The initial Rule included an adjustment that anticipated FAS 133, but at that time, the full impact of FAS 133 on the Enterprises' capital requirements was not clear. With the benefit of subsequent analysis, OFHEO now proposes to add precision to the FAS 133 adjustment, as explained below.

The stress test mandated by Congress determines for specific economic scenarios, the impact on Enterprise capital over time of the income and expenses associated with all on- and off-balance sheet positions. The stress test scenarios involve changing interest rates. FAS 133 requires that many previously off-balance sheet derivative positions be reflected on the balance sheet at their fair values. These fair values reflect the present values of gains or losses that are expected, given current interest rates, to be realized over time.

In the Rule, OFHEO indicated that, to the extent that Generally Accepted Accounting Principles (GAAP) was applicable, the risk-based capital requirement calculation should adhere to GAAP. The Rule, however, also recognized that, in certain situations, a rigid conformity to GAAP would not be possible given the stylized nature of the stress test. OFHEO, therefore, determined that with respect to FAS 133, it would be "impracticable and unreasonably speculative to make mark-to-market adjustments over the ten-year stress test." [4] Consistent with that determination, OFHEO stated that the stress test would not reflect derivatives at their fair market values during the stress test as required by FAS 133. Instead, these assets are adjusted to an amortized cost basis at the start of the stress test.[5]

The stress test, therefore, reflects the effectiveness of hedges by considering their cash flows over ten years, without marking positions to market monthly over the ten years of the stress period. Thus, before applying the stress test, OFHEO backs out the effects of FAS 133 from Enterprise balance sheets, reflecting assets, liabilities and off-balance sheet items at amortized cost.

Per Section 3.10.3.6.2[a] 1.b of the Rule, the carrying value of derivative instruments and related hedged items that are designated Fair Value Hedges are reversed, increasing or decreasing retained earnings. The capital value arrived at after these adjustments (starting capital) is available at the beginning of, and is depleted during, the stress test (per Section 3.12.2). This starting capital value differs from "Total Capital" as defined in section 1750.11(n) of the regulation (and in the 1992 Act, 12 U.S.C. 4502 (18)) and, as publicly disclosed by the Enterprises. Unlike the starting capital, Total Capital does not include the starting position adjustments reversing the effects of FAS 133. The adjustments affect the amount of retained earnings throughout the stress test, a critical element in computing the risk-based capital requirement. Because the 1992 Act requires that the risk-based capital surplus or deficit must be based on Total Capital (12 U.S.C. 4611), it is appropriate to adjust the amount of capital depleted during the stress test to add back in the effects of FAS 133. For this reason, the proposed amendment adds FAS 133 starting-position adjustments that affect retained earnings (which may be positive or negative amounts) to the amount of capital consumed during the stress test. Implementation of the recommended treatment will result in a risk-based capital requirement calculated on a basis more consistent with the calculation of Total Capital.

This proposal is not expected to generate significant commentary, as all of the proposed amendments are technical in nature and address provisions of the Rule that are out-of-date, incorrect or contain typographical errors. Accordingly, OFHEO has determined that the ten-day comment period provides sufficient opportunity for public response.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This document contains proposed amendments to the Rule, which was designated a major rule by the Office of Management and Budget (OMB). The proposed amendments provide that Enterprise risk-based capital requirements would be more consistent with both statutory requirements and Enterprise disclosures. OFHEO has determined that the amendments to the Rule are not economically significant for purposes of Executive Order 12866. OFHEO has not found evidence that the amendments would require the Enterprises to expend more than $100 million nor that they would have a cumulative impact of that amount on the economy. The impact of the amendment is to align risk with capital more accurately, but the amendments do not consistently raise or lower capital requirements for the Enterprises. Further, the adjustments proposed herein are of a technical nature that address accounting and reporting concerns and do not involve novel policy issues. Therefore, this amendment is not a "significant rule" under Executive Order 12866.

Paperwork Reduction Act

These proposed amendments do not contain any information collection

[3] The OFHEO guidelines referred to in this technical amendment are published on OFHEO's web site at: *http://www.OFHEO.gov*. Some guidelines may be pending review at the time of publication, but will be made publicly available in the near future.

[4] 66 FR 47786.

[5] 66 FR 47786.

requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to amend 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4615, 4618.

2. Amend appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–3 in paragraph 3.1.2.1 [c];

b. Revise Table 3–18 in paragraph 3.1.3.1 [c];

c. Revise paragraph 3.3.1 [b];

d. Revise Table 3–30 in paragraph 3.5.3 [a] 2.a.;

e. Revise paragraph 3.6.3.4.3.1 [a] 3.a.;

f. Revise Table 3–35 in paragraph 3.6.3.4.3.2 [a] 1.;

g. In paragraph 3.6.3.6.3.3 [a] 1., remove the term "GL_m" both places it appears and replace it with "GLS_m".

h. In paragraph 3.6.3.6.4.3 [a] 5., after the words "Defaulted UPB." and before the equation, by adding the following equation:

$$\text{If } DEF_m = 0 \text{ then } ALPD_m^{DCC} = 0$$

i. In paragraph 3.7.2.1.1., Table 3–56, in the row entitled "Unamortized Balance", remove the three sentences in the Description column and replace them with the following four sentences: "The sum of all unamortized discounts, premiums, fees, commissions, etc. If proceeds from debt or amount paid for an asset total greater than par, report the premium as a positive number. If proceeds from debt or amount paid for an asset total less than par, report the discount as a negative number. Report all fees as a negative number."

j. In paragraph 3.7.2.1.2 [a], Table 3–57, in the row entitled "Unamortized Balance", remove the three sentences in the Description column and replace them with the following four sentences: "The sum of all unamortized discounts, premiums, fees, commissions, etc.

If proceeds from debt or amount paid for an asset total greater than par, report the premium as a positive number. If proceeds from debt or amount paid for an asset total less than par, report the discount as a negative number. Report all fees as a negative number."

k. Revise Table 3–59 in paragraph 3.7.2.3;

l. Revise paragraph 3.7.3.1 [g] 2.;

m. Revise Table 3–68 in paragraph 3.8.3.6.1 [e] 2.;

n. Revise paragraph 3.10.3.2 [a] 2.;

o. In paragraph 3.11.2 [a], remove the cross reference "1750.2(c)" and replace it with the cross reference "1750.12(c)";

p. Revise paragraph 3.11.3 [c];

q. In paragraph 3.12.2 [a], add the words "outputs and selected inputs from" after the words "Alternative Modeling Treatments, and"; and

r. Add new paragraph 3.12.3 [a] 9. after paragraph 3.12.3 [a] 8.

The revisions and additions read as follows:

Appendix A to Subpart B of Part 1750—Risk-Based Capital Test Methodology and Specifications

* * * * *

3.1.2.1. * * *

[c] * * *

TABLE 3–3.—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Single Family Product Code	Identifies the mortgage product types for single family loans	Fixed Rate 30YR. Fixed Rate 20YR. Fixed Rate 15YR. 5 Year Fixed Rate Balloon. 7 Year Fixed Rate Balloon. 10 Year Fixed Rate Balloon. 15 Year Fixed Rate Balloon. Adjustable Rate. Step Rate ARMs. Second Lien. Other.
Census Division	The Census Division in which the property resides. This variable is populated based on the property's state code.	East North Central. East South Central. Middle Atlantic. Mountain. New England. Pacific. South Atlantic. West North Central. West South Central.
Relative Loan Size	Assigned classes for the loan amount at origination divided by the simple average of the loan amount for the origination year and for the state in which the property is located. Average loan size for the appropriate quarter is provided by OFHEO in accordance with OFHEO guideline #403, based upon data from both Enterprises. It is expressed as a decimal.	0<=Size<=0.4. 0.4<Size<=0.6. 0.6<Size<=0.75. 0.75<Size<=1.0. 1.0<Size<=1.25. 1.25<Size<=1.5. Size>1.5.

* * * * * [c] * * *

3.1.3.1 * * *

TABLE 3–18.—INTEREST RATE AND INDEX INPUTS

Interest Rate Index	Description	Source
1 MO Treasury Bill	One-month Treasury bill yield, monthly simple average of daily rate, quoted as actual/360	Bloomberg Generic 1 Month U.S. Treasury bill Ticker: GB1M (index)
3 MO CMT	Three-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
6 MO CMT	Six-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
1 YR CMT	One-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
2 YR CMT	Two-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
3 YR CMT	Three-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
5 YR CMT	Five-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
10 YR CMT	Ten-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
20 YR CMT	Twenty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
30 YR CMT	Thirty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield after February 15, 2002, estimated according to OFHEO guideline #402	Federal Reserve H.15 Release factors used for estimation, U.S. Dept. of Treasury
Overnight Fed Funds (Effective)	Overnight effective Federal Funds rate, monthly simple average of daily rate	Federal Reserve H.15 Release
1 Week Federal Funds	1 week Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED01W(index)
6 Month Fed Funds	6 month Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED06M(index)
Conventional Mortgage Rate	FHLMC (Freddie Mac) contract interest rates for 30 YR fixed-rate mortgage commitments, monthly average of weekly rates	Federal Reserve H.15 Release
FHLB 11th District COF	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly	Bloomberg Cost of Funds for the 11th District Ticker: COF11 (index)
1 MO LIBOR	One-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0001M (index)
3 MO LIBOR	Three-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0003M (index)
6 MO LIBOR	Six-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0006M (index)
12 MO LIBOR	One-year London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0012M (index)
Prime Rate	Prevailing rate as quoted, monthly average of daily rates	Federal Reserve H.15 Release
1 MO Federal Agency COF	One-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 1 Month Agency Discount Note Yield Ticker: AGDN030Y (index)
3 MO Federal Agency COF	Three-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 3 Month Agency Discount Note Yield Ticker: AGDN090Y (index)
6 MO Federal Agency COF	Six-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 6 Month Agency Discount Note Yield Ticker: AGDN180Y (index)
1 YR Federal Agency COF	One-year Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 12 Month Agency Discount Note Yield Ticker: AGDN360Y (index)
2 YR Federal Agency COF	Two-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 2 Year Agency Fair Market Yield Ticker: CO842Y Index

TABLE 3–18.—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
3 YR Federal Agency COF	Three-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 3 Year Agency Fair Market Yield Ticker: CO843Y Index
5 YR Federal Agency COF	Five-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 5 Year Agency Fair Market Yield Ticker: CO845Y Index
10 YR Federal Agency COF	Ten-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 10 Year Agency Fair Market Yield Ticker: CO8410Y Index
30 YR Federal Agency COF	Thirty-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 30 Year Agency Fair Market Yield Ticker: CO8430Y Index
15 YR fixed-rate mortgage	FHLMC (Freddie Mac) contract interest rates for 15 YR fixed-rate mortgage commitments, monthly average of FHLMC (Freddie Mac) contract interest rates for 15 YR	Bloomberg FHLMC 15 YR, 10 day commitment rate Ticker: FHCR1510 (index)
7-year balloon mortgage rate	Seven-year balloon mortgage, equal to the Conventional Mortgage Rate less 50 basis points	Computed

* * * * *

3.3.1 * * *

[b] The process for determining interest rates is as follows: first, identify the values for the necessary Interest Rates at time zero; second, project the ten-year CMT for each month of the Stress Period as specified in the 1992 Act; third, project the 1-month Treasury yield, the 3-month, 6-month, 1-, 2-, 3-, 5-, and 20-year CMTs; fourth, estimate the 30-year CMT; fifth, project non-treasury Interest Rates, including the Federal Agency Cost of Funds Index; and sixth, project the Enterprises Cost of Funds Index, which provides borrowing rates for the Enterprises during the Stress Period, by increasing the Agency Cost of Funds Index by 10 basis points for the last 108 months of the Stress Test. Guidance in determining interest rates is available under OFHEO Guideline No. 402, "Risk Based Capital Process for Capturing and Utilizing Interest Rates Files," which is available on OFHEO's web site, *http://www.OFHEO.Gov.*

* * * * *

3.5.3 * * *

[a] * * *

2. * * *

a. * * *

TABLE 3–30.—RATING AGENCIES MAPPINGS TO OFHEO RATINGS CATEGORIES

OFHEO ratings category	AAA	AA	A	BBB	Below BBB and unrated
Standard & Poor's Long-Term	AAA	AA	A	BBB	Below BBB and Unrated
Fitch Long-Term	AAA	AA	A	BBB	Below BBB and Unrated
Moody's Long-Term	Aaa	Aa	A	Baa	Below Baa and Unrated
Standard & Poor's Short-Term	A–1+	A–1	A–2	A–3	SP–3, B or Below and Unrated
	SP–1+	SP–1	SP–2		
Fitch Short-Term	F–1+	F–1	F–2	F–3	B and Below and Unrated
Moody's Short-Term [1]	Prime-1	Prime-1	Prime-2	Prime-3	Not Prime, SG and Unrated
	MIG1	MIG1	MIG2	MIG3	
	VMIG1	VMIG1	VMIG2	VMIG3	
Fitch Bank Individual Ratings	A	B	C	D	E
		A/B	B/C	C/D	D/E
Moody's Bank Financial Strength Rating	A	B	C	D	E

[1] Any short-term rating that appears in more than one OFHEO category column is assigned the lower OFHEO rating category.

* * * * *

3.6.3.4.3.1 * * *

[a] * * *

3. * * *

a. Compare mortgage rates for each quarter of the Stress Test and for the eight quarters prior to the start of the stress test (q = −7, −6,...0, 1,...40):

$$b_q = 1 \text{ if } MCON_m + 0.02 \leq MIR_m$$

for all three months in quarter q

(i.e., $m = 3q\text{-}2,\ 3q\text{-}1,\ 3q$),

$$b_q = 0 \text{ otherwise}$$

Note: For this purpose, $MCON_m$ is required for the 24 months (eight quarters) prior to the start of the Stress Test. Also, $MIR_m = MIR_0$ for $m < 0$.

* * * * *

3.6.3.4.3.2. * * *

[a] * * *

1. * * *

TABLE 3–35.—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)
A_q						
$0 \leq A_q \leq 4$	−0.6276	−0.6122	−0.7046	−0.5033	−0.7721	−0.6400
$5 \leq A_q \leq 8$	−0.1676	0.1972	−0.2259	0.1798	−0.2738	0.1721
$9 \leq A_q \leq 12$	−0.05872	0.2668	0.01504	0.2744	−0.09809	0.2317
$13 \leq A_q \leq 16$	0.07447	0.2151	0.2253	0.2473	0.1311	0.1884

TABLE 3–35.—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE—Continued

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)
$17 \leq A_q \leq 20$	0.2395	0.1723	0.3522	0.1421	0.3229	0.1900
$21 \leq A_q \leq 24$	0.2773	0.2340	0.4369	0.1276	0.3203	0.2356
$25 \leq A_q \leq 36$	0.2740	0.1646	0.2954	0.1098	0.3005	0.1493
$37 \leq A_q \leq 48$	0.1908	−0.2318	0.06902	−0.1462	0.2306	−0.2357
$49 \leq A_q$	−0.2022	−0.4059	−0.4634	−0.4314	−0.1614	−0.2914
LTV_{ORIG}						
$LTV_{ORIG} \leq 60$	−1.150	0.04787	−1.303	0.08871	−1.280	0.02309
$60 < LTV_{ORIG} \leq 70$	−0.1035	−0.03131	−0.1275	−0.005619	−0.06929	−0.02668
$70 < LTV_{ORIG} \leq 75$	0.5969	−0.09885	0.4853	−0.09852	0.6013	−0.05446
$75 < LTV_{ORIG} \leq 80$	0.2237	−0.04071	0.1343	−0.03099	0.2375	−0.03835
$80 < LTV_{ORIG} \leq 90$	0.2000	−0.004698	0.2576	0.004226	0.2421	−0.01433
$90 < LTV_{ORIG}$	0.2329	0.1277	0.5528	0.04220	0.2680	0.1107
$PNEQ_q$						
$0 < PNEQ_q \leq 0.05$	−1.603	0.5910	−1.1961	0.4607	−1.620	0.5483
$0.05 < PNEQ_q \leq 0.1$	−0.5241	0.3696	−0.3816	0.2325	−0.5055	0.3515
$0.1 < PNEQ_q \leq 0.15$	−0.1805	0.2286	−0.1431	0.1276	−0.1249	0.2178
$0.15 < PNEQ_q \leq 0.2$	0.07961	−0.02000	−0.04819	0.03003	0.07964	−0.02137
$0.2 < PNEQ_q \leq 0.25$	0.2553	−0.1658	0.2320	−0.1037	0.2851	−0.1540
$0.25 < PNEQ_q \leq 0.3$	0.5154	−0.2459	0.2630	−0.1829	0.4953	−0.2723
$0.3 < PNEQ_q \leq 0.35$	0.6518	−0.2938	0.5372	−0.2075	0.5979	−0.2714
$0.35 < PNEQ_q$	0.8058	−0.4636	0.7368	−0.3567	0.7923	−0.3986
B_q	1.303	−0.3331	0.8835	−0.2083	1.253	−0.3244
RLS						
$0 < RLS_{ORIG} \leq 0.4$	.....	−0.5130	.....	−0.4765	.....	−0.4344
$0.4 < RLS_{ORIG} \leq 0.6$	.....	−0.3264	.....	−0.2970	.....	−0.2852
$0.6 < RLS_{ORIG} \leq 0.75$	.....	−0.1378	.....	−0.1216	.....	−0.1348
$0.75 < RLS_{ORIG} \leq 1.0$	.....	0.03495	.....	0.04045	.....	0.01686
$1.0 < RLS_{ORIG} \leq 1.25$	.....	0.1888	.....	0.1742	.....	0.1597
$1.25 < RLS_{ORIG} \leq 1.5$	.....	0.3136	.....	0.2755	.....	0.2733
$1.5 < RLS_{ORIG}$	.....	0.4399	.....	0.4049	ENT≤0.4045	
IF	0.4133	−0.3084	0.6419	−0.3261	0.4259	−0.3035
RS_q						
$RS_q \leq -0.20$	.....	−1.368	.....	−0.5463	.....	−1.195
$-0.20 < RS_q \leq -0.10$	.....	−1.023	.....	−0.4560	.....	−0.9741
$-0.10 < RS_q \leq 0$	.....	−0.8078	.....	−0.4566	.....	−0.7679
$0 < RS_q \leq 0.10$	.....	−0.3296	.....	−0.3024	.....	−0.2783
$0.10 < RS_q \leq 0.20$	.....	0.8045	.....	0.3631	.....	0.7270
$0.20 < RS_q \leq 0.30$	.....	1.346	.....	0.7158	.....	1.229
$0.30 < RS_q$	.....	1.377	.....	0.6824	.....	1.259
PS_q						
$PS_q \leq -0.20$	.....	.....	0.08490	0.6613	.....	.....
$-0.20 < PS_q \leq -0.10$	.....	.....	0.3736	0.4370	.....	.....

TABLE 3–35.—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE—Continued

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)
$-0.10 < PS_q \leq 0$	.....	.....	0.2816	0.2476	.....	.....
$0 < PS_q \leq 0.10$	.....	.....	0.1381	0.1073	.....	.....
$0.10 < PS_q \leq 0.20$	.....	.....	−0.1433	−0.3516	.....	.....
$0.20 < PS_q \leq 0.30$	.....	.....	−0.2869	−0.5649	.....	.....
$0.30 < PS_q$	.....	.....	−0.4481	−0.5366	.....	.....
YCS_q						
$YCS_q < 1.0$	.....	−0.2582	.....	−0.2947	.....	−0.2917
$1.0 \leq YCS_q < 1.2$	.....	−0.02735	.....	−0.1996	.....	−0.01395
$1.2 \leq YCS_q < 1.5$	.....	−0.04099	.....	0.03356	.....	−0.03796
$1.5 \leq YCS_q$	.....	0.3265	.....	0.4608	.....	0.3436
$IREF_q$	.....	.....	0.1084	−0.01382	.....	.....
PROD						
ARMs	.....	.....	0.8151	0.2453	.....	.....
Balloon Loans	.....	.....	.....	.....	1.253	0.9483
15-Year FRMs	.....	.....	.....	.....	−1.104	0.07990
20-Year FRMs	.....	.....	.....	.....	−0.5834	0.06780
Government Loans	.....	.....	.....	.....	0.9125	−0.5660
$BCal_{LTV}$						
$LTV_{ORIG} \leq 60$	2.045	—	2.045	—	2.045	—
$60 < LTV_{ORIG} \leq 70$	0.3051	—	0.3051	—	0.3051	—
$70 < LTV_{ORIG} \leq 75$	−0.07900	—	−0.07900	—	−0.07900	—
$75 < LTV_{ORIG} \leq 80$	−0.05519	—	−0.05519	—	−0.05519	—
$80 < LTV_{ORIG} \leq 90$	−0.1838	—	−0.1838	—	−0.1838	—
$90 < LTV_{ORIG}$	0.2913	—	0.2913	—	0.2913	.....
Intercept (β_0, γ_0)	−6.516	−4.033	−6.602	−3.965	−6.513	−3.949

* * * * *

3.7.2.3 * * *

TABLE 3–59.—AGGREGATE ENTERPRISE AMORTIZED ORIGINAL LTV ($AOLTV_0$) DISTRIBUTION [1]

Original LTV	UPB distribution	Wt avg AOLTV for range
00<LTV<=60	.....	.....
60<LTV<=70	.....	.....
70<LTV<=75	.....	.....
75<LTV<=80	.....	.....
80<LTV<=90	.....	.....
90<LTV<=95	.....	.....
95<LTV<=100	.....	.....

TABLE 3–59.—AGGREGATE ENTERPRISE AMORTIZED ORIGINAL LTV ($AOLTV_0$) DISTRIBUTION [1]—Continued

Original LTV	UPB distribution	Wt avg AOLTV for range
100<LTV	.....	.....

[1] Source: RBC Report, combined Enterprise single-family sold loan portfolio. Table 3–59 is updated as necessary with RBC Report combined Enterprise single-family sold loan group data in accordance with OFHEO guideline #404. The contents of the table appear at www.OFHEO.gov.

Note: Amortized Original LTV (also known as the "current-loan-to-original-value" ratio) is the Original LTV adjusted for the change in UPB but not for changes in property value.

* * * * *

3.7.3.1 * * *

[g] * * *

2. Compute:

$$HctAmt_m = (TPR_m + TIR_m) \times HctFac_m$$

* * * * *

3.8.3.6.1 * * *

[e] * * *

TABLE 3–68.—CALCULATION OF MONTHLY CASH FLOWS FOR LONG CAPS AND FLOORS

Instrument	Cash flows
Cap	$(I-K) \times N \times D$ if $I > K$; 0 if $I \leq K$
Floor	$(K-I) \times N \times D$ if $I < K$; 0 if $I \geq K$

* * * * *

3.10.3.2. * * *

[a] * * *

2. *Common Stock.* In the first year of the Stress Test, dividends are paid on common stock in each of the four quarters after preferred dividends, if any, are paid unless the Enterprise's capital is, or after the payment, would be, below the estimated minimum capital requirement.

a. *First Quarter.* In the first quarter, the dividend is the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding.

b. *Subsequent Quarters.*

(1) In the three subsequent quarters, if the preceding quarter's after tax income is greater than after tax income in the quarter preceding the Stress Test (adjusted by the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the larger of (1) the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) the average dividend payout ratio for common stock for the four quarters preceding the start of the Stress Test times the preceding quarter's after tax income (adjusted by the reciprocal of the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost) less preferred dividends paid in the current quarter. In no case may the dividend payment exceed an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter.

(2) If the previous quarter's after tax income is less than or equal to after tax income in the quarter preceding the Stress Test (adjusted by the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the lesser of (1) the dividend per share ratio for common stock for the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter, but not less than zero.

* * * * *

3.11.3 * * *

[c] OFHEO will provide the Enterprise with its estimate of the capital treatment as soon as possible after receiving notice of the New Activity. In any event, the Enterprise will be notified of the capital treatment in accordance with the notice of proposed capital classification provided for in § 1777.21 of this chapter.

* * * * *

3.12.3 * * *

[a] * * *

9. Subtract the net increase (or add the net decrease) in Retained Earnings related to Fair Value Hedges at the start of the stress test made in accordance with section 3.10.3.6.2 [a] 1. b. of this appendix.

* * * * *

Dated: September 6, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–23078 Filed 9–11–02; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 020813189–2189–01]

RIN 0691–AA44

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth a proposed rule to revise the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States.

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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The BE–12 survey is a mandatory survey and is conducted once every 5 years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The proposed benchmark survey will be conducted for 2002. BEA will send the survey to potential respondents in February 2003; responses will be due by May 31, 2003. The last benchmark survey was conducted for 1997. The benchmark survey covers virtually the entire universe of foreign direct investment in the United States in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter.

Changes proposed by BEA in the reporting requirements to be implemented in this proposed rule are: Raising the reporting threshold on the BE–12(SF) short form and the BE–12 Bank form from $3 million to $10 million; directing that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE–12(LF) long form; raising the reporting threshold on the BE–12(LF) long form from $100 million to $125 million; and directing bank holding companies to file a fully consolidated report, including all nonbank operations, on the BE–12 Bank form. (Previously, the nonbanking operations were reported on a separate BE–12(LF) long form or BE–12(SF) short form.) These changes will reduce respondent burden, especially for small companies and bank holding companies.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before November 12, 2002.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. Because of slow mail, and to assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE–49(A), Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC 20005, or (3) e-mail to *David.Belli@bea.gov*. Comments received will be available for public inspection in Room 7005, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., eastern time Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone 202–606–9800.

SUPPLEMENTARY INFORMATION: This proposed rule amends 15 CFR 806.17 to set forth the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, "the Act." Section 4(b) of the Act requires that:

"* * * With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter. In conducting surveys [of U.S. direct investment abroad and foreign direct investment in the United States] pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each

country in which they have significant operations, and (C) related information regarding trade (including trade in both goods and services) between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons."

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The benchmark survey is a census; it covers virtually the entire universe of foreign direct investment in the United States in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for selected items, by State.

The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies. Data from the benchmark survey on U.S. affiliates' employee compensation, profits, interest receipts and expenses, depreciation, and income and other taxes are used by BEA to compute U.S. affiliates' gross product or value added. The estimates are used to measure U.S. affiliates' share of U.S. gross domestic product and to evaluate affiliates' profitability and productivity. Data on employment by affiliates are used to link enterprise-level data on foreign-owned companies collected in the benchmark survey to establishment-level data for the same companies collected by the Census Bureau.

It should be noted that, aside from their use in compiling the U.S. national and international economic accounts, the benchmark survey data are primarily intended as general purpose statistics. Based on past experience, areas of particular and lasting analytical and policy interest include trade in goods and services, employment and employee compensation, profitability, regional location, taxes, and technology. These areas, all of which are addressed by the proposed survey, are also ones for which the Act specifically requires data to be collected. Another area of continuing policy interest, particularly at the State and local levels, is the impact of foreign direct investment on individual States. The data in the survey disaggregated by State are intended to address needs in this area.

The forms to be used in the survey are:

1. Form BE–12(LF) (Long Form)—Report for nonbank majority-owned U.S. affiliates (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) with assets, sales or gross operating revenues, or net income greater than $125 million (positive or negative);

2. Form BE–12(SF) (Short Form)—Report for nonbank majority-owned U.S. affiliates with assets, sales or gross operating revenues, or net income greater than $10 million, but not greater than $125 million (positive or negative) and nonbank minority-owned U.S. affiliates (owned 50 percent or less) with assets, sales or gross operating revenues, or net income greater than $10 million (positive or negative). U.S. affiliates with total assets, sales or gross operating revenues, and net income between $10 million and $30 million (positive or negative) will be required to report only selected data items on the short form;

3. Form BE–12 Bank—Report for U.S. affiliates that are banks, bank holding companies, or banking and nonbanking operations of bank holding companies; and

4. BE–12(X)—Report for claiming exemption from filing a BE–12(LF) long form, BE–12(SF) short form, or BE–12 Bank form.

BEA maintains a continuing dialog with respondents and data users, including its own internal users through the Bureau's Source Data Improvement and Evaluation Program, to ensure that, as far as possible, the required data serve their intended purposes and are available to the maximum extent possible from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In designing the survey, BEA contacted data users outside the Bureau and survey respondents to obtain their views on the proposed benchmark survey. The proposed draft reflects users' and respondents' comments. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are readily available from respondents' books), and BEA's experience in previous benchmark and related annual surveys.

Changes proposed by BEA from the previous benchmark survey include reduction of respondent burden, particularly for small companies, by (1) raising the reporting threshold on the BE–12(SF) short form and the BE–12 BANK form from $3 million to $10 million; (2) directing that only nonbank majority-owned U.S. affiliates of foreign companies be reported on the BE–12(LF) long form; (3) raising the reporting threshold on the BE–12(LF) long form from $100 million to $125 million; and (4) directing bank holding companies (BHC's) to file a fully consolidated report, including all banking and nonbanking operations, on the BE–12 Bank form.

Previously, the banking and nonbanking operations of a BHC were required to file separate reports: the nonbank operations of the BHC filed on the BE–12(LF) long form or BE–12(SF) short form, and the BHC itself and its banking operations filed on the BE–12 Bank form.

In addition, BEA proposes to: (1) Add questions to the BE–12 (LF) long form to collect detail on premiums earned and claims paid for U.S. affiliates operating in the insurance industry; collect detail on finished goods purchased for resale for U.S. affiliates operating in the wholesale and retail trade industries; and collect the percentage of total sales or gross operating revenues that represents e-commerce sales (for example, sales transacted over the Internet). (2) Add four items to the short form that are needed to assure the quality of BEA's estimates of U.S. affiliates' gross product—certain realized and unrealized gains and losses; U.S. income taxes; interest received, and interest paid. (3) Add questions to the BE–12 Bank form to collect information on debt flows with the foreign parent for certain nonbanking subsidiaries included in the fully consolidated BE–12 Bank report; sales of services; interest received and paid; and premiums earned and claims payable by insurance companies included in the consolidated report.

To offset the burden imposed by these additional questions, BEA proposes to remove questions on: (1) Whether a foreign government or government-run pension fund has a voting ownership of at least 5 percent, in any foreign parent or any entity in the parent's ownership chain; (2) the balance sheet classification of land and other property, plant, and equipment (BE–12 long form only); (3) acres of mineral rights owned or leased from others (BE–12 long form only); and (4) the gross book value of land owned (BE–12 short form only).

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O.13132.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

This proposed rule contains a collection of information subject to the Paperwork Reduction Act (PRA) and has been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The survey, as proposed, is expected to result in the filing of reports from approximately 17,700 respondents. The respondent burden for this collection of information is estimated to vary from 20 minutes to 715 hours per response, with an average of 11.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden of the survey is estimated at about 199,500 hours (17,700 times 11.3 hours average burden).

Comments are requested concerning: (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 burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0042, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Few small businesses as defined by the RFA are foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than $10 million are not required to report on the BE–12(SF) short form or BE–12 Bank form. To further reduce reporting burden for smaller companies, the reporting threshold for filing a BE–12(LF) long form has been raised to $125 million, from $100 million in the 1997 survey, and companies with total assets, sales or gross operating revenues and net income (positive or negative) between $10 million and $30 million will be required to report only selected data items on the BE–12(SF) short form.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and recordkeeping requirements.

Dated: August 1, 2002.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 2002. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4, or electronically using BEA's Automated Survey Transmission and Retrieval (ASTAR) system. This may be accomplished by completing and returning either Form BE–12(X) within 30 days of its receipt or by May 31, 2003, whichever is sooner, if Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank do not apply, or by completing and returning Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank, whichever is applicable, by May 31, 2003.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, *i.e.*, for

each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 2002 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE–12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Long Form) must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year and that was majority-owned by one or more foreign parents (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(2) Form BE–12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Short Form) must be completed and filed by May 31, 2003 by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a majority-owned U.S. affiliate (not just the foreign parent's share) exceeded $10 million, but no one item exceeded $125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes, or

(iii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a minority-owned U.S. affiliate (not just the foreign parent's share) exceeded $10 million (positive or negative) at the end of, or for, its 2002 fiscal year (a "minority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less):

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(3) Form BE–12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—2002 BANK must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE–12 survey, covers business enterprises engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, and bank holding companies, including all subsidiaries or units of a bank holding company and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(4) Form BE–12(X)–Benchmark Survey of Foreign Direct Investment in the United States-2002 Claim for Exemption from Filing BE–12(LF), BE–12(SF), and BE–12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 2003, whichever is sooner, by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 2002 benchmark survey), but is exempt from filing Form BE–12(LF), Form BE–12(SF), and Form BE–12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 2002 benchmark survey but that is not otherwise required to file the Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file form BE–12(LF), BE–12(SF), or Form BE–12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed $10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 2002 fiscal year but is exempt from filing a completed Form BE–12(LF), BE–12(SF), or Form BE–12 Bank, it must nevertheless file a completed and certified Form BE–12(X).

(f) *Due date.* A fully completed and certified Form BE–12(LF), Form BE–12(SF), or BE–12 Bank is due to be filed with BEA not later than May 31, 2003. A fully completed and certified Form BE–12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 2003, whichever is sooner.

[FR Doc. 02–23099 Filed 9–11–02; 8:45 am]
BILLING CODE 3510–06–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

Standard for the Flammability of Clothing Textiles; Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering amending the flammability standard for clothing textiles. The standard, originally issued in 1953, has become outdated in several respects. The Commission is considering changes that would enable the standard to better reflect current consumer practices and technologies and would clarify several aspects of the standard. The Commission invites comments concerning the risk of injury identified in this notice, the regulatory alternatives being considered, and other possible alternatives. The Commission also invites submission of any existing standard or statement of intention to modify or develop a voluntary standard to address the flammability risk of clothing textiles.

DATES: Comments and submissions must be received by November 12, 2002.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to *cpsc-os@cpsc.gov*. Comments should be captioned "Clothing ANPR."

FOR FURTHER INFORMATION CONTACT: Margaret Neily, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0508, extension 1293.

SUPPLEMENTARY INFORMATION:

A. Background

1. History of the Standard

The Commission is considering amending the Standard for the Flammability for Clothing Textiles, 16 CFR Part 1610, which covers clothing and textile fabrics intended for use in clothing. It excludes hats, gloves, footwear, and interlining fabrics. The standard provides a test to determine whether such clothing and fabrics exhibit "rapid and intense burning," and are therefore highly flammable.

In 1953, Congress enacted the Flammable Fabrics Act of 1953 ("FFA"), (Pub. L. 83–88, 67 Stat. 111). As enacted in 1953 and amended in 1954, the FFA prohibited the importation, manufacture for sale, or the sale in commerce of any article of wearing apparel, which is "so highly flammable as to be dangerous when worn by individuals." The FFA of 1953 specified that a test, first published by the Department of Commerce as a voluntary commercial standard, then called "Flammability of Clothing Textiles, Commercial Standard ("CS") 191–53," shall be used to determine if fabric or clothing is "so highly flammable as to be dangerous when worn by individuals."

In 1967, Congress amended the FFA, expanding its coverage and authorizing the Secretary of Commerce to issue flammability standards through rulemaking. A savings clause kept the flammability standard for clothing textiles that the 1953 Act had mandated into effect until superseded or modified by the Secretary of Commerce through the procedures specified in the 1967 amendment. See section 11 of Public Law 90–189, 81 Stat. 568, December 14, 1967.

In 1972, Congress established the Consumer Product Safety Commission when it enacted the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051 *et seq.* The CPSA transferred to the Commission the authority the Secretary of Commerce had to issue and amend flammability standards under the FFA. 15 U.S.C. 2079(b). In 1975, the Commission codified the FFA of 1953 at 16 CFR 1609 and the Standard for the Flammability of Clothing Textiles at 16 CFR part 1610. It is this standard that the Commission is considering amending.

2. The Current Standard

The clothing textile standard describes a test apparatus and the procedures for testing clothing and textiles intended for clothing. It establishes three classes of flammability: Class 1 or normal flammability; class 2 or intermediate flammability; and class 3 or rapid and intense burning. Clothing and textiles that are categorized as class 3 under the prescribed test method are considered dangerously flammable. 16 CFR 1610.3

To determine the appropriate classification, the standard prescribes the method of testing. Five specimens are subjected to a flammability tester. This is a draft-proof ventilated chamber containing an ignition medium, a sample rack and an automatic timing device. *Id.* 1610.4(b). The ignition medium is a spring-motor driven gas jet around a 26-gage hypodermic needle. *Id.* 1610.4(b)(6). A swatch of each sample must be subjected to the dry cleaning and hand washing procedure prescribed by the standard. *Id.* 1610.4(d)&(e). To determine results, the average time of flame spread is taken for five specimens. However, if the time of flame spread is less than 4 seconds (3½ seconds for plain-surfaced fabrics) or the specimens do not burn, five additional specimens must be tested and the average time of flame spread for these ten specimens taken. *Id.* 1610.4(g)(7). Classification is based on the reported results before and after drycleaning and washing, whichever is lower. *Id.* 16110.4(g)(8).

B. Statutory Provisions

The FFA sets forth the process by which the Commission can issue or amend a flammability standard. The Commission first must issue an advance notice of proposed rulemaking ("ANPR") which: (1) Identifies the fabric or product and the nature of the risk associated with the fabric or product; (2) summarizes the regulatory alternatives under consideration; (3) provides information about existing relevant standards and reasons why the Commission does not preliminarily believe that these standards are adequate; (4) invites interested persons to submit comments concerning the identified risk of injury, regulatory alternatives being considered, and other possible alternatives; (5) invites submission of an existing standard or portion of a standard as a proposed regulation; and (6) invites submission of a statement of intention to modify or develop a voluntary standard to address the risk of injury. 15 U.S.C. 1193(g).

If, after reviewing comments and submissions responding to the ANPR, the Commission determines to continue the rulemaking proceeding, it will issue a notice of proposed rulemaking. This notice must contain the text of the proposed rule along with alternatives the Commission has considered and a preliminary regulatory analysis. 15 U.S.C. 1193(i). Before issuing a final rule, the Commission must prepare a final regulatory analysis, and it must make certain findings concerning any relevant voluntary standard, the relationship of costs and benefits of the rule, and the burden imposed by the regulation. *Id.* 1193(j). The Commission also must provide an opportunity for interested persons to make an oral presentation before the Commission issues a final rule. *Id.* 1193(d).

C. Possible Amendment

This notice initiates the rulemaking process to amend the flammability standard for clothing and textiles intended for clothing.

1. The Products

The products of concern are clothing and fabrics intended to be used for clothing. The flammability standard

applies to all items of clothing, and fabrics used for such clothing, whether for adults or children, for daywear or nightwear. The Commission has regulations governing the flammability of sleepwear, 16 CFR 1615 and 1616, that are more stringent than this general wearing apparel flammability standard. The possible changes the Commission discusses in this notice would not affect the sleepwear standards. The changes the Commission is considering would not affect the scope of the standard, but would modernize the test method.

2. The Risk of Injury

According to the standard, its purpose is to "reduce danger of injury and loss of life by providing, on a national basis, standard methods of testing and rating the flammability of textiles and textile products for clothing use, thereby discouraging the use of any dangerously flammable clothing textiles." 16 CFR 1610.1. Any amendments the Commission is considering would continue to address this risk of injury. Changes to the test method to better reflect current practices and technologies and clarify some aspects of the standard may improve the standard's ability to address the risk of injury. Based on the most recent five years of available data, 153 deaths and an estimated 4,000 hospital emergency department-treated injuries result annually from the ignition of clothing.

3. Regulatory Alternatives

The Commission is considering changes to the clothing textile flammability standard that would modernize and clarify it. Only minimal changes, such as removing obsolete footnotes, have been made since its development in 1953. However, clothing and technology have undergone many changes in that time. Below, is a discussion of the changes the Commission is considering at this point.

Changes to the flammability tester. The flammability tester prescribed in the current standard is a mechanical apparatus that is no longer available. Apparel manufacturers and other testing laboratories now use more modern flammability testers that incorporate electronic timers and several other electro-mechanical devices that control and apply flame impingement. The Commission is considering requiring a more modern flammability tester.

Changes to the dry cleaning procedure. The method of dry cleaning the current standard prescribes requires perchloroethylene in an open vessel. However, perchloroethylene has been shown to cause cancer in animal tests, and use in this manner violates regulations issued by the Environmental Protection Agency. The Commission staff has not used this procedure since 1986. (The standard allows alternate procedures if they are as stringent as the specified procedure.) An alternative procedure using commercial dry cleaning procedures and washing/tumble drying as provided in ASTM D 1230 appears to be just as stringent, if not more so, as the outdated dry cleaning procedures required by 16 CFR part 1610.

Changes to the hand washing procedure. The current standard requires that after fabric specimens are dry cleaned they must be hand washed with neutral chip soap and line dried before testing them for flammability. 16 CFR 1610.4(e). However, this practice is outdated. Neutral chip soap is no longer available to consumers, who now use non-phosphate detergent and usually use home washers and dryers. Moreover, limited testing by CPSC indicates that for some raised surfaces the machine wash/tumble dry method is more stringent than the procedure now required by the standard. The Commission is considering laundering requirements similar to those prescribed in American Association of Textile Chemists and Colorists ("AATCC") 124–1996. This would be consistent with changes the Commission recently made to the laundering requirements for flammability standards for children's sleepwear, carpets and rugs, and mattress pads. 65 FR 12924, 12929, and 12935 (March 10, 2000).

The Commission is also considering clarifying several portions of the standard. When the staff conducts flammability testing it follows CPSC's Laboratory Test Manual. The Test Manual provides specific directions that aid in appropriate testing. The Commission is considering using some portions of the Test Manual to clarify aspects of the standard, as discussed below.

Clarify selection of surface/direction for testing. The standard requires that for textiles without a raised-fiber surface, "the long dimension shall be that in which they burn most rapidly, and the more rapidly burning surface shall be tested." 16 CFR 1610.4(a)(2). However, the standard does not clearly describe how to select the sample surface and direction for testing. Similarly, for textiles with a raised-fiber surface, specimens must be taken from the part that has the fastest rate of burning. 16 CFR 1610(a)(3). However, the standard does not describe how to determine which area is the most flammable. Language from CPSC's Test Manual could be used to clarify both of these procedures. The Commission is also considering whether to add directions on how to test specialty fabrics.

Clarify when to test 5 additional specimens. The standard states that for plain-surface fabrics if the time of flame spread is less than 3.5 seconds or if the first five specimens do not burn, five additional specimens should be tested. 16 CFR 1610.4(g)(7). However, CPSC testing experience has shown that if the first five specimens do not ignite, the next five specimens will not ignite either. The CPSC Engineering Laboratory Test Manual states that if none of the first five specimens burns, five additional specimens should not be tested. As for raised-fiber surfaces, whose burning characteristics are complicated, the standard does not clearly specify when it is necessary to test five additional specimens. CPSC's Test Manual could be used to clarify this.

Clarify when base fabric ignition occurs. Whether the base fabric ignites during testing is important because it is a factor in determining whether additional testing is necessary and what the fabric classification should be. However, the standard provides no clear definition of base burn for raised-surface fabrics. The Appendix of CS 191–53, which was not incorporated in the FFA, clearly defines base burn and surface flash. CPSC's Test Manual also contains a clarification. These could be added to the standard.

Add test result codes. The standard provides no codes to report complex test results consistently. CPSC developed some codes many years ago to record test results. Industry members and test laboratories have adopted some of the CPSC codes, but also developed some of their own codes. Uniform result codes would facilitate reporting accuracy, understanding of flammability performance, and resolution of test result differences among laboratories.

Clarify calculations for determining burn rates and classification. The standard generally describes the procedures of calculating average time of flame spread. However, it does not clearly state the method to determine the flame spread time for raised-fiber surface fabrics. More specific direction on calculating average flame spread time would enable more accurate fabric classification.

Specify different desiccant. The standard specifies anhydrous calcium chloride as the desiccant to allow specimens to cool before testing without reabsorbing moisture. CFR 1610 1610.4(f). However, CPSC's Test Manual

specifies silica gel. Silica gel is more effective, reliable and economical.

Other possible changes. The Commission is considering several other possible changes. For example, the Commission is considering some changes to the organization of the standard to consolidate it and make it easier to understand. The Commission is also considering: Specifying that tape can be used to secure specimens in the specimen holder; specifying the purpose of brushing specimens and when replacing the brush is necessary; specifying the details of specimen conditioning; and requiring only the type of laundering/drycleaning specified on a garment's care label. The Commission is also considering clarifying and amending regulations concerning fabrics exempted from testing for guaranties. *See* 16 CFR 1610.37(d).

4. Existing Relevant Standards

The Commission staff conducted a review to find other relevant textile standards. The staff found three relevant standards with modern dry cleaning methods and/or laundering methods.

American Society for Testing and Materials (ASTM)D 1230–94, Standard Test Method for Flammability of Apparel Textiles. This voluntary standard provides methods for testing and evaluating the flammability of textile fabrics used as apparel in both original state condition and after refurbishment. The standard specifies two dry cleaning options. However, only one—any commercial dry cleaning operation in a closed environment for one cycle—is still available. After the fabric is dry cleaned, it is laundered using home-type washing and drying machines. The standard refers to the American Association of Textile Chemists and Colorists (AATCC) Test Method 135 entitled Dimensional Changes in Automatic Home Laundering of Woven and Knit Fabrics. This voluntary standard specifies the type of detergent, washing and drying conditions and washer and dryer specifications. An analysis of the laboratory test data from an ASTM interlaboratory round robin conducted in 1991 indicates that for specimens subjected to ASTM D 1230 (both dry cleaning and machine laundering followed by tumble drying procedures specified in AATCC Test Method 135), this flammability test was as stringent or more stringent than the refurbishing procedure in 16 CFR part 1610.

British Standards Institution ("BSI") BS EN ISO 3175: 1996 Textile—Evaluation of Stability to Machine Drycleaning. The purpose of this standard is to determine whether normal to very sensitive fabrics can be dry cleaned by examining dimensional changes after three to five cleaning treatments. It uses a commercial dry cleaning machine containing perchloroethylene and a detergent followed by some form of steam treatment and/or hot pressing (a lesser drying temperature or line drying is used for fabrics containing heat sensitive fibers). This standard uses a modern procedure, a commercial dry cleaning machine, but such a machine would not necessarily be available in the U.S. and would have to have appropriate environmental controls installed. The standard does not have a laundering procedure.

Canadian General Standards Board ("CGSB") CAN/CGSB–4.2 No. 30.3–94, Procedure for the Removal of Non-permanent Flame-retardant Treatments from Textile Products. The purpose of this dry cleaning and laundering standard is to test fabrics for the presence of nonpermanent flame-retardant treatments applied to textile products. The procedures specify that the fabric should be initially dry cleaned in either a coin-operated perchloroethylene dry cleaning machine or in any commercial dry cleaning operation. This is followed by laundering in a domestic-type washing machine using neutral chip soap and dried according to the care instructions provided by the fabric manufacturer. One dry cleaning and one laundering cycle are recommended. The washing machine specified in this standard is not currently available in the U.S.

5. Invitations to Comment

In accordance with section 4(g) of the FFA, the Commission invites comments on this notice, specifically:

1. Comments concerning the risk of injury identified in this notice, the regulatory alternatives discussed above, and other alternatives to address the risk of injury;

2. an existing standard or portion of a standard as a proposed rule;

3. a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in the notice along with a description of a plan to modify or develop the standard.

In addition, the Commission is interested in obtaining further information and comments about the possible changes to the clothing flammability standard discussed above, such as:

1. Modernizing the flammability tester;

2. updating the prescribed dry cleaning method;

3. updating the laundering method described in the standard;

4. revising or clarifying confusing test procedures;

5. developing standardized language for interpreting and reporting test results;

6. reorganizing some text of the rule for clarity; and

7. clarifying or amending the exemptions from the requirements for testing to support guaranties at 1610.37(d).

Dated: September 9, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Jacqueline Elder, Acting Assistant Executive Director, EXHR and Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Amending the Standard for the Flammability of Clothing Textiles, 16 CFR 1610," May 29, 2002.

2. Memorandum from Weiying Tao, Division of Electrical Engineering, to Margaret Neily, Project Manager, "Amending the Flammability Tester Specifications, the Dry Cleaning and Washing Procedures of the CPSC Flammability Regulations in 16 CFR 1610," February 28, 2002.

3. Memorandum from Weiying Tao, Division of Electrical Engineering, to Margaret Neily, Project Manager, "Alternate Dry Cleaning and Washing Requirements of Apparel Specified in Standards Other than 16 CFR Part 1610 Standard for the Flammability of Clothing Textiles," March 1, 2002.

4. Memorandum from Weiying Tao, (previously) on detail to ESME, to Margaret Neily, Project Manager, "Proposed Revisions for the Standard for the Flammability of Clothing Textiles," March 25, 2002.

[FR Doc. 02–23273 Filed 9–11–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–054]

RIN 2115–AE47

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Route 70 Bridge across the Manasquan River. The proposed rule would limit the required openings of the draw year-round from 7 a.m. to

11 p.m. to once an hour with no openings required from 4 p.m. to 7 p.m. on Fridays. This change 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 November 12, 2002.

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. 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 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

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 (CGD05–02–054), 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 S70 Bridge is a movable bridge (single-leaf bascule) owned and operated by the New Jersey Department of Transportation (NJDOT) connecting the Borough of Point Pleasant and Brick Township in Ocean County with Brielle Borough and Wall Township in Monmouth County. Currently, 33 CFR 117.727 requires the draw of the S70 bridge, mile 3.4 at Riviera Beach, to open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m. In the closed position to vessels, the bridge has a vertical navigation clearance of 15 feet at mean high water.

On behalf of residents and business owners in the area, NJDOT has requested to change the existing regulations for the S70 Bridge in an effort to balance the needs of mariners and vehicle drivers transiting in and around this seaside resort area. Route 70 is a principal arterial highway that serves as a major evacuation route in the event of tidal emergencies. Bridge openings at peak traffic hours during the tourist season often cause considerable vehicular traffic congestion while accommodating relatively few vessels. To ease traffic congestion, NJDOT has requested that the bridge operating schedule be changed. A review of NJDOT yearly drawbridge logs for 1999, 2000, and 2001, show that the bridge opened for vessels 1028, 1026, and 1020 times, respectively. However, during the peak boating season from May through September, the logs reveal from 1999 to 2001, the bridge opened 750, 792 and 794 times, respectively. With an average of only five openings per day during the peak boating season, NJDOT contends that the effect of the proposed change on vessel traffic through the bridge would be. Also, NJDOT officials, residents and business owners point out that from 4 p.m. to 7 p.m. on Fridays, vehicular traffic congestion is at its peak. During the peak boating season from May through September, the logs reveal from 1999 to 2001, the bridge opened from 4 p.m. to 7 p.m. on Fridays 36, 35, and 26 times, respectively. Limiting the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and no openings required from 4 p.m. to 7 p.m. on Fridays would enhance vehicular traffic without significantly affecting vessel traffic.

Discussion of Proposed Rule

The Coast Guard proposes to amend § 117.727, which governs the S70 Bridge. The draw currently opens on signal from 7 a.m. to 11 p.m. and need not be opened from 11 p.m. to 7 a.m.

The current regulation would be changed to state that the draw of Route 70 Bridge, mile 3.4 at Riviera Beach, need open on signal only on the hour; except that from 11 p.m. to 7 a.m. and on Fridays from 4 p.m. to 7 p.m., the draw need not be opened.

The proposed rule would also change the name of the bridge from "S70" to "Route 70." The name change will accurately reflect the name of this bridge.

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 bridge. 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 scheduled bridge openings can 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 (Public Law 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. 3501–3520).

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. Though 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 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 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 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 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 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 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 (32)(e), 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 117

Bridges.

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 authority of Pub.L. 102–587, 106 Stat. 5039.

2. Section 117.727 is revised to read as follows:

§ 117.727 Manasquan River.

The draw of the Route 70 Bridge, mile 3.4, at Riviera Beach, shall open on signal on the hour; except that from 4 p.m. to 7 p.m. on Fridays and from 11 p.m. to 7 a.m. daily, the draw need not be opened.

Dated: August 26, 2002.

Arthur E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–23115 Filed 9–11–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0021b, UT–001–0041b; FRL–7264–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Vehicle Inspection and Maintenance Program; Utah County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan revision submitted by the Governor of Utah on December 7, 2001. This SIP submittal consists of a revision to Utah's rule R307–110–34 and section X, Vehicle Inspection and Maintenance (I/M) Program, Part D, Utah County. This SIP submittal satisfies one of the conditions of EPA's June 9, 1997 interim approval of Utah County's improved vehicle I/M program SIP. The other condition of EPA's interim approval was submittal of a demonstration that Utah County's decentralized I/M program can obtain the same emission reduction credits as a centralized I/M program. The State

submitted such a demonstration on May 20, 1999. These submittals meet the requirements of Section 348 of the National Highway System Designation Act, which allows States to claim additional credit for their decentralized I/M programs. In this case, Utah has demonstrated that Utah County's improved vehicle I/M program is entitled to 100% emissions reduction credit. Thus, EPA is hereby proposing to approve Utah's program evaluation, and revisions to Utah's rule R307–110–34 and section X, which would allow Utah County to claim 100% emissions reduction credit for its improved vehicle I/M program.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision and demonstration as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before October 15, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, EPA Region VIII, (303) 312–6493.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: August 13, 2002.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–23085 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE061–DE066 –1034; FRL–7375–4]

Approval and Promulgation of Air Quality Implementation Plans; Six Control Measures to Meet EPA-Identified Shortfalls in Delaware's One-Hour Ozone Attainment Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This proposed revision consists of six control measures to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration. The intended effect of this action is to propose approval of the six control measures.

DATES: Written comments must be received on or before October 15, 2002.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On March 1, 2002, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to EPA revisions to the Delaware's State Implementation Plan (SIP). These revisions consist of six control measures to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration for the Philadelphia-Wilmington-Trenton severe nonattainment area (64 FR 70444, December 16, 1999 and 66 FR 54598, October 29, 2001). These six control measures also fulfill Delaware's commitment to adopt measures to address the shortfalls. In addition, Delaware submitted a technical support document (TSD), entitled, Measures to Meet the EPA-Identified Shortfalls in Delaware's Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (November 11, 2001), which indicates the reductions achieved by these adopted measures.

I. Background

In December 1999, EPA identified emission reduction shortfalls in several one-hour ozone nonattainment areas in the Ozone Transport Region and required those areas to address the shortfalls. The Ozone Transport Commission (OTC) developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules that will close the shortfalls.

II. Summary of the SIP Revisions

The following are the six control measures, which are based on the model rules developed by OTC, that Delaware adopted and submitted to EPA on March 1, 2002, as SIP revisions to meet the shortfalls:

(1) Regulation 24, Control of Volatile Organic Compound (VOC) Emissions, Section 11—Mobile Equipment Repair and Refinishing—applies to any person who applies coatings to mobile equipment, such as cars, trucks, and/or tractors for beautification or protection in the State of Delaware. The regulation establishes: (a) Requirements for using improved transfer efficiency coating and application equipment, such as high volume low pressure spray guns; (b) requirements for enclosed spray gun cleaning techniques; and (c) minimum training standards in the proper use of equipment and materials. VOC limits for mobile equipment repair and refinishing coatings are in effect nationally under the Federal requirements at 40 CFR part 59, subpart B, National VOC Emission Standards for Automobile Refinish Coatings, which was adopted by EPA in 1998.

(2) Regulation 24, Control of VOC Emissions, Section 33—Solvent Cleaning and Drying—applies to any person who owns or operates solvent cleaning machines that contain more

than one liter of solvent, and that uses any solvent containing VOCs in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent. The regulation defines applicability, compliance, notification, monitoring, recordkeeping, and reporting requirements similar to the OTC model rule. The regulation also includes standards for batch cold cleaning machines, batch vapor cleaning machines, in-line cleaning machines, and cleaning machines not having a solvent/air interface. An alternative standard for a batch vapor or in-line cleaning machine is also included.

(3) Regulation 41, Limiting VOC Emissions from Consumer and Commercial Products, Section 1—Architectural and Industrial Maintenance (AIM) Coatings—applies to any person who supplies, sells, offers for sale, blends, repackages for sale, or manufactures any architectural coating for use in the State of Delaware. The types of coatings affected in this regulation include a broad range of products from paints to lacquers, varnishes, roof coatings, waterproofing sealers and various others specialty formulations. This regulation does not apply to any architectural coating that is sold or manufactured for use outside the State of Delaware or for shipment to other manufacturers for reformulation or repackaging; any aerosol coating product; or any architectural coating that is sold in a container with a volume of one liter (1.057 quarts) or less. The regulation establishes requirements for container labeling, reporting and recordkeeping, test methods, and compliance provisions.

(4) Regulation 41, Limiting VOC Emissions from Consumer and Commercial Products, Section 2—Commercial Products—applies to any person who sells, supplies, offers for sale, or manufactures consumer products in the State of Delaware. This regulation has 89 categories of regulated products. Also included in the regulation are the VOC content limits, standards and exemptions, innovative products, administrative requirements, recordkeeping and reporting requirements, variances, test methods, severability, and an alternative control plan.

(5) Regulation 41, Limiting VOC Emissions from Consumer and Commercial Products, Section 3—Portable Fuel Containers—specifically concerns the use of portable containers, and to reduce refueling emissions from equipment and engines that are predominantly refueled with portable containers. This regulation applies to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts, or both portable fuel container for use in the State of Delaware. This regulation will require each portable fuel container and/or spout sold to meet the following requirements: (a) Have an automatic shut-off and closure device; (b) contain one opening for filling, pouring, and venting; (c) provide certain fuel flow based on nominal capacity; and (d) meet a permeation standard. Also, included in the regulation are exemptions, standards, testing procedures, recordkeeping, and administrative requirements.

(6) Regulation 42, Specific Emission Control Requirements, Section 1—Control of Nitrogen Oxides (NO_X) Emissions from Industrial Boilers—is designed to reduce the emissions of NO_X from industrial boilers. This regulation would set NO_X emission rates applicable to sources that remain high NO_X emitters even after the application of reasonably available control technology (RACT) and post-RACT requirements, and have not committed substantial capital funds to reduce these NO_X emissions. This regulation applies to any person that owns or operates any combustion unit with a maximum heat input capacity of equal to or greater than 100 million btu per hour. Also, included in the regulation are exemptions, standards, monitoring, recordkeeping and reporting requirements.

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision for the six control measures based on the model rules developed by OTC, to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration submitted on March 1, 2002. The implementation of the OTC model rules will result in emission reductions to close the EPA identified attainment shortfalls for the Philadelphia-Wilmington-Trenton nonattainment area and 19 counties within 100 kilometers of the nonattainment area. The six control measures are: (1) control of VOC emissions from mobile equipment repair and refinishing; (2) control of VOC emissions from solvent cleaning and drying; (3) control of VOC emissions from AIM coatings; (4) control of VOC emissions from consumer products; (5) control of VOC emissions from portable fuel containers; and (6) control of NO_X emissions from industrial boilers. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. A more detailed description of the State submittal and EPA's evaluation are included in a TSD prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IV. Administrative Requirements

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

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This proposed rule pertaining to six control measures to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: August 30, 2002.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 02–23259 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7373–9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Republic Steel Quarry Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is issuing a notice of intent to delete the Republic Steel Quarry Superfund Site (Site) located in Elyria, Ohio from the National Priorities List (NPL) and requests public comments on this notice of intent to delete. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Ohio, through the Ohio Environmental Protection Agency, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund. In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Republic Steel Quarry Superfund Site without prior notice of intent to delete because we view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will delete the Site from the NPL. If we receive timely adverse comment(s), we will withdraw the direct final notice of deletion and the deletion of the Site will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on adverse comments received on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by October 15, 2002.

ADDRESSES: Written comments should be addressed to: Robert Paulson, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson Blvd., Chicago, IL 60604, 312–886–0272 or 1–800–621–8431.

FOR FURTHER INFORMATION CONTACT: Sheila Sullivan, Remedial Project Manager at (312) 886–5251 or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253 or 1–800–621–8431, Superfund Division, U.S. EPA (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region V Library, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Elyria Public Library, 320 Washington Ave., Elyria, OH 44035, (440) 323–5747, Monday through Thursday 9 a.m. to 8:30 p.m., Friday through Saturday 9 a.m. to 5:30 p.m., Sunday 1 to 4 p.m.; Ohio Environmental Protection Agency Department of Emergency and Remedial Response, 2110 E. Aurora Road, Twinsburg, OH 44087, (330) 963–1200, Monday through Friday 8 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 28, 2002.

Norman Niedergang,

Acting Regional Administrator, Region V.

[FR Doc. 02–22982 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2061; MB Docket No. 02–239, RM–10529; MB Docket No. 02–240, RM–10530; MB Docket No. 02–241, RM–10531; MB Docket No. 02–242, RM–10532; MB Docket No. 02–243, RM–10533; MB Docket No. 02–244, RM–10534; MB Docket No. 02–245, RM–10544; MB Docket No. 02–246, RM–10535; MB Docket No. 02–247, RM–10536; MB Docket No. 02–248, RM–10537; and MB Docket No. 02–249, RM–10538]

Radio Broadcasting Services: Alpine, TX; Clayton, OK; Guthrie, TX; Hebbronville, TX; Mertzon, TX; Premont, TX; Roaring Springs, TX; Rocksprings, TX; Sanderson, TX; Smiley, TX; and Thomas, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new allotments to Alpine, TX; Clayton, OK; Guthrie, TX; Hebbronville, TX; Mertzon, TX; Premont, TX; Roaring Springs, TX; Rocksprings, TX; Sanderson, TX; Smiley, TX; and Thomas, OK. The Commission requests comments on a petition filed by Linda Crawford, proposing the allotment of Channel 293C at Alpine, Texas, as the community's third local aural transmission service. Channel 293C can be allotted to Alpine in compliance with the Commission's minimum distance separation requirements without any site restrictions. The coordinates for Channel 293C at Alpine are 30–21–36 North Latitude and 103–39–36 West Longitude. Since Alpine is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican Government has been requested for this allotment. *See* Supplementary Information.

DATES: Comments must be filed on or before October 21, 2002, and reply comments on or before November 5, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Linda Crawford, 3500 Maple Ave., #1320; Dallas, Texas 75219 (Petitioner for Alpine, Texas; Guthrie, Texas; Hebbronville, Texas; Mertzon, Texas; Premont, Texas; Roaring Springs, Texas; Sanderson, Texas; and Smiley, Texas); Jeraldine Anderson, 1702 Cypress Drive, Irving, Texas 75061 (Petitioner for Clayton, Oklahoma); Charles Crawford, 4553 Bordeaux Ave., Dallas, Texas 75205 (Petitioner for Rocksprings, Texas); and Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226 (Petitioner for Thomas, Oklahoma).

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–239; MB Docket No. 02–240; MB Docket No. 02–241; MB Docket No. 02–242; MB Docket No. 02–243; MB Docket No. 02–244; MB Docket No. 02–245; MB Docket No. 02–246; MB Docket No. 02–247; MB Docket No. 02–248; and MB Docket No. 02–248, adopted August 14, 2002, and released August 30, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Commission requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 241A at Clayton, Oklahoma, as the community's first local aural transmission service. Channel 241A can be allotted to Clayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) south of Clayton. The coordinates for Channel 241A at Clayton are 34–27–28 North Latitude and 95–22–01 West Longitude.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 252A at Guthrie, Texas, as that community's first local aural transmission service. Channel 252A can be allotted to Guthrie in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest of Guthrie. The coordinates for Channel 252A at Guthrie are 33–41–26 North Latitude and 100–23–15 West Longitude.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 232A at Hebbronville, Texas, as that community's third local aural transmission service. Channel 232A can be allotted to Hebbronville in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northwest of Hebbronville. The coordinates for Channel 232A at Hebbronville are 27–23–18 North Latitude and 98–44–26 West Longitude. Since Hebbronville is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican Government has been requested for this allotment.

The Commission requests comments on a petition filed on behalf of Linda Crawford proposing the allotment of Channel 278C2 at Mertzon, Texas, as that community's second local aural transmission service. Channel 278C2 can be allotted to Mertzon in compliance with the Commission's minimum distance separation requirements with a site restriction 10.8 kilometers (6.7 miles) southwest of Mertzon. The coordinates for Channel 278C2 at Mertzon are 31–10–09 North Latitude and 100–51–41 West Longitude. Since Mertzon is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican Government has been requested for this allotment.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 287A at Premont, Texas, as that community's second local FM transmission service. Channel 287A can be allotted to Menard in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.4 kilometers (8.9 miles) south of Premont, Texas. The coordinates for Channel 287A at Premont are 27–14–13 North Latitude and 98–10–27 West Longitude. Since Premont is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican Government has been requested for this allotment.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 276C3 at Roaring Springs, Texas, as that community's first local aural transmission service. Channel 276C3 can be allotted to Roaring Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.8 kilometers (4.9 miles) northeast of Roaring Springs, Texas. The coordinates for Channel 276C3 at Roaring Springs are 33–55–44 North Latitude and 100–46–48 West Longitude.

The Commission requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 291A at Rocksprings, Texas, as that community's fourth local aural

transmission service. Channel 291A can be allotted to Rocksprings in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.4 kilometers (8.9 miles) southwest of Rocksprings, Texas. The coordinates for Channel 291A at Rocksprings are 29–57–03 North Latitude and 100–20–02 West Longitude. Since Rocksprings is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican Government will be requested for this allotment.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 286C2 at Sanderson, Texas, as that community's second local aural transmission service. Channel 286C2 can be allotted to Sanderson in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.6 kilometers (12.8 miles) southwest of Sanderson, Texas. The coordinates for Channel 286C2 at Sanderson are 30–03–18 North Latitude and 102–35–01 West Longitude. Since Sanderson is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican Government has been requested for this allotment.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 280A at Smiley, Texas, as that community's first local aural transmission service. Channel 280A can be allotted to Smiley in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers (6.4 miles) east of Smiley, Texas. The coordinates for Channel 280A at Smiley are 29–14–27 North Latitude and 97–32–07 West Longitude. Since Smiley is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican Government will be requested for this allotment.

The Commission requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 288A at Thomas, Oklahoma, as that community's first local aural transmission service. Channel 288A can be allotted to Thomas in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.2 kilometers (5.7 miles) north of Thomas, Oklahoma. The coordinates for Channel 288A at Thomas are 35–49–46 North Latitude and 98–45–09 West Longitude.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Clayton, Channel 241A, and Thomas, Channel 288A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 293C at Alpine; Guthrie, Channel 252A; Channel 232A at Hebbronville; Channel 278C2 at Mertzon; Channel 287A at Premont; Roaring Springs, Channel 276C3; Channel 291A at Rocksprings; Sanderson, Channel 286C2; and Smiley, Channel 280A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 02–23141 Filed 9–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2100; MB Docket No. 02–266; RM–10557]

Radio Broadcasting Services; Chillicothe, Dublin, Hillsboro, and Marion, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Citicasters Licenses, Inc., licensee of Station WMRN–FM and Citicasters Company, licensee of Station WSRW–FM, Hillsboro, Ohio. The petition proposes to change Station WMRN–FM's community of license from Marion to Dublin, Ohio, downgrade that station's channel from Channel 295B to Channel 294B1, and provide Dublin with its first local aural transmission service. To achieve compliance with the Commission's spacing rules, the petition also requests permission to change Station WSRW–FM's community of license from Hillsboro, Ohio, to Chillicothe, Ohio, and to downgrade Station WSRW–FM's channel from Channel 294B to Channel 293A. The coordinates for requested Channel 294B1 at Dublin, Ohio, are 40–09–20 NL and 82–54–12 WL. The coordinates for requested Channel 293A at Chillicothe, Ohio, are 39–17–31 NL and 82–51–38 WL.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 294B1 at Dublin, Ohio, or Channel 293A at Chllicothe, Ohio, or require the petitioner to demonstrate the availability of an additional equivalent class channel for either proposal.

DATES: Comments must be filed on or before October 21, 2002, and reply comments on or before November 5, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Mark N. Lipp, Esq., J. Thomas Nolan, Esq., and Tamara Y. Brown, Esq; Shook, Hardy & Bacon, LLP.; 600 14th Street, NW., Suite 800; Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–266, adopted August 21, 2002, and released August 30, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–

863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Dublin, Channel 294B1, and Channel 293A at Chillicothe; and removing Hillsboro, Channel 294B, and Channel 295B at Marion.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–23140 Filed 9–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2066; MB Docket No. 02–255; RM–10524]

Radio Broadcasting Services; Cottage Grove, Depoe Bay, Garibaldi, Toledo, and Veneta, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition for rulemaking filed on behalf of Alexandra Communications, Inc. licensee of Station KDEP(FM), Depoe Bay, Oregon, Signal Communications, Inc., licensee of Station KEUG, Inc., Cottage Grove, Oregon, and Agpal Broadcasting, Inc., licensee of Station KPPT(FM), Toledo, Oregon, requesting that we substitute Channel 288A for Channel 288C3 at Depoe Bay, Oregon, reallot Channel 288A from Depoe Bay to Garibaldi, Oregon, and modify the license of Station KDEP(FM) to specify the new community. The petition also requests that we substitute Channel 283C3 for Channel 288A at Cottage Grove, Oregon, reallot Channel 288C3 to Veneta, Oregon, and modify the license of Station KEUG(FM) to specify the new community. Finally, the petition requests that we reallot Channel 264C2 from Toledo, Oregon to Depoe Bay, and modify the license of Station KPPT(FM) to specify the new community. Channel 288A can be allotted at Garibaldi at a site 11 kilometers (6.8 miles) south of the community at coordinates NL 45–27–50 and WL 123–56–37. Channel 288C3 can be allotted at Veneta at a site 4.8 kilometers (3.0 miles) southwest of the community at coordinates NL 44–01–56 and WL 123–24–19. Channel 264C2 can be allotted at Depoe Bay at Station KPPT(FM)'s current site 5.9 kilometers (3.7 miles) south of the community at coordinates NL 44–45–23 and WL 124–03–01.

DATES: Comments must be filed on or before October 21, 2002, and reply comments on or before November 5, 2002.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert Lewis Thompson, Thiemann, Aitken & Vohra, LLC, 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–255, adopted August 14, 2002, and released August 30, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 288A and adding Channel 264C2 at Depoe Bay, by removing Channel 288A at Cottage Grove, by removing Toledo, Channel 264C2, by adding Garibaldi, Channel 288C3, and by adding Veneta, Channel 288C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–23139 Filed 9–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2101; MB Docket No. 02–258, RM–10500; MB Docket No. 02–259, RM–10501; MB Docket No. 02–260, RM–10502; MB Docket No. 02–261, RM–10503; MB Docket No. 02–262, RM–10504; MB Docket No. 02–263 RM–10498; MB Docket No. 02–264, RM–10505; MB Docket No 02–265, RM–10556]

Radio Broadcasting Services; Dickens, TX, Floydada, TX, Freer, TX, Ozona, TX, Rankin, TX, Safford, AZ, San Diego, TX, and Westbrook, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes eight new allotments in Dickens, Texas, Floydada, Texas, Freer, Texas, Ozona, Texas, Rankin, Texas, Safford, Arizona, San Diego, Texas, and Westbrook, Texas. The Audio Division requests comment on a petition filed by Maurice Salsa proposing the allotment of Channel 294A at Dickens, Texas, as the community's first local aural transmission service. Channel 294A can be allotted to Dickens in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) northeast to avoid a short-spacing to the license site of Station KEJS, Channel 293C2, Lubbock, Texas. The coordinates for Channel 294A at Dickens are 33–40–43 North Latitude and 100–45–00 West Longitude. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before October 21, 2002, and reply comments on or before November 5, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, TX 77345; Linda Crawford, 3500 Maple Avenue #1320, Dallas, TX 75219; Robert Fabian, 4 Hickory Crossing Lane, Argyle, TX 76226; Graham County FM Associates, c/o Dan J. Alpert, 2120 N. 21st Road, Arlington, VA 22201; and Charles Crawford, 4553 Bordeaux Avenue, Dallas, TX 75205.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–258, 02–259, 02–260, 02–261, 02–262, 02–263, 02–264, 02–265, adopted October 21, 2002, and released November 5, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

The Audio Division requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 255A at Floydada, Texas, as the community's second local aural transmission service. Channel 255A can be allotted to Floydada in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northeast to avoid a short-spacing to the license site of Station KQBR, Channel 258C1, Lubbock, Texas. The coordinates for Channel 255A at Floydada are 34–00–54 North Latitude and 101–18–29 West Longitude.

The Audio Division requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 271A at Freer, Texas, as the community's third local aural transmission service. Channel 271A can be allotted to Freer in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.0 (6.8 miles) north to avoid a short-spacing to the license site of Station KILM, Channel 271C2, Raymondville, Texas. The coordinates for Channel 271A at Freer are 27–58–35 North Latitude and 98–35–05 West Longitude. Since Freer is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Audio Division requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 289C1 at Ozona, Texas, as the community's second local aural transmission service. Channel 289C1 can be allotted to Ozona in compliance with the Commission's minimum distance separation requirements with a site restriction of 39.8 kilometers (24.7 miles) southwest to avoid a short-spacing to the application site of a New FM station, Channel 289C2, Mason, Texas. The coordinates for Channel 289C1 at Ozona are 30–25–54 North Latitude and 101–27–42 West Longitude. Since Ozona is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Audio Division requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 229C3 at Rankin, Texas, as the community's first local aural transmission service. Channel 229C3 can be allotted to Rankin in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east of Rankin, Texas. The coordinates for Channel 229C3 at Rankin are 31–11–24 North Latitude and 101–48–39 West Longitude. Since Rankin is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Audio Division requests comments on a petition filed by Graham County FM Associates proposing the allotment of Channel 246C3 at Safford, Arizona, as the community's second local aural transmission service. Channel 246C3 can be allotted to Safford in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 246C3 at Safford are 32–50–02 North Latitude and 109–42–25 West Longitude. Since Safford is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 273A at San Diego, Texas, as the community's second local aural transmission service. Channel 273A can be allotted to San Diego in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (5.9 miles) west to avoid a short-spacing to the license site of Station KNDA, Channel 275C2, Alice, Texas. The coordinates for Channel 273A at San Diego are 27–46–29 North Latitude and 98–20–04 West Longitude. Since San Diego is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Audio Division requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 272A at Westbrook, Texas, as the community's first local aural transmission service. Channel 272A can be allotted to Westbrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) west to avoid a short-spacing to the license site of Station KFZX, Channel 271C, Gardendale, Texas. The coordinates for Channel 272A at Westbrook are 32–22–24 North Latitude and 101–04–58 West Longitude. Since Westbrook is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter

is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 246C3 at Safford.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Dickens, Channel 294A; by adding Channel 255A at Floydada; by adding Channel 271A at Freer; by adding Channel 289C1 at Ozona; by adding Rankin, Channel 229C3; by adding Channel 273A at San Diego; by adding Westbrook, Channel 272A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–23138 Filed 9–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH91

Endangered and Threatened Wildlife and Plants; Extension of the Public Comment Period on Proposed Designation of Critical Habitat for the Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening and extension of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice of an extension of the public comment period for the proposal to designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*) (silvery minnow), a species federally listed as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). Comments are also solicited on the associated draft economic analysis and draft environmental impact statement (draft EIS). Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final rule. The proposed rule designating critical habitat for the silvery minnow and the draft EIS were issued pursuant to a November 21, 2000, court order by the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* Civ. Nos. 99–870, 99–872, 99–1445M/RLP (Consolidated), that set aside the July 9, 1999, critical habitat designation for the silvery minnow.

DATES: The comment period will be extended until October 2, 2002. Comments must be received by the closing date.

ADDRESSES: You may submit written comments and materials concerning the proposal, the draft economic analysis, or the draft EIS to Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM, 87113. Written comments may also be sent by facsimile to (505) 346–2542 or *R2FWE_AL@fws.gov*. All comments, including names and addresses, will become part of the administrative record and may be released. You may also hand-deliver written comments to our New Mexico Ecological Services Field Office, at the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address. You may obtain copies of the proposed rule from the above address or by calling 505/346–2542, or from our website at *http://ifw2es.fws.gov/Library/*.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** above); phone: 505–346–2525 or visit our website at *http://ifw2es.fws.gov/*.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule to designate critical habitat for the silvery minnow in the **Federal Register** on June 6, 2002 (67 FR 39206). The silvery minnow presently occurs only in the Rio Grande from Cochiti Dam, Sandoval County, downstream to the headwaters of Elephant Butte Reservoir, Sierra County, New Mexico. We proposed to designate critical habitat within this last remaining portion of the occupied range in the middle Rio Grande (Cochiti Dam to Elephant Butte Dam) in New Mexico. The proposed critical habitat designation defines the lateral extent (width) as those areas bounded by existing levees or, in areas without levees, 91.4 meters (300 feet) of riparian zone adjacent to each side of the middle Rio Grande.

We have not proposed critical habitat designation for two areas important for the conservation of the silvery minnow (*i.e.*, the river reach of the middle Pecos and lower Rio Grande in Big Bend National Park and downstream to the Terrell/Val Verde County line). We proposed a conservation strategy of developing one or more experimental populations under section 10(j) of the Act, because we believe this strategy outweighs any benefits that could be provided to the silvery minnow by including these areas within a designation of critical habitat.

If the proposed rule is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the "destruction or adverse modification" of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We request data and comments from the public and all interested parties on all aspects of the proposal, including data on economic and other impacts of the proposed designation.

We held two public hearings to receive comments from the public. The hearings were in Socorro and Albuquerque, NM, on June 25 and 26, 2002 respectively. Public hearings are designed to gather relevant information that the public may have that we should consider in our rule-making. During the hearings, we presented information about the proposed action. We invited the public to submit information and comments either at the hearings or in writing.

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal, the draft economic analysis, or draft EIS. Our practice is to make all comments, including names and home

addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the rulemaking record; we will honor these requests to the extent allowed by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your 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.

We are particularly interested in comments or suggestions on reasons why any particular area should or should not be designated as critical habitat. We are further soliciting information or comments concerning our conservation strategy for the silvery minnow; specific information on the amount and distribution of silvery minnow habitat; what habitat is essential to the conservation of the species and why; and land use practices and current or planned activities in the subject areas, including comments or information relating to the 300-foot lateral width. Depending on public comments, information, or data received, we will evaluate whether these areas within the silvery minnow's historical range should be designated as critical habitat, and critical habitat could be revised as appropriate.

Authors

The primary authors of this notice are the New Mexico Field Office staff (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 5, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23249 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH09

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species From the Northwestern Hawaiian Islands, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the Northwestern Hawaiian Islands, Hawaii. In an earlier **Federal Register** notice published August 26, 2002 (67 FR 54766) we reopened the comment period for the proposed designations or non-designations of critical habitat for these plants. We are now providing notice of extending the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until October 15, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

Six plant species reported from the Northwestern Hawaiian Islands (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Midway Atoll, and Kure Atoll) were listed as endangered under the Endangered Species Act of 1973, as amended (Act), between 1994 and 1996 (59 FR 56333, 61 FR 43178, 61 FR 53108). *Amaranthus brownii, Cenchrus agrimonioides* var. *laysanensis, Mariscus pennatiformis* ssp. *bryanii, Pritchardia remota,* and *Schiedea verticillata* are endemic to the Northwestern Hawaiian Islands, while *Sesbania tomentosa* is reported from one or more other islands, as well as the Northwestern Hawaiian Islands.

In previously published proposals (65 FR 66808, 65 FR 79192, 67 FR 3940, 67 FR 9806) we proposed that critical habitat was prudent for *Cenchrus agrimonioides, Mariscus pennatiformis,* and *Sesbania tomentosa.* In a May 14, 2002, proposal (67 FR 34522), we made no change to these proposed prudency determinations, and we proposed that critical habitat designation was prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata* (for which proposed prudency determinations had not been made previously) because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks that may result from human activity because of critical habitat designation.

In the May 14, 2002, proposal, we proposed designation of critical habitat for five (*Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa*) of the six species reported from the Northwestern Hawaiian Islands. Critical habitat is not proposed for *Cenchrus agrimonioides* var. *laysanensis* in the Northwestern Hawaiian Islands because it has not been seen in the wild for over 20 years and no viable genetic material of this variety is known to exist.

We propose critical habitat designations for five species on three islands (Nihoa, Necker, and Laysan) totaling approximately 498 hectares (ha) (1,232 acres (ac)).

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

The public comment period for the May 14, 2002, proposal originally closed on July 15, 2002. On August 26, 2002, we published a **Federal Register** notice (67 FR 54766) of the reopening of the comment period for the proposed designations and non-designations of critical habitat for plant species on the Northwestern Hawaiian Islands, as well as for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai,

Niihau, Molokai, Maui, Kahoolawe, Hawaii, and Oahu; and we announced that the comment period would close on September 30, 2002. We are now announcing the availability of the draft economic analysis and the extension of the comment period for the proposed designations and non-designations of critical habitat for plant species on the Northwestern Hawaiian Islands. We will accept public comments on the proposal and the associated draft economic analysis for the Northwestern Hawaiian Islands until October 15, 2002. The extension of the comment period gives all interested parties the opportunity to comment on the proposal and the associated draft economic analysis for the Northwestern Hawaiian Islands. Comments already submitted on the proposed designations and non-designations of critical habitat for plant species from the Northwestern Hawaiian Islands need not be resubmitted as they will be fully considered in the final determinations.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *NWHI_crithab@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AH09" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Author(s)

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 NE 11th Avenue, 4th Floor, Portland, OR 97232–4181.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 5, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23250 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 090302C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Draft Amendment to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico to Establish a Red Snapper Rebuilding Plan; Proposed Amendment 13 to the FMP for the Shrimp Resources of the Gulf of Mexico; Scoping Meeting

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

ACTION: Notice of intent; amendment; notice of scoping meeting; request for comments.

SUMMARY: The purpose of this document is to amend two documents published in the **Federal Register** on August 19, 2002. The first notice referenced the intent of the Gulf of Mexico Fishery Management Council (Gulf Council) to prepare a draft supplemental environmental impact statement (DSEIS) in association with proposed Amendment 13 to the Gulf Shrimp FMP. The second notice referenced the Gulf Council's intent to prepare a DSEIS in association with a draft amendment to the Reef Fish FMP to establish a red snapper rebuilding plan.

Both of those documents provided a schedule of eight public meetings organized by the Gulf Council to solicit public input on the range of alternatives and scope of impacts to be analyzed in the two DSEISs. This document amends the notices to add a ninth scoping meeting to that schedule.

DATES: As specified in the notices published at 67 FR 53769 and 67 FR 53771, written comments on the scope of issues to be addressed in the two DSEISs must be received by the Council by September 18, 2002. See the **SUPPLEMENTARY INFORMATION** section of this document for the specific date and time of the ninth scoping meeting added through this action.

ADDRESSES: Written comments on the scope of the DSEISs, and requests for additional information on the draft red snapper rebuilding plan and on proposed Amendment 13, should be sent to the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815; fax: 813–225–7015. Comments may also be sent by e-mail to Peter.Hood@gulfcouncil.org. See the **SUPPLEMENTARY INFORMATION** section of this document for the address of the ninth scoping meeting added through this action.

FOR FURTHER INFORMATION CONTACT: Peter Hood; phone: 813–228–2815; fax: 813–225–7015; e-mail: Peter.Hood@gulfcouncil.org or Phil Steele; phone: 727–570–5305; fax: 727–570–5583; e-mail: Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf Council is considering amendments to two FMPs. Proposed Amendment 13 would establish stock status determination criteria for managed shrimp stocks in the Gulf of Mexico. Amendment 13 may also consider management alternatives related to adding rock shrimp to the management unit of the shrimp FMP, requiring endorsements for vessels harvesting rock shrimp and royal red shrimp in the exclusive economic zone (EEZ) of the Gulf of Mexico, requiring vessel monitoring systems aboard shrimp trawl vessels fishing in or transiting all or some portions of the Gulf of Mexico EEZ, improving bycatch reporting, and further reducing bycatch in the shrimp fishery. The draft amendment to the Reef Fish FMP would establish a red snapper rebuilding plan that is based on biomass-based stock rebuilding targets and thresholds.

Through two separate documents published August 19, 2002 (67 FR 53769 and 67 FR 53771), the Gulf Council notified the public of its intent to develop a DSEIS associated with proposed Amendment 13 and with the draft red snapper rebuilding plan. Those documents also provided a schedule of

eight scoping meetings organized by the Council to solicit input from the public on the range of alternatives and scope of issues to be considered in those DSEISs. The scoping meetings for these two actions will run concurrently.

The purpose of this action is to notify the public that an additional scoping meeting has been added to the series published in 67 FR 53769 and in 67 FR 53771. The date and location of that meeting is as follows:

Monday, September 30, 2002, NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL; telephone: (850–234–6541).

The scoping meeting will begin at 6 p.m. The first portion of the meeting will be allocated to taking public comments on proposed Amendment 13. Scoping for the draft red snapper rebuilding amendment will commence immediately thereafter. The meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Hood at the Council (see **ADDRESSES**).

The notifications published at 67 FR 53769 and 67 FR 53771 provide detailed information on additional opportunities for public comment associated with the publication of the draft and final SEISs.

Dated: September 5, 2002

Virginia M. Fay,

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

[FR Doc. 02–23097 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 177
Thursday, September 12, 2002

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

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on GIPSA's Grain Inspection Advisory Committee.

SUPPLEMENTARY INFORMATION: Under authority of section 20 of the United States Grain Standards Act (Act), Public Law 97–35, the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of the Act. Section 21 of the United States Grain Standards Act Amendments of 2000, Pub. L. 106–580, extended the authority for the Advisory Committee through September 30, 2005.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and includes scientists with expertise in research related to the policies in section 2 of the Act. Members of the Advisory Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members and the five alternate members whose terms will expire in January 2003.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: GIPSA, by telephone (tel: 202–720–0219), fax (fax: 202–205–9237), or electronic mail (e-mail: *Terri.L.Henry@usda.gov*) and request Form AD–755. Form AD–755 may also be obtained via the Internet through GIPSA's home page at: *http://www.usda.gov/gipsa/advcommittee/ad755.pdf*. Completed forms must be submitted to GIPSA by fax or at the following address: GIPSA, 1400 Independence Ave., SW., Stop 3601, Washington, DC 20250–3601. Form AD–755 must be received not later than November 12, 2002.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, disability, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Dated: September 9, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–23233 Filed 9–11–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: BISNIS Publication Subscription Form.

Agency Form Number: N/A.

OMB Number: 0625–0236.

Type of Request: Regular submission.

Burden: 170 hours.

Number of Respondents: 2,040.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The International Trade Administration's (ITA) Business Information Service for the Newly Independent States (BISNIS) program offers business information and counseling to U.S. companies seeking to export or to invest in the countries of the former Soviet Union. A critical component of the program is the dissemination of information regarding market conditions and opportunities in various industries and countries of the former Soviet Union. These information products provided by BISNIS are in the form of e-mails, faxes, and paper mailers. The Publication Subscription form is a quick way for interested parties to tell BISNIS which products they want and their industry and country interests.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via Internet at *dhynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: September 6, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–23121 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Chemical Weapons Convention, Amendment to the Export Administration Regulations (End-Use Certificates and Advanced Notifications and Annual Reports)

ACTION: Proposed collection; comment request.

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 November 12, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via e-mail at *dhynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Room 6622, Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC was signed by the United States in Paris on January 13, 1993, and was submitted by President Clinton to the United States Senate on November 23, 1993, for its advice and consent to ratification. The CWC prohibits, *inter alia*, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons.

Schedule 1 notification and report: Under Part VI of the CWC Verification Annex, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to implement the CWC, at least 30 days before any transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit annual reports to the OPCW on all transfers of Schedule 1 Chemicals.

End-Use Certificates: Under Part VIII of the CWC Verification Annex, the United States is required to obtain End-Use Certificates for transfers of Schedule 3 chemicals to Non-States Parties to ensure the transferred chemicals are only used for the purposes not prohibited under the Convention.

II. Method of Collection

Written reports.

III. Data

OMB Number: 0694–0117.

Form Number: N/A.

Type of Review: Renewal of collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 356.

Estimated Time Per Response: 60 to 90 minutes per response.

Estimated Total Annual Burden Hours: 176 hours.

Estimated Total Annual Cost: No capital expenditures are required.

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 will also become a matter of public record.

Dated: September 6, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–23119 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Commercial Encryption Items Under the Jurisdiction of the Department of Commerce

ACTION: Proposed collection; comment request.

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 November 12, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via e-mail *dhynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Encryption items are an important commercial export for the U.S. but they also have significant strategic uses. This information collection is essential because the responsibility for export authorization for commercial encryption items has been transferred from the Department of State to the Department of Commerce. The information required by this collection is required in support of classification requests regarding encryption items and applications to export or reexport encryption items and encryption software. Overall, U.S. policies continues to develop. A recent regulation liberalizes the licensing policy for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms. As encryption policies continue to develop, paperwork requirements will fluctuate.

II. Method of Collection

Typed or by Fax.

III. Data

OMB Number: 0694–0104.
Form Number: BIS–748P.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 234.
Estimated Time Per Response: 15 minutes to 5½ hours per response.
Estimated Total Annual Burden Hours: 1,372.
Estimated Total Annual Cost: No capital expenditures are required.

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 will also become a matter of public record.

Dated: September 6, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–23120 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

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

ACTION: Notice of final results and partial rescission of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On March 6, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). Imports covered by these orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. On February 27, 2001, the petitioner, Ames True Temper, requested administrative reviews of all four classes or kinds of subject merchandise for the following companies: Shandong Machinery Import & Export Corporation (SMC), Fujian Machinery & Equipment Import & Export Corporation (FMEC), Tianjin Machinery Import & Export Corporation (TMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong General Group Corporation (Huarong). The petitioner also requested a review of hammers/sledges from Shandong Jinma Industrial Group Co., Ltd. (Jinma). The period of review (POR) is February 1, 2000, through January 31, 2001. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled *Final Results of Reviews.*

EFFECTIVE DATE: September 12, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas E. Martin or Thomas F. Futtner, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2305 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On March 6, 2001, the Department published the preliminary results of the administrative reviews of the antidumping duty orders on HFHTs from the PRC. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, Notice of Intent Not To Revoke in Part and Extension of Final Results of Reviews*, 67 FR 10123 (March 6, 2001) *(Preliminary Results)*. We conducted verifications of TMC, LMC and Huarong after publication of the preliminary results. *See* Verification of the Questionnaire Responses of Tianjin Machinery Import & Export Corp., in the Antidumping Duty Administrative Review of Certain Heavy Forged Hand Tools from the People's Republic of China (July 23, 2002); Verification of the Questionnaire Responses of (TMC hammer factory), in the Antidumping Duty Administrative Review of Certain Heavy Forged Hand Tools from the People's Republic of China (July 23, 2002); Verification of the Questionnaire Responses of Liaoning Machinery Import & Export Corporation in the Antidumping Duty Administrative Review of Heavy Forged Hand Tools from the PRC (July 23, 2002); Verification of the Questionnaire Responses of Shandong Huarong General Group Corporation in the Antidumping Duty Administrative Review of Heavy Forged Hand Tools from the PRC (July 23, 2002). After the verification reports, we invited parties to comment on our preliminary results of review. The petitioner and respondents filed case briefs on July 30, 2002, and July 31, 2002, and rebuttal briefs on August 6, 2002, and August 7, 2002, respectively. A hearing was held pursuant to a request from the respondents on August 8, 2002. Based on arguments raised in the briefs and information obtained by the Department since the preliminary results, the Department has made changes to the surrogate values used in this review which are discussed more fully in a memorandum dated concurrently with this notice (*see* Changes to Surrogate Values Used in Preliminary Results for the Final Results of the Tenth Administrative Reviews of Certain HeavyForged Hand Tools From the People's Republic of China—February 1, 2000 through January 31, 2001). The Department's analysis of the comments raised in the petitioner and respondents'

briefs and rebuttal briefs are addressed in the Issues and Decision Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration (Decision Memorandum), dated concurrently with this notice, which is hereby adopted by this notice.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the orders is dispositive.

Partial Rescission of Review

On March 29, 2001, Jinma informed the Department that it did not ship hammers/sledges to the United States during the POR, and requested rescission of its administrative review. Information on the record indicates that there were no entries of this merchandise from Jinma during the POR. We preliminarily rescinded the review with respect to Jinma in the preliminary results, and we have determined that no change to our rescission decision is warranted for these final results. Therefore, we are rescinding the hammers/sledges review for Jinma.

On March 29, 2001, FMEC requested that the Department rescind its administrative reviews with respect to axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks, because it had no sales, entries, or shipments of subject merchandise during the POR. *See* FMEC Request for Rescission of Administrative Reviews Letter (March 29, 2001). Information on the record indicates that there were no entries of subject merchandise from FMEC during the review period. We preliminarily rescinded the reviews with respect to FMEC in the preliminary results, and we have determined that no changes to our rescission decisions are warranted for these final results. Therefore, we are rescinding the axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks reviews for FMEC.

In its May 25, 2001, Section A questionnaire response, Huarong stated that during the POR it sold only subject merchandise within the bars/wedges class of merchandise. Information on the record indicates that there were no entries of axes/adzes, hammers/sledges, and picks/mattocks from Huarong during the POR. (*See* Memorandum from Thomas Martin through Ronald Trentham to The File, dated August 16, 2002). We preliminarily rescinded the reviews for these products with respect to Huarong and have determined that no changes to our recision decisions are warranted for these final results. Therefore, we are rescinding the axes/adzes, hammers/sledges, and picks/mattocks reviews for Huarong.

In its May 25, 2001, Section A questionnaire response, LMC stated that during the POR, it sold only subject merchandise within the bars/wedges class of merchandise. Information on the record indicates that there were no entries of axes/adzes and picks/mattocks from LMC during the POR, but record information indicates that LMC made one sale of hammers/sledges during the review period. (*See* Memorandum from Thomas Martin through Ronald Trentham to The File, dated August 16, 2002). We preliminarily rescinded the reviews with respect to axes/adzes, picks/mattocks, and hammers/sledges from LMC in the preliminary results, and we have determined that no changes to our rescission decisions are warranted with respect to axes/adzes and picks/mattocks for these final results. Therefore, we are rescinding the axes/adzes and picks/mattocks reviews for LMC. With respect to hammers/sledges from LMC, based on our determination that LMC failed to report its sale of hammers/sledges during the POR, we applied a separate adverse facts available (AFA) rate to imports of this merchandise. *See* Application of Adverse Facts Available to Liaoning Machinery Import & Export Corporation (LMC), dated concurrently with this notice.

In its May 25, 2001, Section A questionnaire response, SMC stated that during the POR, it sold only subject merchandise within the hammers/sledges class of merchandise. Information on the record indicates that there were no entries of axes/adzes, picks/mattocks, and bars/wedges from SMC during the POR. We preliminarily rescinded the reviews with respect to SMC in the preliminary results, and we have determined that no changes to our rescission decisions are warranted for these final results. Therefore, we are rescinding the axes/adzes, picks/mattocks, and bars/wedges reviews for SMC.

Intent Not To Revoke

In its February 27, 2001, review requests, TMC requested revocation for all four HFHT orders. In the preliminary results, the Department found that TMC did not qualify for revocation for any of the four orders because it did not receive zero or *de minimis* margins for each of the reviews upon which it based its revocation request. In its July 31, 2002, case brief, TMC argued that it satisfies the conditions for revocation for two of the orders, hammers/sledges and picks/mattocks. Section 351.222(b)(2) of the Department's regulations provides that the Secretary may revoke an antidumping order in part if the Secretary concludes, *inter alia*, that one or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years. Thus, in determining whether a requesting party is entitled to a revocation inquiry, the Department must determine that the party received zero or *de minimis* margins for the three consecutive years forming the basis for the revocation request. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part,* 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and*

Determination Not to Revoke Order in Part, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands,* 65 FR 742 (January 6, 2000). In the instant reviews, TMC's final results are above *de minimis* for the HFHT antidumping duty orders. Consequently, we find that TMC does not qualify for revocation of any of the HFHTs antidumping duty orders based upon section 351.222(b) of the Department's regulations.

Facts Available (FA)

1. Application of Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) Withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department has determined that it is appropriate to apply FA for purposes of determining the dumping margin for hammers/sledges for LMC in the instant review. Pursuant to 776(a)(2)(A), we have determined that LMC did not report sales of hammers to the United States during the POR as requested by the Department in the antidumping duty questionnaire. Pursuant to section 782(i) of the Act, the Department conducted an on-site verification of the information submitted by LMC at its sales headquarters in the PRC. After analyzing LMC's record information pursuant to section 782(e) of the Act, we determined that LMC made one sale of hammers/sledges to the United States within the POR. Furthermore, we were able to confirm this with Customs' data. *See Memorandum from Thomas Martin through Ronald Trentham to The File,* dated August 16, 2002. For further discussion, please see memorandum regarding *Application of Adverse Facts Available to Liaoning Machinery Import & Export Corporation (LMC),* dated concurrently with this notice.

Because LMC failed to provide necessary information regarding its U.S. sales of hammers/sledges as requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we must establish the margin for this company based totally on facts otherwise available.

2. Selection of AFA

We have determined that the AFA rate for hammers/sledges is the calculated margin of 36.55 percent, the margin for TMC in the instant review, and the highest rate in this proceeding. Because LMC had control of the information related to sales of hammers/sledges during the POR, yet failed to cooperate to the best of its ability by providing this information, we have applied an adverse inference in accordance with section 776(b) of the Act. For a discussion of the Department's selection of the AFA rates to be applied to LMC, *see* the memorandum regarding *Application of Adverse Facts Available to Liaoning Machinery Import & Export Corporation (LMC),* dated concurrently with this notice.

3. Corroboration

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The rate used as AFA in this segment was calculated using verified information from the instant POR. The source for calculated margin is a company-specific administrative determination. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. Furthermore, we have no new information that would lead us to reconsider the reliability of the rate being used in this case.

As to the relevance of the margin used for AFA, the courts have stated that "[b]y requiring corroboration of adverse inference rates, Congress clearly intended that such rates should be reasonable and have some basis in reality." *F.Lli De Cecco Di Filippo Fara S. Martino S.p.A.,* v. *U.S.,* 216 F.3d 1027, 1034 (Fed. Cir. 2000).

The rate selected is the highest calculated rate calculated in this proceeding. In determining a relevant AFA rate, the Department assumes that if the non-responding parties could have demonstrated that their dumping margins were lower, they would have participated in this review and attempted to do so. *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190–91 (Fed. Cir. 1990). Therefore, given LMC's failure to cooperate to the best of its ability in this review, we have no reason to believe that its dumping margins would be any less than the highest calculated rate in this proceeding. This rate ensures that LMC does not benefit by failing to cooperate fully. Therefore, we consider the rate of 36.55 percent relevant and appropriate to use as AFA for LMC.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the Decision Memorandum. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B–

099 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on Import Administration's Web site at *http//ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Separate Rates Determination

As in the preliminary results, TMC, SMC, Huarong and LMC are entitled to separate rates.

Changes Since the Preliminary Results

In calculating the final results, the Department has made the following changes since the Preliminary Results:

1. We corrected errors in the calculation of SG&A expenses and profit for all reviewed companies.
2. We corrected errors in the calculation of the surrogate values for steel billet and steel scrap.
3. We applied total AFA to LMC with respect to the hammers/sledges order.
4. We applied reported market economy ocean carrier charges to LMC's nonmarket economy (NME) ocean carrier shipments, pursuant to current practice.
5. We adjusted certain Huarong sales for discounts.
6. We applied as facts available (FA) the highest labor rate calculated at verification for bars produced by Huarong.
7. We applied as FA the highest packing and freight costs reported for TMC hammers to all hammers sold by TMC.
8. We applied a weighted-average of the surrogate values of the three types of steel consumed by the verified TMC hammer supplier to all of TMC's hammers.
9. We increased the consumption rate for paint, coal and electricity for all TMC hammers.
10. We corrected errors with respect to TMC's calculated margins.
11. We corrected the adjustment made to one of TMC's sales.
12. We corrected TMC's minor errors.

Final Results of Reviews

We determine that the following weighted-average percentage margins exist for the period February 1, 2000, through January 31, 2001:

Manufacturer/exporter	Margin (percent)
Tianjin Machinery Import & Export Corporation:.	
Axes/Adzes—2/1/00–1/31/01	5.08
Bars/Wedges—2/1/00–1/31/01	0.25
Hammers/Sledges—2/1/00–1/31/01	36.55
Picks/Mattocks—2/1/00–1/31/01	3.12
Shandong Machinery Import & Export Corporation:.	
Hammers/Sledges—2/1/00–1/31/01	0.00
Shandong Huarong General Group Corporation:.	
Bars/Wedges—2/1/00–1/31/01	16.22
Liaoning Machinery Import & Export Corporation:.	
Bars/Wedges—2/1/00–1/31/01	0.00
Hammers/Sledges—2/1/00–1/31/01	36.55

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore, *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies with a separate rate not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates; (4) for all non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: September 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Part I—General Issues

1. "Zeroing" Methodology
2. Inland Freight Distances
3. Calculation of Overhead, Selling, General and Administrative Expenses (SG&A) and Profit
4. Calculation of Marine Insurance

Part II—General Surrogate Value Issues

5. Aberrational Data
6. Harmonized Tariff System (HTS) Classification of Steel Billet
7. Surrogate Value for Tool Handles
8. HTS Classification for Steel Scrap for Scrap Offset
9. HTS Classification of Steel Scrap for Factors of Production

Part III—LMC Comments

10. LMC's Unreported Hammer Sale
11. LMC Ocean Freight
12. Agency Sales
13. LMC Unreported Port Charges

Part IV—Huarong Comments

14. Huarong Unreported Axe/Adze and Pick/Mattock Sales
15. Huarong Unreported Bar/Wedge Sales
16. Huarong Discounts
17. Huarong Inland Freight Distances
18. Huarong Labor Rate
19. Huarong Packing FOP
20. Huarong Steel FOP Input

Part V—TMC Comments

21. TMC Unreported Sales
22. TMC FOP Verification and Application of Adverse Facts Available (AFA)
23. Verification of TMC Steel Consumption
24. TMC Scrap Offset
25. TMC Type of Steel
26. TMC Paint Consumption
27. TMC Coal and Electricity Consumption
28. TMC Margin Calculation Errors
29. TMC Inland Freight Distances
30. TMC Inland Freight Calculation Errors
31. TMC Packing
32. TMC Discount
33. TMC Marine Insurance Charges
34. TMC Ocean Freight
35. TMC Steel Tool Handles and Steel Wedges
36. TMC Revocation
37. TMC Minor Errors and Corrections Presented at Verification

[FR Doc. 02–23252 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils From France: Notice of Extension of Time Limit for Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce is extending the time limit for the final results of review of the countervailing duty order on stainless steel sheet and strip in coils from France. The period of review is January 1, 2000, through December 31, 2000.

EFFECTIVE DATE: September 12, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam; Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to 19 CFR Part 351 (2000).

Background

The preliminary results of this review were published in the Federal Register on May 10, 2002 (67 FR 31774). The final results are currently due no later than September 9, 2002.

Postponement

The Department determines that it needs additional time to consider the issues raised by the parties and thus, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Accordingly, the Department is extending the time limit for completion of these final results for 14 days (i.e., until September 23, 2002).

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: September 6, 2002.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–23251 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 020827204–2204–01]

Notice of Intent To Update Existing Mass Spectral Library

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) announces its intent to enhance its library of mass spectra. The enhancement will both expand the coverage of chemical substances in the library of mass spectra and add related reference data, including retention indices and mass spectra generated from ion trap and mass spectrometry/mass spectrometry (MS/MS) instruments. Interested parties are invited to submit comments to the address below.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Comments should be sent to the attention of Dr. Stephen Stein at the National Institute of Standards and Technology, Mail Stop 8380, 100 Bureau Drive, Gaithersburg, MD, 20899–8380.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Stein by writing to the above address or by e-mail at *stephen.stein@nist.gov* or by telephone at (301) 975–2444.

SUPPLEMENTARY INFORMATION: As part of its responsibilities under Title 15 U.S.C. 290 to collect, evaluate and publish high quality Standard Reference Data (SRD), NIST creates and maintains evaluated SRD databases. One such database is the Mass Spectral Library, which is an evaluated data collection containing electron ionization mass spectra for discrete chemical substances. The database is primarily used to aid in the identification of chemical compounds by providing a source for reference spectra for comparison to spectra acquired by commercial instruments, especially spectra generated by gas chromatography/ mass spectrometry (GC/MS). For each spectrum, auxiliary information for chemical identification is provided, including chemical names,

formulas, chemical structures and related information. It is proposed to expand this collection by adding both new classical electron ionization spectra as well as related reference data, including gas chromatographic retention indices and mass spectra acquired by other instrument types. The addition of spectra of relevant compounds and derivatives will increase the likelihood of identifying unknown compounds, or ruling them out, in a chemical analysis. The addition of gas chromatographic retention indices will enable the more reliable identification of compounds by matching retention data as well as spectral data acquired in a GC/MS analysis. The addition of mass spectra generated by other instrument classes, including the methods of MS/MS and ion trap mass spectrometry, will broaden the scope of application of this library to other analytical methods and substances. The net result of these enhancements will be to increase the reliability and utility of this library as an aid in the process of chemical identification. We invite comments concerning this update.

Dated: September 5, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–23267 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Secretary of Commerce. The invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–869–2751, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title as indicated below.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

Title: Method and Apparatus for Measuring the Temperature of a Liquid Medium.

Abstract: A method and apparatus for measuring the temperature of a liquid medium are disclosed. In accordance with the present invention, a liquid medium containing a fluorescent dye is provided. The fluorescent dye is chosen to exhibit a first fluorescence intensity at a first wavelength and a second fluorescence intensity at a second wavelength, wherein the temperature of the liquid medium may be determined in accordance with a predetermined temperature function of the first fluorescence intensity and the second fluorescence intensity. The method of the invention comprises the steps of measuring the fluorescence intensities at the first and second wavelengths; and determining the temperature of the liquid medium in accordance with the predetermined temperature function. The apparatus comprises means for measuring the first and second fluorescence intensities, and means for determining the temperature of the liquid medium in accordance with the predetermined temperature function. The apparatus preferably is a confocal optical measuring device, and preferably is capable of determining a temperature profile within the liquid medium.

Dated: September 5, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–23268 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Wednesday, October 9, 2002, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP and to have a panel of outside experts discuss the "state of small manufacturing" and how it is affected by the economy, the current state of the trade deficit and how productivity within firms is changing. Discussions scheduled to begin at 8 a.m. and to end at 9:15 a.m. and to begin at 2:30 p.m. and to end at 3:30 p.m. on October 9, 2002, on personnel issues and proprietary budget information will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Monday, October 7, 2002, and she will provide you with instructions for admittance. Ms. Peter's address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene October 9, 2002 at 8 a.m. and will adjourn at 3:30 p.m. on October 9, 2002.

ADDRESSES: The meeting will be held in the Lecture Room A, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–5033.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 3, 2002, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of

proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 6, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–23269 Filed 9–11–02; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Paperless ELVIS (Electronic Visa Information System) Requirement and of Elimination of Paper Visa for Textiles and Textile Products Produced or Manufactured in the Republic of the Philippines

September 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customs eliminating the paper visa requirement.

EFFECTIVE DATE: September 15, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to a textile visa arrangement between the Governments of the United States and the Republic of the Philippines (Philippines), certain textiles and textile products exported from the Philippines must be accompanied by a visa issued by the Philippines in order to be imported into the United States. See 44 FR 68005 (November 28, 1979). The Electronic Visa Information System (ELVIS) allows certain foreign governments to electronically transfer textile and textile product shipment information to the U.S. Customs Service and thereby issue a visa electronically. On August 18, 1997 (62 FR 43993), CITA announced that the Philippines would begin an ELVIS test implementation phase using both paper and electronic visas. On August 17, 2001, the Chairman of CITA requested public comment regarding elimination of the paper visa requirement for the Philippines and utilization of the ELVIS system exclusively. (66 FR 43227)

On May 21, 2002, the Governments of the United States and the Philippines signed an ELVIS Arrangement. Under this Arrangement, a paper visa is no longer required, as an electronic transmission certifies the country of origin and authorizes the shipment to be charged against any applicable quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to eliminate the paper visa requirement for textiles and textile products, produced or manufactured in the Philippines and exported on or after September 15, 2002. Each shipment of textiles and textile products, as defined in the Arrangement, must be accompanied by an ELVIS transmission issued by the Philippines for products exported on or after September 15, 2002.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines for which the Government of the Republic of the Philippines (Philippines) has not issued an appropriate export visa.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Executive Order 11651 of March 3, 1972, as amended, the Uruguay Round Agreement on Textiles and Clothing (ATC); and pursuant to the Electronic Visa Information System (ELVIS) Arrangement dated May 21, 2002 between the Governments of the United States and the Republic of the Philippines, you are directed to prohibit, effective on September 15, 2002, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670, and 800-899, including part categories and merged categories, and which are not eligible for the exemptions noted below, produced or manufactured in the Philippines and exported on or after September 15, 2002 for which the Philippines has not transmitted an appropriate ELVIS transmission fully described below. Further, you are directed, effective on September 15, 2002, no longer to require a paper visa for the entry of shipments of textiles and textile products, produced or manufactured in the Philippines and exported to the United States on or after September 15, 2002.

A. Each ELVIS transmission must include the following information:

i. The visa number. The visa number must be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for the Republic of the Philippines is "PH"), and a six digit numerical serial number identifying the shipment; e.g., 1PH123456.

ii. The date of issuance. The date of issuance must be the day, month and year on which the visa was issued.

iii. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity are provided for in the U.S. Department of Commerce correlation and in the Harmonized Tariff Schedules of the United States (HTS), e.g., "Cat. 340-510DZ". Annex A lists all the part-category and merged category visas required for entry. Products covered by merged category quotas must be accompanied by either a merged category transmission or the correct category corresponding to the actual shipment, (e.g., quota category 333/334 may be transmitted in "category 333/334" or if the shipment consists solely of category 333 merchandise, the shipment may be accompanied by a transmission in "category 333" but not as "category 334."). Quantities must be stated in whole numbers. Decimals or fractions will not be accepted.

iv. The manufacturer identification number (MID). The MID must begin with 'PH,' followed by the first three characters from each of the first two words of the name of the manufacturer, followed by the largest number on the address line up to the first four digits, followed by the first three letters from the city name where the manufacturer is located.

B. Entry of a shipment shall not be permitted:

i. if an ELVIS transmission has not been received for the shipment from the Philippines;

ii. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number

b. category, part category or merged category,

c. quantity,

d. unit of measure,

e. date of issuance, or

f. MID;

iii. if the ELVIS transmission for the shipment does not match the information supplied by the importer or by its representatives regarding:

a. visa number

b. category, part category, or merged category, or

c. unit of measure;

iv. if the quantity being entered is greater than the quantity in the transmission.

v. if the visa number has previously been used (except in the case of a split shipment) or canceled, except when an entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the Philippines is required before a shipment that has been denied entry for one of the circumstances mentioned above will be released.

D. Visa waivers will only be considered if the shipment qualifies as a one-time special purpose shipment that is not part of an ongoing commercial enterprise. A visa waiver may be issued by the Department of Commerce at the request of the Philippine Embassy in Washington, D.C. for the Philippines. A visa waiver only waives the requirement to present an ELVIS transmission at entry and does not waive any quota requirements.

E. In the event of a systems failure, shipments will not be released for twenty-four hours or one calendar day. If system failure exceeds twenty-four hours or one calendar day, for the remaining period of the system failure the U.S. Customs Service will release shipments on the basis of the visa data provided by the Philippines.

Exempt Certification Requirements:

A. Shipments of the Philippine textile products listed below will be exempt from the levels of restraint (quotas) and ELVIS transmission requirements if they are certified, prior to exportation, by the Philippines as handmade or handicraft products as described below by the placing of an original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. Exempt certification affixed to duplicate copies of the invoice shall not be accepted. The shipment must be accompanied by the original copy of the invoice with the original exempt certification for entry into the United States. The following products may be so certified:

1. Handmade articles and garments of handwoven and handloomed fabric: all items must be cut, sewn, or otherwise fabricated by hand in order to qualify for this exemption. They may not include machine stitching.

2. Traditional folklore handicraft products: "Philippine items" defined as items that are traditional Philippine products, cut, sewn or otherwise fabricated by hand in cottage units of the cottage industry and may not include machine stitching, including:

i. Batik and Hablon Fabrics - Handwoven by the cottage industry

ii. Banaue Cloth - Cotton handloom fabric in multi-colors

iii. Other handwoven and handloom fabrics of the cottage industry iv. Articles and garments made by hand from handwoven and handloomed fabrics

B. Requirements for exempt certification stamp: Each exempt certification stamp must include the following information:

1. Date of issuance

2. Signature of issuing official; and

3. The basis for the exemption must be noted as:

i. Handwoven fabric of handloomed fabric (whichever is appropriate)

ii. Handmade textile products, or

iii. The name of the particular traditional folklore handicraft product (Philippines items) as defined above.

C. Should a shipment be exported from the Philippines without an exempt certification issued prior to the date of exportation, or should the certification be incorrectly certified (i.e., the date of issuance, signature or basis for the exemption is missing, incorrect or illegible, or has been crossed out or altered in any way), then the exempt certification will not be accepted and entry shall not be permitted unless a visa waiver is obtained.

D. If the exempt certification does not meet these requirements, a visa waiver must be obtained prior to release of any portion of the shipment. An exempt certification may not be issued after the exportation of the shipment from the Philippines. The shipment will be charged to the appropriate quota level.

Other Provisions:

A. The date of export is the actual date the merchandise finally leaves the Philippines. For merchandise exported by carrier, this is the day on which the carrier last departs the Philippines.

B. Textile product integrated into the General Agreement on Tariffs and Trade 1994 by the United States in accordance with the WTO Agreement on Textiles and Clothing do not require a transmission.

C. Merchandise imported for personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at $800 dollars or less do not require a transmission or exempt certification for entry and shall not be charged to agreements levels.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

ANNEX A

THE FOLLOWING IS A LIST OF MERGED CATEGORIES VISAS:

331/631
333/334
338/339
340/640
341/641
342/642
347/348
351/651
352/652
359–C/659–C

THE FOLLOWING IS A LIST OF MERGED CATEGORIES VISAS:—Continued

359–O/659–O
445/446
638/639
645/646
647/648

THE FOLLOWING IS A LIST OF PART-CATEGORY VISAS:

359–C
359–O (other than 359–C)
369–S
369–O (other than 369–S)
659–C
659–H
659–O (other than 659–C, 659–H)
669–P
669–O (other than 669–P)
670–L
670 O (other than 670–L)

[FR Doc. 02–23149 Filed 9–11–02; 8:45 am]
BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, William L. Hudson, at (202) 606–5000, extension 265, (*WHudson@cns.gov*); T.D.D. at (202) 565–2799 between the hours of 9 a.m. and 4 p.m. Eastern Standard Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of publication in this **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description

In his State of the Union address, President Bush called on all Americans to perform some form of service to the nation for the equivalent of two years of their life. Americans serve their country in extraordinary and countless ways. Most of our Nation's civic work is being done without the aid of the Federal Government, but we believe the Federal Government can work to enhance the opportunities for Americans to serve their neighbors and their Nation. The Administration proposes to create and expand activities that will enhance homeland security, provide additional community-based service and volunteer opportunities, and assist people around the world. In January, the President announced the creation of the USA Freedom Corps which has three major components: A newly created Citizen Corps to engage citizens in homeland security; an improved and enhanced AmeriCorps and Senior Corps, programs of the Corporation; and a strengthened Peace Corps.

Because of President Bush's announcement on March 12, 2002, which informed the public of the availability of this record of service, the Corporation, on March 6, 2002, submitted a request for emergency processing and approval by OMB of this record of service because it could not reasonably comply with the normal clearance procedures under the Paperwork Reduction Act. OMB approved this request on March 12, 2002, for a period of six months to expire on September 30, 2002, and assigned Control Number 3045–0077 to this information collection activity. The link to this record of service, which is now available for use, and which serves as a means for the public to record their record of service may be found on the following Internet address: *http://www.usafreedomcorps.gov*. Use of this tracking tool is 100 percent electronic in that users will establish a user ID and password that automatically creates a "record of service" account which is only accessible to that particular user. This record of service account can be updated only by the user who established the account. In addition, those users who create a record of service account can, by checking various blocks, elect to receive information about USA Freedom Corps and other national and community service volunteer activities.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Volunteer Service Hour Tracking Tool.

OMB Number: 3045–0077.

Agency Number: None.

Affected Public: Citizens of the United States.

Total Respondents: 10,000.

Frequency: On occasion.

Average Time Per Response: 3 minutes.

Estimated Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: September 6, 2002.

Christine Benero,

Director of Public Affairs and Public Liaison.

[FR Doc. 02–23143 Filed 9–11–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards List of 2002 Members

Below is a list of individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Awards System.

Air Force Materiel Command

Ms. Christine M. Anderson
Lt Gen Charles Coolidge
Mr. Edward Koenig
Maj Gen Mike Mushala
Mr. Harry E. Schulte

Secretariat

Ms. Frances A. Duntz
Mr. David Hamilton
Mr. James D. Marlowe
Ms. Susan A. O'Neal
Mr. Kenneth I. Percell
Mr. Harlan G. Wilder

Air Staff and "Others"

Mr. W. Kipling At Lee, Jr.
Mr. Edward C. Koenig
Mr. Terry R. Little
Mr. Jon S. Ogg
Mr. Ronald L. Orr
Mr. Earl J. Scott
Ms. Debra K. Walker

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–23245 Filed 9–11–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Friday, September 20, 2002 from 9 a.m. to 11:45 a.m. The closed Executive Session will be from 11:45 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held in Room SD–628 of the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of partially closed meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will

consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7), and (9) of title 5, United States Code.

Dated: September 9, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–23338 Filed 9–11–02; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to defense nuclear activities at Lawrence Livermore National Laboratory (LLNL).

Time and Date of Meeting: 9–12 a.m., September 26, 2002.

Place: Shrine Event Center, 170 Lindbergh Avenue, Livermore, CA 94551.

Status: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

Matters To Be Considered: The Board's meeting will examine the status of defense nuclear activities at Lawrence Livermore National Laboratory (LLNL). The meeting will first focus on LLNL's implementation of DNFSB Recommendation 2000–2, *Configuration Management, Vital Safety Systems.* Next, the meeting will review LLNL's implementation of DNFSB Recommendation 94–1, *Improved Schedule for Remediation in the Defense Nuclear Facilities Complex,* and DNFSB Recommendation 2000–1, *Prioritization for Stabilizing Nuclear Materials.* Disposition of inactive nuclear material will be included in this discussion. Additionally, the meeting will examine Laboratory support for nuclear explosive operations at the Pantex Plant.

The Board's meeting will provide an opportunity for members of the public, DOE, and its contractor employees or their representatives to comment on or provide information directly to the Board regarding matters affecting health and safety at Lawrence Livermore National Laboratory, including, but not limited to, those subject areas and facilities the Board will review during this visit.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the meeting may be submitted in writing or by telephone. Commentators should describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on September 25, 2002, will be scheduled for time slots, beginning at approximately 10 a.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Shrine Event Center at the start of the 9 a.m. meeting.

Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC office. The Board will hold the record open until October 26, 2002, for the receipt of additional materials.

The Board reserves the right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: September 9, 2002.

John T. Conway,

Chairman.

[FR Doc. 02–23295 Filed 9–9–02; 5:09 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than September 12, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: September 13, 2002.

Times: 8:30 a.m.–4 p.m.

September 13: Full Board Meeting: Closed Session 8:30 a.m.–3:30 p.m.; Full Board Open Meeting, 3:30 p.m.–4 p.m.

Location: The Ritz Carlton Pentagon City, 1250 Hayes Street, Arlington, Virginia 20002.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The full Board will meet in closed session on September 13, 2002 from 8:30 a.m. to 3:30 p.m. to interview candidates for the Executive Director position. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on September 13, 2002 from 3:30 p.m. to 4:30 p.m. to take action on personnel matters related to the Executive Director search. The meeting is scheduled to adjourn at 4:30 p.m.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: September 9, 2002.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 02–23203 Filed 9–11–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–527–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifty-Third Revised Sheet No. 8, Fifty-Third Revised Sheet No. 9, Fifty-Second Revised Sheet No. 13, and Sixty-Fourth Revised Sheet No. 18, proposed to become effective September 1, 2002:

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.4 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,872,498 to $2,382,158.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23229 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–517–000]

Black Marlin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Black Marlin Pipeline Company (BMPC) tendered for filing in its FERC Gas Tariff First Revised Volume No. 1, Eleventh Revised Sheet No. 4, to become effective October 1, 2002.

BMPC states that the purpose of the instant filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of BMPC's rates. Pursuant to Order No. 472, the Commission has assessed BMPC its ACA unit Rate of $.0022/MMBtu, effective October 1, 2002.

BMPC states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23218 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–528–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

September 6, 2002.

Take notice that on August 30, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1,

the following tariff sheet to become effective October 1, 2002:

Twenty-Fifth Revised Sheet No. 11A

CIG states the tariff sheet is being filed to revise the Fuel Reimbursement Percentages applicable to Lost, Unaccounted-For and Other Fuel Gas, Transportation Fuel Gas, and Storage Fuel Gas. The tendered tariff sheet is proposed to become effective October 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23214 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–526–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifty-eighth Revised Sheet No. 25, Fifty-eighth Revised Sheet No. 26, Fifty-eighth Revised Sheet No. 27, and Fifty-first Revised Sheet No. 28, bearing a proposed effective date of October 1, 2002.

Columbia states that the purpose of this filing is to reflect the new Annual Charge Adjustment (ACA) surcharge to be applied to rates commencing October 1, 2002, of $0.0022 per Dth.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23221 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–522–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirtieth Revised Sheet No. 18, Twentieth Revised Sheet No. 18A, and Thirty-first Revised Sheet No. 19, bearing a proposed effective date of October 1, 2002.

Columbia Gulf states that the purpose of this filing is to reflect the new Annual Charge Adjustment (ACA) surcharge to be applied to rates commencing October 1, 2002, of $0.0022 per Dth.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23212 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No RP02–524–000]

Cove Point LNG Limited Partnership; Notice of Annual Charge Adjustment and TARIFF Filing

September 6, 2002.

Take notice that on August 30, 2002 Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 certain tariff sheets listed on Appendix A to the filing, to be effective October 1, 2002.

Cove Point states that the purpose of the instant filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Cove Points rates. Pursuant to Order No. 472, the Commission has assessed Cove Point its ACA unit Rate of $.0022/dt, effective October 1, 2002.

Cove Point states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23228 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–521–000]

Crossroads Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 6, bearing a proposed effective date of October 1, 2002.

Crossroads states that the purpose of this filing is to reflect the new Annual Charge Adjustment (ACA) surcharge to be applied to rates commencing October 1, 2002, of $0.0022 per Dth.

Crossroads states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23227 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–516–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Discovery Gas Transmission, LLC (DGT) tendered for filing in its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 20 The tariff sheet is proposed to be effective October 1, 2002.

DGT states that the purpose of the instant filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of DGT's rates. Pursuant to Order No. 472, the Commission has assessed DGT its ACA unit Rate of $.0022/dt, effective October 1, 2002.

DGT states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23210 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–530–000]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

September 6, 2002.

Take notice that on September 3, 2002, Guardian Pipeline, L.L.C. (Guardian) tendered for filing revised pro forma tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as listed on Appendix A attached to the filing. Guardian states that the purpose of this filing is to submit tariff sheets in compliance with Commission requirements in Order Nos. 637, *et seq.*

Guardian states that its revisions to comply with Order Nos. 637, *et seq.*, are consistent with the Commission's Preliminary Determination on Non-Environmental Issues, 91 FERC (CCH) ¶ 61,285 (2000), and Order on Rehearing and Issuing Certificates, 94 FERC (CCH) ¶ 61,269 (2001), issued to Guardian in Docket Nos. CP00–36, *et al.* Guardian states that the pro forma tariff included in its November 30, 1999 Certificate Application in Docket Nos. CP00–36, *et al.*, already complied with many aspects of Order No. 637.

Guardian explains that its filing addresses both the revisions it has made to its tariff to comply with Order No. 637, as well as the means by which Guardian's pro forma tariff filed as part of its Certificate Application already complies with Order No. 637.

Guardian states that complete copies of this filing are being served on its shippers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23230 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–78–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Technical Conference

September 6, 2002.

Maritimes & Northeast Pipeline, L.L.C. (Maritimes) seeks authorization, pursuant to Section 7(c) of the Natural Gas Act (NGA), to construct and operate pipeline facilities (the Phase IV Project) that will result in an increase of approximately 385,000 dekatherms per day in year-round mainline design capacity. The proposed facilities for the Phase IV Project will, in part, be located on the facilities that Maritimes owns jointly with Portland Natural Gas Transmission System (PNGTS). PNGTS has protested Maritimes' filing stating that it violates the agreements governing the ownership, expansion rights and operation of the jointly-owned facilities and asks that the Commission reject the application.

Take notice that a technical conference to discuss the issues raised by the PNGTS protest will be held on Tuesday, September 17, 2002, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and staff are permitted to attend. For further information contact Jeff Wright at (202) 502–8617.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23207 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–525–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on October 1, 2002:

Second Revised Sheet No. 7
Second Revised Sheet No. 8
Second Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 14

Maritimes states that the purpose of this filing is to adjust Maritimes rates to reflect the current ACA Unit Surcharge authorized by the Commission for the fiscal year 2003. The ACA Unit Surcharge authorized by the Commission for fiscal year 2003 is $0.0021 per Dth, which results in a $0.0001 per Dth decrease in Maritime's prior year ACA surcharge.

Maritimes states that copies of this filing were served on all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23213 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2574–032 Maine]

Merimil Limited Partnership; Notice of Site Visit

September 6, 2001.

Take notice that the Applicant and Commission staff will tour the Lockwood Hydroelectric Project beginning at 1:30 p.m. on September 19, 2002. All interested individuals, organizations, and agencies are invited to attend.

All participants should meet at the Lockwood Project powerhouse on Water Street, Waterville, Maine.

For further information contact Nan Allen at (202) 502–6128.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23215 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–519–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002 Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised First Revised Sheet No. 4. The tariff sheet is proposed to be effective October 1, 2002.

Pine Needle states that the purpose of the instant filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Pine Needle's rates. Pursuant to Order No. 472, the Commission has assessed Pine Needle its ACA unit Rate of $.0022/dt, effective October 1, 2002.

Pine Needle states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23211 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–529–000]

Portland Natural Gas Transmission System; Notice of Tariff Filing of Annual Charge Adjustment

September 6 2002.

Take notice that on September 3, 2002, Portland Natural Gas Transmission System (PNGTS) filed its annual Annual Charge Adjustment (ACA) filing. PNGTS states that, pursuant to Section 154.402 of the Commission's regulations and Section 17 of the General Terms and Conditions of its tariff, that its ACA surcharge of $0.0022 per dekatherm, will remain unchanged in the next fiscal year.

PNGTS states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23222 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–523–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002 Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised sheets, with an effective date of October 1, 2002:

Third Revised Sheet No. 5
Third Revised Sheet No. 6

SLNG states that the proposed tariff sheets implement the Commission's Annual Charge Adjustment (ACA) effective October 1, 2002. The ACA surcharge is .21" per Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23220 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–515–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 14, to become effective November 1, 2002.

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 "Fuel Retention" as found in the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1. The revised EFRPs are proposed to be in effect for the annual period November 1, 2002, through October 31, 2003. In general, the instant filing results in a minimal overall annual impact on most customers due to the fact that some EFRPs increase and some EFRPs decrease from percentages charged during the last annual period.

Texas Gas states that copies of the revised tariff sheet are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23225 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–520–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective October 1, 2002.

Transco states that the purpose of the instant filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Transco's rates. Pursuant to Order No. 472, the Commission has assessed Transco its ACA unit Rate of $.0022/dt, effective October 1, 2002.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23219 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–518–000]

Vector Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2002.

Take notice that on August 30, 2002, Vector Pipeline L.P. (Vector), tendered for filing a revised tariff sheet to its FERC Gas Tariff, Volume No. 1, in compliance with section 154.402 of the Commission's regulations and section 26 of the General Terms and Conditions of Vector's Tariff for the purpose of initiating an Annual Charge Adjustment (ACA) of $0.0021 per Dth applicable to the usage component of all transportation services. Vector requests an effective date of October 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23226 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2497–001, et al.]

Central Maine Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 4, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Maine Power Company

[Docket No. ER02–2497–001]

Take notice that on August 29, 2002, Central Maine Power Company (CMP) submitted a correction to its filing dated August 26, 2002 regarding revisions to the Continuing Site/Interconnection Agreement (CSIA) by and between CMP and FPL Energy Maine, Inc., designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Original Service Agreement No. 158, First Revised. The correction consisted of the submission of page 29 (which was missing from the original filing) to the clean version of the revised filing.

Comment Date: September 19, 2002.

2. Tucson Electric Power Company

[Docket No. ER02–2508–000]

Take notice that on August 29, 2002, Tucson Electric Power Company tendered for filing one (1) Umbrella Service Agreement (for short-term firm service) and one (1) Service Agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER01–208–000.

The details of the service agreements are as follows:

Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of August 21, 2002 by and between Tucson Electric Power Company and FPL Energy Power Marketing, Inc.—FERC Electric Tariff Vol. No. 2, Service Agreement No. 202. No service has commenced at this time.

Form of Service Agreement for Non-Firm Point-to Point Transmission Service dated as of August 21, 2002 by and between Tucson Electric Power Company and FPL Energy Power Marketing, Inc.—FERC Electric Tariff Vol. No. 2, Service Agreement No. 203. No service has commenced at this time.

Comment Date: September 19, 2002.

3. Wisvest-Connecticut, LLC

[Docket No. ER02–2514–000]

Take notice that on August 29, 2002, Wisvest-Connecticut, LLC (Wisvest), filed with the Federal Energy Regulatory Commission an "Installed Capability Purchase and Sale Agreement" between Bridgeport Energy LLC and Wisvest which is being filed pursuant to Wisvest's market-based rate tariff.

Comment Date: September 19, 2002.

4. Covanta Fairfax, Inc

[Docket No. ER02–2515–000]

Take notice that on August 29, 2002, Covanta Fairfax, Inc. (the Applicant), filed under Section 205 of the Federal Power Act, 16 U.S.C. 824d, Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), and Commission Order No. 614, a request that the Commission accept for filing an Amendment to the First Amendment and Restatement of Power Purchase and Operating Agreement Between Ogden Martin Systems of Fairfax, Inc. and Virginia Electric and Power Company dated December 1, 1996, which was accepted for filing by the Commission in Docket No. ER97–1562–000. The proposed Amendment amends certain provisions pertaining to scheduled outages and establishes a limited offset against capacity payments.

Comment Date: September 19, 2002.

5. Westar Energy, Inc.

[Docket No. ER02–2516–000]

Take notice that on August 29, 2002, Westar Energy, Inc., submitted for filing revised Order 614 compliant tariffs and contracts reflecting changes to incorporate the company's recent name change. The submitted contracts are proposed to be effective on June 19, 2002, the date of the official company name change.

A copy of this filing was served upon the Kansas Corporation Commission and the wholesale customers who take service under the aforementioned contracts.

Comment Date: September 19, 2002.

6. The Dayton Power and Light Company

[Docket No. ER02–2517–000]

Take notice that on August 29, 2002, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Select Energy, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Select Energy, Inc., and the Public Utilities Commission of Ohio.

Comment Date: September 19, 2002.

7. The Dayton Power and Light Company

[Docket No. ER02–2518–000]

Take notice that on August 29, 2002, The Dayton Power and Light Company (Dayton) submitted service agreements establishing with Select Energy, Inc., as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton request an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon with Select Energy, Inc., and the Public Utilities Commission of Ohio.

Comment Date: September 19, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–2519–000]

Take notice that on August 29, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the Appendix of Attachment K of the PJM Open Access Transmission Tariff and Schedule 1 of the Amended and

Restated Operating Agreement to establish a Spinning Reserve market for PJM and PJM West.

PJM requests an effective date of December 1, 2002 for the amendments. Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: September 19, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–23155 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12209–000.

c. *Date filed:* June 6, 2002.

d. *Applicant:* Three Mile Falls Hydro, LLC.

e. *Name of Project:* Three Mile Falls Diversion Dam Hydroelectric Project.

f. *Location:* At an existing diversion dam owned by the U.S. Bureau of Reclamation (USBR) on the Umatilla River in Umatilla County, Oregon. Part of the project would be on lands administered by the USBR.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442 (208) 745–0834.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12209–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would be located at an existing diversion dam owned by the USBR and would consist of: (1) A proposed 84-inch-diameter steel penstock approximately 300 feet long, (2) a proposed powerhouse containing one turbine generator having a total installed capacity of 1 MW, (3) a proposed 1-mile-long, 15 kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 4.8 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at Three Mile Falls Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant (s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23208 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary License Amendment and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for temporary license amendment to deviate from: (1) The High Rock reservoir and Badin Lake drawdown schedule; and (2) the obligation beginning March 6, 2003 to refill High Rock Reservoir to within five feet of full pool by May 15, 2003.

b. *Project No.:* 2197–056.

c. *Date Filed:* August 29, 2002.

d. *Applicant:* Alcoa Power Generating Inc.

e. *Name of Project:* Yadkin River.

f. *Location:* The project is located on the Yadkin/Pee Dee River, in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and sections 799 and 801.

h. *Applicant Contact:* Julian Polk, Alcoa Power Generating Inc., 293 NC 740 Highway, PO Box 576, Badin, NC 28009–0576, (704) 422–5617.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. T.J. LoVullo at (202) 502–8900, or e-mail address: *thomas.lovullo@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 7, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2197) on any comments or motions filed.

k. *Description of Request:* As the result of collaborative efforts between Alcoa Power Generating Inc. (APGI), Carolina Power and Light (CP&L), the North Carolina Department of the Environment and Natural Resources, the South Carolina Department of Natural Resources, and the South Carolina Department of Health and Environmental Control, the licensee filed a request for an emergency temporary amendment to its license requirements. The purpose of this emergency amendment request is to adopt special management practices for the Yadkin Project to respond to the public health and safety concerns that have arisen as a result of the extraordinary drought in the Yadkin/Pee Dee basin. The new, temporary operating protocol, developed by the above parties and filed by APGI with the Commission, proposes to coordinate the operation of the Yadkin Project with CP&L's Yadkin/Pee Dee River Project (collectively, the licensees) to discharge a target volume of 900 cubic feet per second of water for downstream water uses. APGI proposes to implement the protocol which calls for, in part, to coordinate operation with CP&L to proportionally draw down the licensees' reservoirs in order to minimize drought impacts and equalize the burden on people, fish, and wildlife dependent upon the reservoirs.

The operating guides for the Yadkin Project require specific reservoir levels as well as refilling requirements in the spring. In order to meet the downstream water needs, APGI requested an emergency temporary license variance of the reservoir elevation requirements and the requirement to refill High Rock reservoir to within five feet of full by May 15, 2003 in the event that adherence to the newly developed protocol prevents the licensee from being able to achieve the refill.

Based on the need to respond to the public health and safety concerns that have arisen as a result of the extraordinary drought in the Yadkin/Pee Dee basin, APGI's request for variances to its operational requirements, as identified in its August 29, 2002 filing, may be implemented while the Commission completes its review of APGI's request.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link, select "General Search" and enter "P–2197" in the "Docket Number" box to access the document. For assistance call 202–502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23209 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12317–000.

c. *Date filed:* July 30, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Maxwell L&D Hydroelectric Project would be located on the Monongahela River in Fayette County, Pennsylvania. The project would utilize the U.S. Army Corps of Engineers' existing Maxwells Lock and Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12317–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Maxwell Locks and Dam, would consist of: (1) Four 132-inch-diameter, 50-foot-long steel penstocks leading from the pool to the turbine assembly, (2) a powerhouse containing four generating units with a total installed capacity of 7.5 megawatts, (3) a 500-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 47 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23216 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12331–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Oliver Dam Hydroelectric Project would be located on the Black Warrior River in Tuscaloosa County, Alabama. The project would utilize the U.S. Army Corps of Engineers' existing Oliver Dam and Reservoir.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12331–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing the Oliver Dam and Reservoir, would consist of: (1) A penstock connecting the existing outlet works to the turbine assembly, (2) a powerhouse on the downstream side of the dam containing several generating units with a combined installed capacity of 6.2 megawatts, (3) a transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 42 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23223 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12326–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Mississinewa Lake Dam Hydroelectric Project would be located on the Mississinewa River in Miami County, Indiana. The project would utilize the U.S. Army Corps of Engineers' existing Mississinewa Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12326–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing the Mississinewa Lake and Dam, would consist of: (1) A 78-inch-diameter, 130-foot-long penstock connecting the existing outlet works to the turbine assembly, (2) a powerhouse containing two generating units with a combined installed capacity of 3 megawatts, (3) an 800-foot-long, 14.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 18 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application. r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23224 Filed 9–11–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7375–6]

Control of Air Pollution From New Motor Vehicles; Low Sulfur Diesel Refinery Hardship Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: In January 2001, EPA promulgated new emission standards for 2007 and later model year highway diesel engines as well as low-sulfur diesel requirements that begin in 2006 (66 FR 5002, January 18, 2001). That action included a provision which allows refiners to seek temporary relief from the regulations based on a showing of unusual circumstances that impose extreme hardship and significantly affect their ability to comply by the required date, as well as other factors. Through this document, we are informing the public that we have received applications from two refiners for hardship relief under these provisions.

The public is invited to provide input on this matter.

DATES: Comments should be provided by October 15, 2002.

ADDRESSES: Tad Wysor, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; e-mail wysor.tad@epa.gov.

FOR FURTHER INFORMATION CONTACT: Tad Wysor, at telephone (734) 214–4332, fax (734) 214–4816, e-mail *wysor.tad@epa.gov.*

SUPPLEMENTARY INFORMATION: In January 2001, EPA promulgated new emission standards for 2007 and later model year highway diesel engines as well as low-sulfur diesel requirements that begin in 2006 (66 FR 5002, January 18, 2001). That action included a provision which allows refiners to seek temporary relief from the regulations based on a showing of unusual circumstances that impose extreme hardship and significantly affect their ability to comply by the required date, as well as other factors. This provision also requires the refiners to make best efforts to comply with the low sulfur diesel fuel requirements (40 CFR 80.560).

Hardship applications were due to EPA by June 1, 2002. We have received applications from two refiners for hardship relief under the diesel sulfur program by that deadline, as presented in the following table.

Refinery	Refinery location(s)	Crude capacity (bpcd)*
Giant Industries, Inc	Yorktown, VA**	59,000
Farmland Industries, Inc	Coffeyville, KS	112,000

*Based on data from the Department of Energy's Energy Information Administration Petroleum Supply Annual 2001, Vol. 1 as of January 1, 2002.

**Giant also owns two refineries in New Mexico that are not the subject of its application.

We are now in the process of reviewing and evaluating these hardship applications according to the provisions of 40 CFR 80.270. Although the review and determination associated with these applications does not involve a rulemaking, we believe it is important to provide public notice of these applications and to provide opportunity for public comment. The applicants have requested that we treat most of the information in their applications as business proprietary "Confidential Business Information" under 40 CFR part 2.

Any party wishing to provide us input on these applicants in the context of 40 CFR 80.560 or to provide what they otherwise consider to be relevant materials should direct these to the contact person listed above by October 15, 2002. We will consider any relevant information provided in our evaluation of these applications.

Dated: September 3, 2002.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 02–23263 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7375–7]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of Two New Equivalent Methods for SO_2 and O_3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of designation of two new equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, one new equivalent method for measuring concentrations of sulfur dioxide (SO_2) in ambient air and one new equivalent method for measuring concentrations of ozone (O_3) in ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs), set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of one new equivalent method for measuring concentrations of sulfur dioxide (SO_2) in ambient air and one new equivalent method for measuring concentrations of ozone (O_3) in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new equivalent method for SO_2 is an automated method (analyzer) that utilizes a measurement principle based on ultraviolet fluorescence. The newly designated equivalent method is identified as follows:

EQSA–0802–149, "Environnement S.A. Model AF22M UV Fluorescence Sulfur Dioxide Analyzer," operated with a full scale range of 0–500 ppb, at any temperature in the range of 10 °C to 35 °C, with a 5-micron PTFE sample particulate filter, with a response time setting of 11 (Automatic response time), with the automatic "ZERO–REF" cycle ON and set for activation every 24 hours, and with or without either of the following options: Permeation oven, Rack mount slides.

An application for an equivalent method determination for this method was received by the EPA on April 30, 2002. The method is available commercially from the applicant, Environnement S.A., 111, Boulevard Robespierre, 78304 Poissy, France (*http://www.environnement-sa.com*).

The new equivalent method for O_3 is an automated method (analyzer) that utilizes a measurement principle based on absorption of ultraviolet light by ozone at a wavelength of 254 nm. The newly designated equivalent method is identified as follows:

EQOA–0992–087, "Teledyne—Advanced Pollution Instrumentation Model 400E UV Photometric Ozone Analyzer," operated on any full scale range between 0—100 ppb and 0—1000 ppb, with any range mode (Single, Dual, or Auto Range), at any ambient temperature in the range of 5 °C to 40 °C, on input power of 115 or 230 Vac (nominal) and 50–60 Hz, with a PTFE sample particulate filter, with a sample flow rate of 800 ±80 cm^3/min (sea level), with the dilution factor set to 1, with Dynamic Zero ON or OFF, with Dynamic Span OFF, with Temp/Press compensation ON, and with or without any of the following options: Internal or external sample pump, Sample/Cal valve option, Internal Zero/Span (IZS), Rack mount with or without slides, 4–20 mA isolated current loop output.

An application for an equivalent method determination for this method was received by the EPA on June 4, 2002. The Model 400E is a modified and updated version of the Advanced Pollution Instrumentation Model 400/400A, which was previously designated as an equivalent method (57 FR 44565) and continues to be so designated. The model 400E is available commercially from the applicant, Teledyne Instruments, Advanced Pollution Instrumentation Division, 6565 Nancy Ridge Drive, San Diego, California (*http://www.teledyne-api.com*).

A test analyzer representative of each of these methods has been tested by the respective applicant in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that each of these methods should be designated as an equivalent method. The information submitted by the applicants will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, measurement range, operational settings, or temperature range) specified in the applicable designation method description (see the identifications of the methods above). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R–94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1," EPA–454/R–98–004. Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or

equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: September 4, 2002.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 02–23261 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7375–8]

Implementation of the Small Business Liability and Brownfields Revitalization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: The Environmental Protection Agency (EPA) is holding two public meetings to discuss EPA's draft of the fiscal year 2003 Brownfields Assessment, Cleanup, and Revolving Loan Fund Grant Application Guidelines (FY 03 Guidelines). The public meetings will be held on Thursday, September 26, 2002 in Washington, DC at the times and location specified below. EPA will make the draft Brownfields Grant guidelines available to the public on the Agency's Web site at *http://www.epa.gov/brownfields* on September 18, 2002. Interested stakeholders and the public are encouraged to download and review the draft guidelines prior to the public meetings.

The purpose of the public meetings is for EPA's Office of Brownfields Cleanup and Redevelopment to listen to the views of public stakeholders on the Agency's draft Brownfields Grant Guidelines. During the public meetings, EPA officials will discuss the draft Guidelines, as well as reserve a limited amount of time at the meetings to discuss other implementation issues regarding the new Brownfields Law.

DATES: The public meetings will be held on September 26, 2002 in Learning Forum Rooms A and B of the Marriott Learning Complex in the Ronald Reagan Building at 1300 Pennsylvania Avenue NW., Washington, DC 20004. The first session will be held from 10 a.m.–11:30 p.m. The second session will be held from 2 p.m.–3:30 p.m.

ADDRESSES: Both public meetings will be held in Learning Forum Rooms A and B of the Marriott Learning Complex in the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue NW., Washington, DC 20004. The Marriott Learning Center Complex is on the concourse level of the Ronald Reagan Building just inside the building entrance from the Federal Triangle Metro station.

Those parties that wish to submit written comments on the draft Brownfields Grants Guidelines must submit their comments to EPA no later than September 26, 2002. To ensure that EPA has adequate time to consider any written comments, the Agency encourages parties to submit their comments to the Agency in electronic format. Electronic comments may be submitted to EPA's Office of Brownfields Cleanup and Redevelopment at BF.comments@epa.gov. Parties wishing to submit their comments via the United States Postal Service should address their comments to: Ms. Patricia Overmeyer, U.S. Environmental Protection Agency, Office of Brownfields Cleanup and Redevelopment, MC–5105T, 1200 Pennsylvania Avenue, Washington, DC 20460. Hand deliveries should be sent to Ms. Patricia Overmeyer, U.S. Environmental Protection Agency, Office of Brownfields Cleanup and Redevelopment, Room 2406, 1301 Constitution Ave. NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For additional information, contact EPA's Office of Brownfields Cleanup and Redevelopment at 202–566–2777.

SUPPLEMENTARY INFORMATION: The FY2003 Brownfields Grant Guidelines will be the first that EPA will issue under Section104(b)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the recently enacted Small Business Liability Relief and Brownfields Revitalization Act, Public Law 107–118 (SBLRBRA). Guidelines for grant programs are exempt from notice and comment requirements under 5 U.S.C. 553(a)(2). However, the Agency has decided that consultation with public stakeholders prior to issuing the final version of the Brownfields Grant Guidelines is an appropriate step in effectively implementing the new Brownfields Law.

Both meetings are open to the general public. Stakeholders that have actively worked with EPA on Brownfields issues, including those representing state, tribal, and local government associations, industry trade associations, environmental interest groups, and environmental justice interest groups will be invited by EPA. The focus of the morning session will be on issues of general interest to state and local governments, environmental justice organizations, and environmental interest groups. The afternoon session generally will focus on insights that industry trade associations and commercial organizations may have on how the draft Brownfields Grant Guidelines can leverage private investment in Brownfields revitalization. Interested

parties and the general public are invited to participate in either or both of the public meetings.

Parties wishing to provide their views to EPA on the draft FY 03 Guidelines, or to listen to the views of other parties, are strongly encouraged to attend the public meetings. Interested parties not able to attend one of the public meetings on September 26, 2002 may submit written comments to the Agency. All written comments must be received by the Agency no later than September 26, 2002. The Agency will carefully consider comments received during the public meetings, as well as written comments received on or before September 26, 2002, prior to issuing final Brownfields Grant Application Guidelines in October, 2002. However, due to the need to provide the final Guidelines to potential applicants promptly, EPA does not plan to respond in writing to written comments.

Dated: September 5, 2002.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Remediation.

[FR Doc. 02–23264 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7375–5]

EPA Science Advisory Board, Notification of Public Advisory Committee Meetings; Human Health Research Strategy Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of two meetings of the Human Health Research Strategy Review Panel (HHRS Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB). The Panel will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. For teleconference meetings, available lines may also be limited. *Important Notice:* The document that is the subject of this SAB review, Human Health Research Strategy, May 2002 draft, is available on the SAB Web site at *http://www.epa.gov/sab/pdf/hhrs.pdf*. Any questions on the strategy should be directed to the program contact noted below.

Background—The background for this review and the charge to the panel were published in the **Federal Register** (67 FR 41718–41721) on June 19, 2002. The notice also included a call for nominations for members of the panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the panel.

1. Human Health Research Strategy Review Panel—September 30, 2002 Teleconference

The HHRS Review Panel will meet on September 30, 2002 via teleconference from 2:30 p.m. to 3:30 p.m. Eastern Time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. For further information concerning the meeting or how to obtain the phone number, please contact the individuals listed at the end of this FR notice.

Purpose of the Meeting—The purpose of this public teleconference meeting is to: (a) Discuss the charge and the adequacy of the review materials provided to the HHRS Review Panel; (b) to clarify any questions and issues relating to the charge and the review materials; (c) to discuss specific charge assignments to the HHRS Review Panelists; and (d) to clarify specific points of interest raised by the Panelists in preparation for the face-to-face meeting to be held on October 7–9, 2002.

See below for availability of review materials, the charge to the review panel, and contact information.

2. Human Health Research Strategy Review Panel—October 7–9, 2002 Meeting

The HHRS Review Panel of the Science Advisory Board (SAB) will conduct a public meeting on October 7–9, 2002. The meeting will begin on October 7 at 9 a.m. and adjourn no later than 5:30 p.m. that day. On October 8, 2002, the meeting may begin at 8 a.m. and adjourn no later than 5 p.m. On October 9, 2002, the meeting will begin at 8 a.m. and adjourn no later than 1:30 p.m. The meeting will take place at the U.S. Environmental Protection Agency's Environmental Research Center, Research Commons, 86 T.W. Alexander Drive, Research Triangle Park, NC 27711. For further information concerning the meeting, please contact the individuals listed at the end of this FR notice.

The need for subsequent meetings of the Review Panel will be discussed at this meeting and schedules of any future meetings to complete review of this topic will be determined. Information concerning any future public meetings will appear in **Federal Register** notices as appropriate.

Purpose of the Meeting—The purpose of this meeting is to conduct a review of an Agency draft document entitled, Human Health Research Strategy, May 2002 Draft Report, prepared by the U.S. Environmental Protection Agency, Office of Research and Development. In particular, the Review Panel will: (a) Engage in dialogue with appropriate officials from the Agency who are responsible for the Strategy's preparation; (b) begin to prepare responses to the charge questions; (c) receive public comments as appropriate; and (d) plan and schedule subsequent meetings (if needed) to complete this review.

See below for availability of review materials, the charge to the review panel, and contact information for both meetings.

FOR FURTHER INFORMATION CONTACT: To enquire about public participation in the meetings identified above please contact Mr. Thomas O. Miller, Designated Federal Officer, HHRS Review Panel, USEPA Science Advisory Board (1400A), Suite 6450DD, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4558; fax at (202) 501–0323; or via e-mail at *miller.tom@epa.gov*. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Miller no later than noon Eastern Time on the following dates: for the September 30 teleconference call, requests must be received by September 25; and for the October 7–9 face to face meeting, requests must be received by October 2, 2002.

The SAB will have a brief period (no more than 10 minutes) available during the Teleconference meeting for applicable public comment. For the Teleconference, the oral public comment period will be divided among the speakers who register. At the October 7–9 face to face meeting, the oral public comment will be limited to sixty minutes divided among the speakers who register. Registration is on a first come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Those wishing to speak but who are unable to register in time may provide their comments in writing.

Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference, must contact Ms.

Zisa Lubarov-Walton, Management Assistant, EPA Science Advisory Board (1400A), Suite 6450FF, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4537; fax at (202) 501–0582; or via e-mail at *lubarov-walton.zisa@epa.gov*.

A copy of the draft agenda for each meeting will be posted on the SAB Web site (*http://www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before that meeting.

Availability of Review Material—There is one primary document that is the subject of the review. The review document is available electronically at the following site *http://www.epa.gov/sab/pdf/hhrs.pdf*. For questions and information pertaining to the review document, please contact Dr. Hugh Tilson, (Mail Code B30502), U.S. Environmental Protection Agency, National Health and Environmental Effects Research Laboratory, Research Triangle Park, NC 27711; tel. (919) 541–4607, Fax (919) 685–3252, e-mail: *tilson.hugh@epa.gov*.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: September 5, 2002.

A. Robert Flaak,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 02–23262 Filed 9–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of AAPC Meeting for September 2002

Board Action

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Accounting and Auditing Policy Committee of the Federal Accounting Standards Advisory Board (FASAB) will meet on Friday, September 27, 2002, in room 2N30 of the GAO Building.

The purpose of the meeting is to discuss issues related to:

—Inter-Entity Costs, and
—Credit Reform Task Force
—A more detailed agenda can be obtained from the FASAB Web site (*www.fasab.gov*).

Any interested person may attend the meeting as an observer. Committee discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. For the September meeting, please notify FASAB by September 26 of your planned attendance by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: September 6, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–23122 Filed 9–11–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Agenda Hearing for October 2002

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will hold an Agenda Hearing in conjunction with the October 2002 Board meeting. The Agenda Hearing will be on Wednesday, October 9, 2002, in Room 7C13 of the GAO Building.

The purpose of the meeting is to:

Obtain information from interested individuals, organizations, and groups about potential future projects

Any interested person may attend the meeting as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. For the October meeting, please notify FASAB by October 8 of your planned attendance by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: September 6, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–23123 Filed 9–18–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 6, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 15, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0972.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No.: FCC Form 507.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and State, local, and tribal government.

Number of Respondents: 5,461.

Estimated Time Per Response: 2–100 hours (average burden per response).

Frequency of Response: On occasion, annual, and quarterly reporting requirements, and third party disclosure requirement.

Total Annual Burden: 37,562 hours.

Total Annual Cost: $228,000.

Needs and Uses: The Commission modified, on its own motion, the data collection and filing procedures for implementation of the Interstate Common Line Support (ICLS) mechanism, in order to ensure timely implementation of the ICLS mechanism on July 1, 2002, as adopted in the MAG Order. The Commission will use the information to determine whether and to what extent non-price cap or rate-of-return carriers are providing the data are eligible to receive universal service support. The tariff data is used to make sure the rates are just and reasonable. The Commission is seeking an extension of a currently approved collection for the normal three year OMB clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–23201 Filed 9–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2574]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 4, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this 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 this petition must be filed by September 27, 2002. See section 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: In the Matter of Review of part 15 and other parts of the Commission's Rules (ET Docket No. 01–278, RM–9375, RM–10051).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary

[FR Doc. 02–23202 Filed 9–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, September 17, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, Section 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, September 19, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Final Audit Report—Quayle 2000, Inc. and Quayle 2000 Compliance Committee.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–23351 Filed 9–10–02; 11:14 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov*.

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: Study of Fathers' Involvement in Permanency Planning and Child Welfare Casework—New—The Office of the Assistant Secretary for Planning and Evaluation proposes a study to assess how four states identify, locate, and involve non-custodial fathers in case decision making and permanency planning for children in the child welfare system. *Respondents:* State or local governments—Reporting Burden Information—State and Local Administrator Burden Information—*Number of Respondents:* 44; *Average Burden per Response:* 35 minutes; *Total Administrator Burden:* 26 hours—Caseworker Burden Information—*Number of Respondents:* 1,200; *Average Burden per Interviewer Response:* 55 minutes; *Total Interviewer Burden:* 1,100 hours—Administrative Staff Burden Information—*Number of Respondents:* 8; Average Burden per Response 90 minutes; *Total Administrative Burden:* 12 hours—Total Burden 1,138 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Huber H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Comments should be received within 60 days of this notice.

Dated: September 4, 2002.

Kerry Weens,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–23108 Filed 9–11–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 9 a.m. to 5 p.m., September 27, 2002.

Place: The Adams Mark Hotel, 1550 Court Place, Denver, Colorado 80202–5107, Phone: (303) 893–3333.

Status: Open.

Purpose: The Subcommittee on Populations, NCVHS, is holding a hearing to discuss issues relating to statistics for the determination of health disparities in racial and ethnic populations. The focus will be on issues related to the collection and use of data on race and ethnicity for American Indian/Alaska Native populations. Invited panelists will address methodologies issues (*e.g.*, misclassification, small area analysis, confidentiality concerns) on the collection of data on race and ethnicity, use of mixed race data, measurement of ethnic identity and perspectives on variables beyond race and ethnicity needed to determined health disparities in racial and ethnic groups.

Contact Person for More Information: Additional information about this meeting as well as summaries of past meetings and a roster of committee members may be obtained from Audrey L. Burwell, Office of Minority Health, 5600 Fishers Lane, Rockwall II Building, Suite 100, Rockville, Maryland 20857, telephone: (301) 443–1129, fax (301) 443–8280, e-mail *alburwell@osophs.dhhs.gov*; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda and more details about participation in the meeting or Subcommittee deliberations will be posted when available.

Dated: August 27, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–23109 Filed 9–11–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date:

September 25, 2002—9 a.m.–6 p.m.
September 26, 2002—9 a.m.–2 p.m.

Place: Quality Hotel—Arlington, 1200 North Courthouse Road, Arlington, Virginia 22201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the first day the full Committee will hear updates and status reports from the Department on several topics including the Consolidated Health Informatics effort and the HHS Strategic Plan. There will also be a discussion of the Executive Subcommittee's report on Committee operation and strategy based on that Subcommittee's recent retreat. There will be Subcommittee breakout sessions late in the afternoon of the first day and prior to the full Committee meeting on the second day. Agendas for these breakout sessions may be found on the NCVHS Web site (URL below). On the second day the Committee will hear reports from each Subcommittee. Finally, the agendas for future NCVHS meetings will be discussed.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Dated: September 5, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–23147 Filed 9–11–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03008]

Grants for Injury Control Research Centers; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant for an Injury Control Research Center (ICRC). This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention. A copy of "Healthy People 2010" is available at the following Internet address: *http://www.health.gov/healthypeople.*

The purposes of this program are:

1. To support injury prevention and control research on priority issues as delineated in: Healthy People 2010; Injury Control in the 1990's: A National Plan for Action; Reducing the Burden of Injury: Advancing Prevention and Treatment; and the research priorities published in the National Center for

Injury Prevention and Control (NCIPC) Research Agenda. (For a copy of the NCIPC Research Agenda contact the Program Manager identified in the "Where to Obtain Additional Information" section of this announcement.)

2. To integrate, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral and social sciences in order to prevent and control injuries more effectively.

3. To support the identification and description of injury problems, by identifying risk and protective factors that can be used to design and test injury prevention and control strategies. Evaluate current and new interventions for the prevention and control of injuries, and support the implementation of effective prevention and control strategies in the public and private sector.

4. To provide technical assistance to injury prevention and control programs within a geographic region.

Measurable outcomes of the program will be in alignment with the following performance goal for NCIPC: To increase external input on the research priorities, policies, and procedures related to the extramural research supported by CDC.

B. Authority And Catalog Of Federal Domestic Assistance Number

This program is authorized under Sections 301, 391, 392, 393, and 394 of the Public Health Service Act, [42 U.S.C. 241, 280b, 280b-1, 280b-1a, and 280b-2] as amended. Catalog of Federal Domestic Assistance number is 93.136.

C. Eligible Applicants

This announcement will provide funding for applicants in regions which do not have funded ICRCs and for applicants in regions which have funded centers who must re-compete for funding.

Eligible applicants include all nonprofit and for-profit organizations in Region two, three, and six. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, faith-based organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Non-academic applicant institutions should provide evidence of a collaborative relationship with an academic institution.

Eligible applicants are limited to organizations in Region two (New Jersey, New York, Puerto Rico, and Virgin Islands), Region three (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), and Region six (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).

Note: ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator. An organization described in section 501(c)(4) of Title 26 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan.

D. Funds

Availability of Funds:

Approximately $905,500 is expected to be available in FY 2003 to fund one award. It is expected that the award will be $905,500 (total of direct and indirect costs). It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Applications that exceed the funding cap of $905,500 will be excluded from the competition and returned to the applicant. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Matching funds are not required for this program announcement, however other sources of funding must be documented.

Use of Funds: Center funding is to be designated for two types of activities. One type of activity is considered "Core" and includes administration, management, general support services (e.g., statistical, library, media relations, and advocacy) as well as activities associated with research development, technical assistance, and education (e.g., seed projects, training activities, and collaborative and technical assistance activities with other groups). Funds may be allocated for trainee stipends, tuition remission, and trainee travel, in accordance with the current rates for the Public Health agencies. Indirect costs for these trainee-related activities are limited to eight percent.

Defined research projects constitute the second type of activity, and ICRCs are encouraged to work toward addressing the breadth of the field. Core activities and defined research projects may each constitute between 25 percent to 75 percent of the operating budget, and should be balanced in such a way that the ICRC demonstrates productivity in research as well as teaching and service. Applicants with less demonstrated expertise in research are encouraged to devote a larger percentage of funds to defined research projects in order to establish their capability as research centers of excellence.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Funding Preferences: Funding preference will be given to re-competing ICRCs. These centers represent a long-term investment for NCIPC and an established resource for Injury Control-related issues for their States and regions.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Applicants must demonstrate expertise and conduct research projects in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and are encouraged to be comprehensive.

2. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

3. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health. The director must have no less than thirty percent effort devoted solely to this project with an anticipated range of thirty percent–fifty percent.

4. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

5. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

6. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or

public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs. An ICRC is encouraged to involve biomechanicists in its research. This may be achieved through collaborative relationships as it is not a requirement that all ICRCs have biomechanical engineering expertise.

7. Applicants must have established curricula and graduate training programs in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

8. Applicants must disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

9. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the region in which the ICRC is located. Cooperation with private-sector programs, *e.g.*, "Safe USA" partnerships, is encouraged.

10. Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, *e.g.*, minority communities.

F. Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications should include the following information:

1. Face page
2. Description (abstract) and personnel
3. Table of contents
4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant. In addition, separate budgets (direct and indirect costs) and justifications should be provided for the following categories of activities:

a. Core activities, including management and administrative functions, other non-research activities (*e.g.*, education/training, consultation, technical assistance, translation/dissemination, program and policy development and evaluation, advocacy, and media activities, etc.), and small seed projects of less than $15,000 for one year or less.

b. Research Studies:

(1) Small studies of $15,000–75,000 for one to three years duration. These projects might be expansions of seed projects, either further developing methods or hypotheses in preparation for a larger investigation leading to the submission of an RO1 level proposal, or may be stand-alone investigations sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(2) Larger scale studies with annual budgets exceeding $75,000 and lasting up to five years. These projects typically will test hypotheses and employ more sophisticated methodologies and/or larger sample sizes than small studies.

For seed projects, only modest descriptions are required within the application and/or clear definition of procedures used to select the projects. More detailed descriptions, commensurate with costs, are required for both small studies and larger scale projects.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: On the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.

6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.

7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.

8. Resources and environment.

9. Research plan:

a. ICRCs are to develop a range of research and other non-research activities that are designed to advance the field of injury control through development of new scientific or surveillance methods, creation of new knowledge, and translation of knowledge into training, program and policy development and evaluation activities or other applications that will ultimately reduce injuries or their effects. ICRC applications should articulate how the activities of their program are integrated with each other, demonstrating ICRCs activities and their potential impact.

b. A detailed research plan (design and methods) including hypothesis, expected outcome, value to field, measurable, and time-framed objectives consistent with the activities for each project within the proposed grant.

(1) Seed projects require a short write-up describing the injury control context of the study, the objective, the design, the setting and participants, the intervention being addressed, main outcome measurements, expected results, time lines, cost (direct and indirect), and plans for translation/dissemination, and/or clear definition of procedures used to select the projects.

(2) Small research projects require a ten to fifteen page summary describing the accomplishment of all the steps, including the development and testing of methods, instruments, and collection of preliminary data needed to take an innovative approach and develop it to the level of a larger investigation leading to the submission of an RO1 level proposal or a stand-alone investigation sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large research projects require an RO1 level summary as described in the PHS 398 (Rev. 5/01) guidelines. The summary should be included as appendices of the application.

(4) A detailed evaluation plan which should address outcome and cost-effectiveness evaluations as well as formative, efficacy, and process evaluation.

In the research plan section of the application, include a description for each small and large research project:

(1) Title of Project

(2) Project Director/Lead Investigator

(3) Institution(s)

(4) Categorization as to "Prevention, Acute Care, Rehabilitation, or Biomechanics"

(5) Categorization as to which NCIPC research agenda priority area the project addresses. Also, a brief description on how it addresses that priority area. If a priority area is not addressed, provide an explanation

(6) Categorization as to "Seed Project, Small Project, or Large Project"

(7) Categorization as to "New or Ongoing Project"

(8) Cost/Year (Total of Direct and Indirect)

(9) Research Training? Names, Degrees of Persons Trained or in Training

(10) Key Words

(11) Brief Summary of Project including Intended Application of Finding (Abstract)

c. A description of the core faculty and their roles in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRCs objectives.

d. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center or the project, both structurally and operationally. ICRC directors should report to an appropriate organizational level (e.g. dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activities and ensuring oversight of the process of interdisciplinary activity.

e. Documentation of the involved public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

G. Submission and Deadline

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction sheet for PHS 398. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

The application must be received by 5 P.M. Eastern Time October 28, 2002. Submit the application to: Technical Information Management Section–PA03008, CDC Procurement and Grants Office, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Applications may not be submitted electronically.

Deadline: The applications shall be considered as meeting the deadline if they are received before 5 P.M. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be returned to the applicant.

H. Evaluation Criteria

Applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical, and scientific merit to warrant further review by the IRGRC. Applications that are determined noncompetitive will not be considered, and IRGRC will promptly notify the investigator/program director and the official signing for the applicant organization. Applications determined to be competitive will be evaluated by a dual review process.

Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

1. Review by the Injury Research Grants Review Committee (IRGRC)

Initial peer-review of ICRC grant applications will be conducted by the IRGRC. The IRGRC will recommend the application for further consideration. For those applications recommended for further consideration, a team of peer reviewers, including members of the IRGRC, will conduct on-site visits at each applicant institution, generate summary statements for the visits, and report the assessment to the IRGRC.

Factors to be considered by the IRGRC include:

a. The specific aims of the application, *e.g.*, the long-term objectives and intended accomplishments. Approval of research projects (including new research projects proposed during the five-year funding cycle) is subject to peer-review.

(1) Seed projects will be evaluated collectively on the mechanism for solicitation of projects, on the technical/scientific merit review, and on the selection and monitoring of projects.

(2) Small projects will be evaluated individually on the innovative approach and proposed methods for achieving an investigation sufficient to support a submission of an RO1 level proposal and/or worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large projects will be evaluated individually according to existing RO1 level project standards as described in the PHS 398 (Rev. 4/98) guidelines. The application must have a minimum of three large research projects approved in order to be recommended for further consideration.

b. The scientific and technical merit of the overall application, including the significance and originality (*e.g.*, new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

c. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives. Does your application specify how you will measure the effectiveness of your program?

d. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

e. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

f. In addition to conducting defined research projects, ICRCs are expected to devote substantial attention to activities directed at advancing the field through other activities that are designed to improve research capabilities and translate research into practice. Examples of activities include: Consultation and technical assistance that are responsive to regional and state priorities, professional training for researchers and practitioners, program development, and evaluation endeavors. The degree of effort devoted to these aspects of an ICRCs program should be clearly stated in the justification and the budget. The degree of effort may be varied and should reflect the specific focus and goals of the ICRC.

g. Details of progress in the most recent funding period should be provided in the application if the applicant is submitting a re-competing

application. Documented examples of success include: Development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; ongoing provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; and impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

h. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

i. Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

(1) The proposed plan for the inclusion of both sexes, racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

j. Does the application adequately address the requirements of the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions?'

2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of ICRC grant applications with a priority score of 350 or better from the initial peer-review by the IRGRC will be conducted by the Science and Program Review Section (SPRS) of the ACIPC. The SPRS consists of ACIPC members, Federal Ex Officio participants, and organizational liaisons. The Federal Ex Officio participants will be responsible for identifying proposals in overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided. The NCIPC Division Associate Directors for Science (ADS) or their designees will address the SPRS to assure that research priorities of the announcement are understood and to provide background regarding current research activities. These recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRS. The ACIPC will vote to approve, disapprove, or modify these recommendations for funding consideration.

These recommendations, based on the results of the review by the IRGRC, the relevance and balance of the proposed research relative to the NCIPC programs and priorities, and the assurance of no duplication of federally-funded research, are presented to the Director, NCIPC, for funding decisions.

Factors to be considered by the ACIPC include:

a. The results of the peer-review.

b. The significance of the proposed activities as they relate to national program priorities, geographic balance, and the achievement of national objectives.

c. The overall balance of the ICRC program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics, epidemiology, and behavioral science).

d. Budgetary considerations. The ACIPC will recommend annual funding levels as detailed is section "D. Funds" of this announcement.

3. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly work plans are being met.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan.

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Attachment I of this announcement as posted on the CDC home web page.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–20 Conference Activities within Grants/Cooperative Agreements

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements". For general 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 business management and budget assistance, contact: Nancy Pillar, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2751, E-mail: *nfp6@cdc.gov*.

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (K58), Atlanta, GA 30341–3724, Telephone: 770–488–4265, E-mail: *tdv1@cdc.gov*.

Dated: September 5, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–23151 Filed 9–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03006]

Immunization and Vaccines for Children Grants; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant program for Preventive Health Services, Immunization and the Vaccines for Children (VFC) program. Both programs address the "Healthy People 2010" priority area under Immunization and Infectious Diseases.

The purpose of this grant program is to support efforts to plan, develop, and maintain a public health infrastructure, which assures an effective national immunization system. As a part of this system, the purpose of the VFC program is to increase access to vaccines for eligible children by supplying Federal government-purchased pediatric vaccines to public and private health care providers registered with the program. Eligible children include newborns through those 18 years of age who are Medicaid-eligible, not insured, American Indian/Alaska Natives, and children not insured with respect to the vaccine who are served by a Federally-Qualified Health Center or a Rural Health Clinic.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Immunization Program:

1. Reduce the number of indigenous cases of vaccine-preventable diseases.

2. Ensure that two year-olds are appropriately vaccinated.

3. Improve vaccine safety surveillance.

4. Increase routine vaccination coverage levels for adolescents.

5. Increase the proportion of adults who are vaccinated annually against influenza and who have ever been vaccinated against pneumococcal diseases.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317 of the Public Health Service Act, [42 U.S.C. 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.268. The VFC Program is authorized under Section 1902(a)(62), of the Social Security Act, 42 U.S.C. section 1396a(a)(62). The VFC Program was established under the authority of Section 1928(a) of the Social Security Act, 42 U.S.C. 1396s)(a).

C. Eligible Applicants

Limited Competition

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In consultation with States, assistance may be provided to political subdivisions of States. The Federated States of Micronesia, the Republic of Palau and the Republic of the Marshall Islands are not eligible for funding through the VFC Program. Competition is limited to these entities because they have the primary responsibility for carrying out the public health assurance functions required to achieve the desired outcomes and performance goals established by CDC.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funds

Availability of Funds

Section 317

Approximately $180,000,000 in Section 317 funds is available in FY 2003 to fund 64 awards for program operations. It is expected that the average Section 317 award for program operations will be $2.8 million, ranging from $62,000 to $16,000,000.

In addition, approximately $208,000,000 in Section 317 funds is available in FY 2003 to fund 64 Section 317 awards for vaccine purchases. It is expected that the average Section 317 award for vaccine purchase will be $3,250,000, ranging from $6,000 to $25,000,000.

VFC

Approximately $65,000,000 in VFC funds is available in FY 2003 to fund 61 awards for program operations. It is expected that the average VFC award for program operations will be $1,000,000, ranging from $99,000 to $7,000,000.

In addition, approximately $704,000,000 in VFC funds is available in FY 2003 to fund 61 VFC awards for vaccine purchase. It is expected that the average VFC award for vaccine purchase will be $11,555,000, ranging from $298,000 to $121,000,000.

All applicants eligible for VFC funding are expected to apply for both Section 317 and VFC funds.

It is expected that the awards will begin on or about January 1, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change. All awards are subject to availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

You may request Federal personnel and vaccines for which CDC has established purchase contracts as Direct Assistance (DA) in lieu of a portion of financial assistance. Grantees may also access Federal contracts for equipment, supplies, and services needed for immunization registry development by requesting these costs as DA.

Use of Funds

Funding requests not directly related to immunization activities are outside the scope of these grant programs and will not be funded.

Immunization grant funds are intended to supplement and may not be used to supplant state and local resources.

Grant funds awarded for vaccine may be used only for purchasing vaccines. Vaccines obtained through the VFC Program may be administered only to VFC-eligible persons in risk groups recommended by the Advisory Committee on Immunization Practices (ACIP). Vaccines and related products acquired with 317 funds [with the exception of Td/DT toxoids and hepatitis B immune globulin (HBIG)] are not to be administered to persons eligible for the VFC Program. Additional information about limitations on the use of VFC funds for program operations is provided in the CDC document entitled "VFC Operations Guide" which is available from CDC upon request. (See section J. Where to Obtain Additional Information).

Based on the availability of appropriated 317 funds, Section 317

grant funds may also be used to implement programs to ensure vaccination of adolescents and adults. Also based upon the availability of grant funds, vaccines may be purchased for adults not covered by Medicare, including hepatitis B vaccine for persons at high risk, influenza vaccine for persons 50 years of age and older, and any other vaccines recommended by the ACIP for adults.

The amount of grant funds used for shipping vaccine to providers should be within the per-dose cost standards established by CDC through on-going cost studies.

Grant funds may not be used to purchase or lease vehicles or for administrative overhead such as rent and utilities. Costs associated with purchasing or leasing vehicles will be denied except in cases where the application provides strong evidence of exceptional need directly related to the implementation of the program. Requests for funds to support administrative overhead covered by the indirect cost agreement will also be denied. Applications that include requests for funding to support administrative overhead should include a copy of the grantee's indirect cost rate agreement.

Recipient Financial Participation

Documentation of recipient financial participation is required for this program in accordance with this Program Announcement. Although CDC does not require grantees to match funding for immunization activities, CDC wishes to fully document grantee financial participation in immunization programs as recommended by the Institute of Medicine ("Calling The Shots, Immunization Finance Policies and Practices", National Academy of Sciences, 2000). Therefore, grantees should fully and comprehensively document all support by grantee and sub-grantee agencies, including in-kind support, for immunization program activities and vaccine purchases.

Funding Priority

As funding levels permit, funds will be awarded for the program activities listed in the "2002 VFC Operations Guide" and the "Immunization Program Operations Manual" (available from CDC upon request: See section J. Where to Obtain Additional Information); including screening and referral of children enrolled in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) in areas where evidence suggests that WIC enrollees are significantly under-immunized.

Priority will be given to funding activities proven to be effective in raising immunization coverage. These activities are described in the "Community Guide to Preventive Health Services" published by CDC and available through the following Web site: *www.thecommunityguide.org.*

Priority will also be given to funding activities that: (1) Identify areas where immunization coverage is low relative to the over-all population; (2) identify the under-immunized individuals in these areas; and (3) implement proven strategies to ensure that these individuals are fully vaccinated.

Funding Preferences

Funding preference will be given to current recipients.

E. Program Requirements

In conducting activities to achieve the purposes of these programs, the recipient will be responsible for the following activities:

1. Program Management

a.Identify areas where immunization coverage is low and implement strategies to ensure that under-immunized individuals in these areas are identified and receive ACIP-recommended vaccines.

b. Build and participate in community-based and program-wide coalitions to promote specific activities or projects intended to assure immunization of all age groups.

c. Coordinate educational and other activities with state and local WIC programs, to assure that children participating in WIC are screened and referred for immunizations using a documented immunization history in accordance with policy of the United States Department of Agriculture.

d. Coordinate program planning and implementation with the Indian Health Service, Tribal/638 health clinics and other entities that provide medical services to Native populations to assure consistent and immediate access to all VFC vaccines by American Indian and Alaska Native populations.

2. Vaccine Management

a. Establish a cost-effective system for distributing federally-purchased vaccine to private and public health care providers.

b. Estimate 317 and VFC vaccine needs, based on ACIP recommendations, populations to be served, anticipated vaccine uptake and wastage rates, state/local vaccine supply policies and existing vaccine inventories.

c. Follow a CDC-approved purchasing plan for VFC vaccine to ensure that total annual VFC vaccine purchases do not exceed the amount needed for VFC eligible children and are consistent with the number of VFC-eligible children reported to and certified by CDC.

d. Provide vaccines to VFC enrolled providers in sufficient quantities to immunize VFC-eligible children in accordance with ACIP resolutions.

e. Update (annually) and maintain VFC program records on all participating providers.

f. Establish a system to document wasted and unaccounted for vaccines purchased with 317 and VFC funds.

g. Implement a program with immunization providers and vaccine depots to minimize and report vaccine wastage.

h. Submit claims for rebate of excise tax for vaccines that cannot be administered because of shelf-life expiration or improper storage and handling.

i. Maintain a system for detecting, responding to, and reporting suspected cases of fraud and abuse involving Federally-purchased vaccine.

3. Immunization Registries

Develop, update, and/or implement a plan to reach the Healthy People 2010 goal of enrolling at least 95 percent of children under six years of age in a fully operational registry.

4. Provider Quality Assurance

a. Work with health insurance companies, managed care organizations (MCOs) and the State Medicaid agency to ensure that local health departments are appropriately reimbursed for vaccines and vaccine administration costs that are covered benefits.

b. Work with private health care providers to reduce referrals to public clinics and remove the barriers to immunization that drain limited 317 vaccine resources in public clinics.

c. Provide educational opportunities for public and private providers concerning the standards for pediatric and adult immunization practices, reporting of suspected vaccine preventable diseases (VPDs), and provider responsibilities under the National Childhood Vaccine Injury Act (sections 2125 and 2126 of the Public Health Service Act, 42 U.S.C. sections 300aa–25 and 300aa–26); including recordkeeping, reporting and use of Vaccine Information Statements.

d. Conduct site visits to VFC provider offices to evaluate vaccine management, ensure compliance with VFC program requirements, assess immunization

practices and make recommendations for improvement.

5. Service Delivery

a. Coordinate with local public health agencies and clinics to make immunization services and ACIP-recommended vaccines available for underserved populations of all age groups in every county and major city.

b. Enroll health care providers who serve children into the VFC program in accordance with Section 1902(a)(62), of the Social Security Act and Section 1928 (42 U.S.C. 1396s) (a) of the Social Security Act.

c. Assess completeness of prenatal hepatitis B surface antigen (HbsAg) screening and appropriate vaccination of infants at high risk of perinatally-acquired hepatitis B infection.

d. Conduct and coordinate case management of infants at high risk of perinatally-acquired hepatitis B infection to ensure completion of the hepatitis B vaccination series.

e. Work with child care facilities, schools, state, and local agencies, to identify and provide appropriate vaccinations to under-immunized infants and children entering day care and school.

6. Consumer Information

a. Undertake appropriate efforts to inform, influence, and motivate the public about the importance and safety of immunizations.

b. Distribute Vaccine Information Statements (VIS) and CDC's instructions for their use to ensure proper use of VIS in accordance with the National Childhood Vaccine Injury Act (section 2126 of the Public Health Service Act, 42 U.S.C. 300aa–26.

7. Surveillance

a. Investigate and document suspected VPD cases in accordance with CDC's "Manual for Surveillance of Vaccine Preventable Diseases".

b. Submit timely case reports to CDC on cases of VPD designated as reportable by the Council of State and Territorial Epidemiologists.

c. Coordinate and monitor the Vaccine Adverse Events Surveillance System mandated by the National Childhood Vaccine Injury Act of 1986.

d. Follow up on all reports of serious adverse events (*e.g.*, death, life-threatening illness, hospitalization and permanent disability) following immunization.

8. Population Assessment

a. Identify and monitor pockets of under-immunized children and adults by using immunization coverage estimates (*e.g.*, cluster surveys, immunization registries, Medicare billing data, retrospective analysis of school immunization surveys, provider coverage assessments and Behavioral Risk Factor Sample Survey).

b. Estimate immunization coverage and exemption rates among children in day care and kindergarten.

c. Use existing coverage data to monitor and analyze uptake of new and recently introduced vaccines.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 80 pages, double-spaced, printed on one side, with one-inch margins, and 12 point Courier font.

The application should consist of, at minimum, a description of Program Need, Objectives, Methods, Evaluation, Budget, Budget Justification, Applicant Resources, and Management Plan. All applications must clearly differentiate 317 and VFC funding streams to enable CDC and grantee financial offices to track these funds separately. CDC will provide instructions and a budget template for this purpose in a Grant Guidance document. Requests for VFC funds must be justified based on the number and proportion of the population eligible for VFC vaccines.

Direct Assistance

To request new direct-assistance assignees, include:

a. Number of assignees requested.

b. Description of the position and proposed duties.

c. Ability or inability to hire locally with financial assistance.

d. Justification for request.

e. Organizational chart and name of intended supervisor.

f. Opportunities for training, education, and work experiences for assignees.

g. Description of assignee's access to computer equipment for communication with CDC (*e.g.*, personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

The application must be received by 5 p.m. Eastern Time October 28, 2002. Submit the application to: Technical Information Management-PA03006, Procurement and Grants Office, Center for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146. Forms may not be submitted electronically.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 P.M. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after close due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery of the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will be returned to the applicant. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of various identified objectives of the grant. Measures of Effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. They should be expressed as: (1) A stated percentage increase in coverage for individual vaccines or maintenance of coverage at the national goal of 90 percent, and (2) objectives related to specific programmatic areas for which a need for additional programmatic emphasis has been identified. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following

criteria by an independent review group appointed by CDC:

1. Methods (30 points)

Are the proposed activities and interventions potentially effective in directly impacting immunization coverage and disease reduction, (especially in under-immunized geographical areas and sub-populations)? Is the management plan likely to ensure that grant-funded activities will be implemented in a timely fashion?

2. Program Plan (25 points)

Does the application propose effort for required activities in all program components outlined in section "D. Program Requirements" and for populations of all ages (infants, children, adolescents and adults)?

3. Objectives (25 points)

Does the program objectives focus on specific activities that potentially impact program need?

4. Evaluation (20 points)

Are quantified performance measures that will demonstrate program effectiveness as indicated by achievement of program objectives and intended outcomes clearly stated?

5. Budget (not scored)

Are the budget and budget justification thorough in explaining the purpose for which each line item is requested, and how the amounts were derived? Are the budget items apportioned across the program components? Are the 317 and VFC funds clearly differentiated?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The progress report will include a data element that demonstrates measures of effectiveness. The first report will cover the period January 1 to June 30, and the second report (which serves as the continuation application) will cover the period July 1 to December 30. A copy of the progress report due on July 30 must be submitted via computer-based systems and formats developed by CDC that specify required data elements related to measures of effectiveness (the original and two copies are to be mailed).

2. Ad hoc reports, *i.e.*, VPD case reports and ongoing purchase and inventory reports for all vaccines purchased with public funds, via forms, templates, and computer-based systems developed by CDC should be submitted as information is collected or as requested by CDC.

3. Financial Status Report, with an attachment that delineates separate VFC and 317 expenditures and obligations by object class category, no more than 90 days after the end of the budget period.

4. Final financial and performance report, with an attachment that delineates separate VFC and 317 expenditures and obligations by object class category, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications and associated forms can be found on the CDC home page: *http://www.cdc.gov*.

Click on "Funding" then "Grants and Cooperative Agreements."

For general 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 business management and budget assistance, contact: Peaches Brown, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2738, E-mail address: *prb0@cdc.gov*.

For program technical assistance, contact: Glen Koops, Acting Chief, Program Operations Branch, ISD, National Immunization Program, Mailstop E–52, 1600 Clifton Rd., Atlanta, GA 30333, Telephone number: (404) 639–8215, E-mail address: *gak3@cdc.gov*.

Dated: September 6, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–23187 Filed 9–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Alcohol Syndrome and Fetal Alcohol Effect National Task Force Meeting; Correction

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice; correction.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFAS/FAE): Correction.

Times and Dates: 8:30 a.m.–4:30 p.m., September 20, 2002. 8:30 a.m.–12 noon, September 21, 2002.

SUMMARY: The National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect published a notice in the **Federal Register** of August 8, 2002, announcing a meeting place.

Correction

In the **Federal Register** of August 8, 2002, Volume 67, Number 153, Notice, Page 51584, "Place" should read:

Place: Marriott Atlanta Marquis, 265 Peachtree Center Avenue, Atlanta, Georgia 30303, telephone 404/521–0000; fax 404/586–6299.

FOR FURTHER INFORMATION CONTACT: Louise Floyd, 770/488–7372.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 5, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–23188 Filed 9–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–3 p.m., October 8, 2002. 8:30 a.m.–3 p.m., October 9, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: Agenda items will include: A report from the National Vaccine Program Office (NVPO) and the Interagency Vaccine Workgroup; a report from the Assistant Secretary for Health; discussion on a proposal for a workshop on traveler's vaccines; an update on the Influenza Pandemic Preparedness Plan; an update on vaccine supply; a discussion of compensation for vaccine administration: Center for Medicare and Medical Services Ruling; a discussion of international vaccine development and introduction; an update on immunization registries; a discussion of racial and ethnic disparities in adult immunization rates; Polio Laboratory Containment and ramifications of recent synthesis of poliovirus; Vaccine Safety and Communication Subcommittee report; Immunization Coverage Subcommittee report, Future Vaccines Subcommittee report; Increasing Public Participation in Dialogue and Deliberation About Vaccines—Report from Wingspread; discussions on Smallpox Vaccine Development and DHHS Smallpox Vaccine Policy; Institute of Medicine (IOM) Report—Vaccine Financing, also an update on the IOM Safety Review Committee; reports from Advisory Committee Immunization Practices/NVAC Smallpox Working Group—Update, Advisory Commission on Childhood Vaccines/Division of Vaccine Injury Compensation, Vaccine Related Biological Products Advisory Committee/Food and Drug Administration, Advisory Committee on Immunization Practices/National Immunization Program/ National Center for Infectious Diseases.

Name: Subcommittee on Future Vaccines.

Time and Date: 3:15 p.m.–5 p.m., October 8, 2002.

Place: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters To Be Discussed: Agenda items will be; a discussion on Planning for a meeting on Pneumococcal Vaccinations for Adults; a report on the CMV meeting; a discussion of potential future topics, Cell-culture based influenza vaccine, Implications of vectored vaccines.

Name: Subcommittee on Immunization Coverage.

Time and Date: 3:15 p.m.–5 p.m., October 8, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters To Be Discussed: Agenda items will include discussions on the updates on Publication of Adult and Pediatric Standards; IOM Study on Financing Vaccines; Influenza Immunization Study/READII; Registry for missed immunizations; Areas of Unmet Needs.

Nome: Subcommittee on Vaccine Safety and Communication.

Time and Date: 3:15 p.m.–5 p.m. October 8, 2002.

Place: Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington. DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters To Be Discussed: Influenza communications programs; a progress report from the IOM Vaccine Safety Review; and a progress report about changes in the Vaccine Injury Compensation Program; a report about Thimerosal class action suits.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 4700 Buford Highway M/S K–77, Chamblee, Georgia 30341, telephone 770/488–2040.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 6, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–23152 Filed 9–11–02; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–484]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare 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.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations 42 CFR 410.38 and 42 CFR 424.5.

Form No.: 0938–0534 (CMS–484).

Use: This form is used to determine if oxygen is reasonable and necessary pursuant to Medicare Statute; Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information

including estimate length of need (# of months), diagnosis codes (ICD–9) etc.

Frequency: As needed.

Affected Public: Business of other for-profit.

Number of Respondents: 175,000.

Total Annual Responses: 500,000.

Total Annual Hours: 50,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 4, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–23246 Filed 9–11–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0393]

Assessing Acrylamide in the U.S. Food Supply; Public Meeting; Draft Action Plan on Acrylamide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Assessing Acrylamide in the U.S. Food Supply." The purpose of the public meeting is to update the public on FDA's activities related to acrylamide in food, to present FDA's draft action plan on acrylamide, and to obtain and solicit comments on the action plan.

Date and Time: The public meeting will be held on September 30, 2002, from 9 a.m. to 5 p.m.

Location: The public meeting will be held at the Center for Food Safety and Applied Nutrition, Food and Drug Administration, Harvey W. Wiley Building Auditorium, 5100 Paint Branch Pkwy, College Park, MD.

Contact: Louis J. Carson, Food Safety Staff (HFS–32), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 301–436–2130, FAX: 301–436–2605, e-mail: Louis.Carson@cfsan.fda.gov.

Addresses: Submit written comments concerning the agency's draft action plan on acrylamide to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 by October 30, 2002. Submit electronic comments to http://www.fda.gov/dockets/ecomments. The draft action action plan will be be available on the Internet at http://www.cfsan.fda.gov/list.html.

Registration and Request for Oral Presentations: Send registration information (including name, title, firm name, address, telephone number, and fax number) to the contact person by September 26, 2002. Additionally, specify if you wish to make an oral presentation.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

If you need special accommodations due to a disability, please notify the contact person at least 7 days in advance .

SUPPLEMENTARY INFORMATION:

I. Background

On April 24, 2002, researchers at the Swedish National Food Administration and Stockholm University reported finding the chemical acrylamide in a variety of fried and oven baked foods. The initial Swedish research indicates that acrylamide formation is particularly associated with traditional high temperature cooking processes for certain carbohydrate-rich foods (Ref. 1). Since the Swedish report, similar findings have been reported by Norway, the United Kingdom, and Switzerland. The discovery of acrylamide in foods is a concern because acrylamide is a potential human carcinogen and genotoxicant.

FDA is currently conducting a broad survey of the occurrence of acrylamide in foods. Analytical test methodology was developed for a broad range of food types by FDA to measure acrylamide levels. This methodology is available on the Internet at http://www.cfsan.fda.gov/dms/acrylami.html. Preliminary FDA food analyses for acrylamide suggest that U.S. food levels are consistent with Swedish and European published findings.

Acrylamide is a potential cancer causing chemical that appears to be formed in many foods during the cooking process. It is not known if there is a link between acrylamide in food and cancer in humans. Further research into a number of factors will assist us in evaluating adequately the potential human risk of acrylamide. These factors include: Which foods contain acrylamide, range of levels in these foods, dietary exposure, the bioavailability of acrylamide from food, the potential of acrylamide to cause cancer when consumed in food, acrylamide's potential to cause germ cell mutations, and biomarkers of acrylamide exposure.

Therefore, FDA has drafted an action plan to develop the information to assess effectively the risks associated with acrylamide in food and to make appropriate risk management choices. Until more is known, FDA is not recommending that consumers change their diet or cooking methods because of concerns about acrylamide. Consumers are advised to eat a balanced diet, choosing a variety of foods that are low in fat, and rich in high fiber grains, fruits, and vegetables.

II. Components of FDA's Draft Action Plan on Acrylamide

The components of FDA's draft action plan on acrylamide include:

- Assess the dietary exposure of U.S. consumers to acrylamide by measuring acrylamide levels in various foods,
- Develop screening methods and validate confirmatory methods of analysis,
- Assess the potential risks associated with acrylamide in foods by extensive evaluation of the available information and by expanding research into acrylamide toxicology,
- Identify mechanisms responsible for the formation of acrylamide in foods and identify means to reduce acrylamide exposure,
- Inform and educate consumers of the potential risks throughout the assessment process and as knowledge is gained, and
- Develop and foster public/private partnerships to gather scientific and technological information and data for assessing the human risk.

This public meeting is intended to present FDA's draft action plan on acrylamide and to obtain and solicit public comment on the plan. The draft action plan will be made public on the Internet at http://www.cfsan.fda.gov/

list.html on or before the date of the public meeting. The preliminary agenda for the public meeting also will be made available on or before the date of the public meeting under the docket number found in brackets in the heading of this document at the Dockets Management Branch (see **ADDRESSES**).

III. Comments

Interested persons may present data, information, or views orally or in writing on issues pending at the public meeting. Those desiring to make oral presentations should notify the contact person (see *Contact*) by September 26, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, their names, addresses, phone numbers, fax numbers, and e-mail addresses. Oral presentations are scheduled for the afternoon session starting at 1:30 p.m. Oral presentations may be limited to 5 minutes, but may be expanded based on the number of people wishing to comment.

You may submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) for 30 days following the public meeting on the FDA's acrylamide draft action plan. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Reference

The following reference has been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Tareke, E.; Rydberg, P.; Karlsson, P.; Eriksson, S.; and Tornquist, M.; *Journal of Agricultural and Food Chemistry*, 2002, vol. 50, pp. 4998 to 5006.

Dated: September 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–23193 Filed 9–9–02; 2:37 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0324]

Draft "Guidance for Industry: Drugs, Biologics, and Medical Devices Derived From Bioengineered Plants for Use in Humans and Animals;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), in collaboration with the U.S. Department of Agriculture (USDA), is announcing the availability of a draft document entitled "Guidance for Industry: Drugs, Biologics, and Medical Devices Derived From Bioengineered Plants for Use in Humans and Animals" dated September 2002. The draft guidance document is intended to provide guidance to sponsors, manufacturers, licensees, and applicants of products derived from bioengineered plants or plant materials. The draft guidance document provides recommendations on the use of bioengineered plants or plant materials to produce biological products, including intermediates, protein drugs, medical devices, new animal drugs, and veterinary biologics.

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by January 10, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document also may be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER-FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA, in collaboration with USDA, is announcing the availability of a draft document entitled "Guidance for Industry: Drugs, Biologics, and Medical Devices Derived From Bioengineered Plants for Use in Humans and Animals" dated September 2002. The draft guidance document provides recommendations on the use of bioengineered plants or plant materials to produce biological products, including intermediates, protein drugs, medical devices, new animal drugs, and veterinary biologics. The draft guidance document does not address nonprotein drugs, botanicals, or allergenic products for human use. The draft guidance document outlines important scientific questions and information that should be addressed during the preparation of an investigational new drug application, investigational device exemption, biologics license application, new drug application, investigational new animal drug file, new animal drug application, premarket approval, or 510(k), to FDA or a U.S. veterinary biological product license application to USDA.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding the draft guidance document. Submit written or electronic comments to ensure adequate consideration in preparation of the final document by January 10, 2003. Two copies of any written comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number

found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: August 20, 2002.

Margaret M. Dotzel

Associate Commissioner for Policy.

[FR Doc. 02–23105 Filed 9–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0333]

Draft Guidance for Industry: Juice HACCP Hazards and Controls Guidance, First Edition; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Juice HACCP Hazards and Controls Guidance" (first edition) (the draft guidance). The draft guidance supports and complements the FDA regulation that requires a processor of juice to evaluate its operations using Hazard Analysis Critical Control Point (HACCP) principles and, if necessary, to develop and implement HACCP systems for its operations. The draft guidance represents FDA's views on potential hazards in juice products and how to control them, and it is designed to assist juice processors in the development of HACCP plans.

DATES: Submit written or electronic comments concerning the draft guidance and collection of information by November 12, 2002, to ensure adequate consideration in the preparation of the final guidance document. Comments on the draft guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to Michael E. Kashtock, Center for Food Safety and Applied Nutrition (see **FOR FURTHER INFORMATION CONTACT**). Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments concerning the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets.ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2022, FAX 301–436–2651, e-mail: mkashtoc@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of the first edition of the draft guidance entitled "Guidance for Industry: Juice HACCP Hazards and Controls Guidance."

Under the HACCP regulations in part 120 (21 CFR part 120), juice processors are required to evaluate their operations using HACCP principles and, if necessary, to develop and implement HACCP systems for their operations. Under § 120.9, juice products are adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) if a processor or importer fails to have and implement a HACCP plan when one is necessary, or otherwise fails to meet any of the requirements of the regulations. The primary purpose of the draft guidance is: (1) To help processors and importers of juice products identify the likelihood that a food safety hazard may occur in their product, and (2) to guide them in the preparation of appropriate HACCP plans for those hazards that are reasonably likely to occur.

II. Significance of the Guidance

The draft guidance is a level 1 guidance issued consistent with FDA's good guidance practices regulations (21 CFR 10.115). The draft guidance represents the agency's current thinking on the potential hazards that are associated with various juice products and processing operations, and how the occurrence of these hazards can be avoided with HACCP controls when they are reasonably likely to occur, as required under part 120. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in the draft guidance has been submitted to OMB for review and was approved under OMB control number 0910–0466.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at http://www.cfsan.fda.gov/~dms/guidance.html.

Dated: August 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–23106 Filed 9–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in October 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission meeting will focus on issues relating to the Interim Report, which the Commission is required to send to the President by the end of October.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission Web site, *www.mentalhealthcommission.gov*, or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time:

Open: October 2, 2002, 4:30 p.m. to 6 p.m.

Open: October 3, 2002, 8:30 a.m. to 4:30 p.m.

Open: October 4, 2002, 8:30 a.m. to 1:30 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554 and, e-mail: *Cheffern@samhsa.gov*, Web site: *www.mentalhealthcommission.gov*.

Dated: September 6, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–23107 Filed 9–11–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as amended most recently at 67 FR 45136, July 8, 2002 is amended to: Abolish the Office of Evaluation, Scientific Analysis, and Synthesis (OESAS); replace the functional statement of two divisions of the Center for Substance Abuse Treatment (CSAT), the Division of State and Community Assistance and the Division of Services Improvement. The changes are to update and realign CSAT organizational structure to strengthen CSAT's programs and allow CSAT to more effectively use its resources. The changes are as follows:

Section M.20, Functions is amended as follows:

Under the heading, *Office of Evaluation, Scientific Analysis, and Synthesis (MTC),* delete the functional statement.

Under the heading, *Division of Services Improvement (MTB),* delete the functional statement and substitute the following functional statement:

(1) Develops, plans, implements, and monitors national treatment capacity expansion and knowledge adoption program designed to improve treatment services throughout the United States, including services in other systems of care; (2) provides leadership and guidance to CSAT on the organization and financing of services for substance abuse treatment, HIPAA, and adoption of evidenced-based practices; (3) collaborates on the development of Guidances for Applications (GFAs) and Requests for Contracts for the national treatment capacity expansion and services improvement agenda; (4) monitors grants, cooperative agreements, contracts, interagency agreements, and memoranda of understanding for treatment capacity expansion, knowledge adoption, and services improvement; (5) supports the development and testing of performance measures for public and private managed care plans and other systems of care; (6) collects, analyzes, and disseminates data and information pertaining to public and private financing and expenditures for treatment services; (7) identifies the need for, develops, and provides technical assistance to grantees, other service providers and systems of care, and others on adoption of evidence-based practices, capacity expansion, and organization and financing of services; (8) establishes and maintains collaborative relationships with other Federal, State, and local governmental agencies, national organizations, and constituency groups; (9) maintains internal expertise and collaborates with national experts on the science-to-services agenda; (10) develops funding levels for Division programs and activities; (11) provides guidance and oversight of training services for treatment professionals; and (12) provides leadership on workforce development activities.

Under the heading, *Division of State and Community Assistance (MTE),* delete the functional statement and substitute the following functional statement:

(1) Administers the Substance Abuse Prevention and Treatment (SAPT) Block Grant Program, including oversight and approval of Block Grant applications and maintenance of effort (MOE) issues; (2) administers the Substance Abuse Performance Partnership Grant (PPG), negotiating PPG agreements with States; (3) monitors and ensures State compliance with legislative and regulatory provisions which apply to PPG funds at State and provider levels; (4) provides guidance and technical assistance to States in preparation of State substance abuse plans; (5) conducts performance reviews of State agencies and treatment programs; (6) works closely with data and evaluation to assure proper reporting and data integrity; (7) administers the State Incentive Grant program for co-occurring disorders and the TCE grant program for co-occurring disorders; (8) works collaboratively with the Division of Services Improvement on performance measurement, GPRA, and HIPAA issues; and (9) serves as focus for State and local data infrastructure development issues.

Section M.40, Delegations of Authority: All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue in them.

These organizational changes are effective August 12, 2002.

Dated: September 5, 2002.

Charles Curie,

Administrator.

[FR Doc. 02–23150 Filed 9–11–02; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Recovery Plan for the California Red-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of a final recovery plan for the California red-legged frog (*Rana aurora draytonii*). The population of this subspecies of red-legged frog has been extirpated from 70 percent of its former range and is now found in coastal drainages of central California from Marin County, California, south to northern Baja California, Mexico. Actions needed for recovery include: (1) Protection of known populations and reestablishment of populations; (2)

protection of suitable habitat, corridors, and core areas; (3) habitat management; (4) development of land use guidelines; (5) research; (6) surveying and monitoring; and (7) public participation, outreach, and education.

ADDRESSES: Copies of this recovery plan are available by request from the Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California, 916/414–6600. Recovery plans may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301/429–6403 or 1–800–582–3421. The fee for the plan varies depending on the number of pages of the plan. This recovery plan will be made available on the World Wide Web at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.*

FOR FURTHER INFORMATION CONTACT: Ina Pisani, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in the appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The California red-legged frog (*Rana aurora draytonii*) occurs from sea level to elevations of about 1,500 meters (5,000 feet) in its range. It has been extirpated from 70 percent of its former range. The California red-legged frog requires a variety of habitat elements with aquatic breeding areas embedded within a matrix of riparian and upland dispersal habitats. Breeding sites of the California red-legged frog are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, sag ponds, dune ponds, and lagoons. California red-legged frogs frequently breed in artificial impoundments such as stock ponds. Potential threats to the species include elimination or degradation of habitat from land development and land use activities, and habitat invasions by non-native aquatic species.

The objective of this recovery plan is to delist the California red-legged frog through implementation of a variety of recovery measures including: (1) Protection of known populations and reestablishment of populations; (2) protection of suitable habitat, corridors, and core areas; (3) habitat management; (4) development of land use guidelines; (5) research; (6) surveying and monitoring; and (7) public participation, outreach, and education.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 19, 2002.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1 , Fish and Wildlife Service.

[FR Doc. 02–21614 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–02–0777XX]

Notice of Public Meeting; Sierra Front/Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below.

DATES: The three councils will meet on Thursday, October 17 from 8 a.m. to 5 p.m. and Friday, October 18, 2002, from 8 a.m. to 3 p.m., in the Conference Center at John Ascuaga's Nugget, 1100 Nugget Avenue, Sparks, Nevada 89502. On October 18, the Sierra Front/Northwestern Great Basin Resource Advisory Council will convene at 7:30 a.m. in joint session with BLM Northeast California Resource Advisory Council.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, Chief, Office of Communications, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861–6586; or BLM Public Affairs Specialist Debra Kolkman at telephone (775) 289–1946.

SUPPLEMENTARY INFORMATION: The 15-member councils advise 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 Nevada. Agenda topics include a presentation and discussion of accomplishments during 2002 and the outlook for 2003 for the BLM in Nevada; opening remarks and closeout reports of the three Resource Advisory Councils (RACs); discussion of nominations of proposed projects to be funded by the Southern Nevada Public Land Management Act of 1998; breakout meetings of each group category; breakout meetings of the three RACs; discussion and approval of Off-Highway Vehicle (OHV) guidelines; mine closure and bonding issues in Nevada; setting of schedules for meetings of the Individual RACs for the coming year, and other issues members of the Councils may raise. In the October 18 joint session, the Sierra Front/Northwestern Great Basin and Northeast California council members will hear a report from their National Conservative Area (NCA) subcommittee, which as been assisting the BLM with development of a draft management plan for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area. The council members will also hear a briefing on NCA management from the Black Rock-High Rock NCA staff.

All meetings are open to the public. The public may present written comments to the three RAC groups or the individual RACs. The public comment period for the council meeting will be at 3 p.m. on Thursday, October 17. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kolkman at the Nevada

State Office, BLM, 1340 Financial Blvd., Reno, Nevada, telephone (775) 289–1946.

Dated: September 4, 2002.

Jean Rivers-Council,

Acting State Director, Nevada.

[FR Doc. 02–23189 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COC–3292]

Public Land Order No. 7538; Transfer of Jurisdiction to the Department of Agriculture, Forest Service; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order transfers administrative jurisdiction of 837.12 acres of lands within the boundary of the San Isabel National Forest to the Department of Agriculture, Forest Service for management as National Forest System lands.

EFFECTIVE DATE: September 12, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land and Policy Management Act of 1976, 43 U.S.C 1714 (1994) it is ordered as follows:

Subject to valid existing rights, the administrative jurisdiction of the following described lands, which are within the boundary of the San Isabel National Forest, are hereby transferred to the Department of Agriculture, Forest Service to be managed as National Forest System lands:

New Mexico Principal Meridian

T. 50 N., R. 6 E.,
Sec. 16, lot 12.
T. 51 N., R. 8 E.,
Sec. 36, NE¼.
T. 50 N., R. 9 E.,
Sec. 36.

The areas described aggregate 837.12 acres in Chaffee and Gunnison Counties.

Dated: August 28, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–23191 Filed 9–11–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 1837 et al.]

Public Land Order No. 7537; Revocation of Forest Service Withdrawals; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes 7 Public Land Orders, 25 Secretarial Orders, and 2 Executive Orders in their entirety. The lands were withdrawn for Forest Service administrative sites, ranger stations, campgrounds, recreation areas, plant nurseries, a city watershed, roads, and a conservation center. The lands are no longer needed for the purposes for which they were withdrawn and the Forest Service has requested the revocations. There are approximately 13,822 acres involved in the revocations. The lands will be opened to mining and to such forms of disposition as may by law be made of National Forest System lands unless closed by overlapping withdrawals or other segregations of record.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office, 324 South State Street, Salt Lake City, Utah 84111–2303, 801–539–4132. A copy of the orders being revoked is available from this location.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The following Public Land Orders, Secretarial Orders, and Executive Orders are hereby each revoked in their entirety:

(a) Public Land Order Nos. 1084, 1715, 2400, 3928, 4102, 4115, and 4245.

(b) Secretarial Orders dated August 23, 1906, October 26, 1906, November 17, 1906, December 13, 1906, January 9, 1907, January 23, 1907, August 15, 1907, August 16, 1907, August 29, 1907, September 5, 1907, October 29, 1907, November 18, 1907, January 7, 1908, January 14, 1908, April 4, 1908, April 28, 1908, April 30, 1908, May 13, 1908, June 5, 1908, July 10, 1908, August 12, 1908, August 22, 1908, October 6, 1908, and two dated October 30, 1908.

(c) Executive Order dated June 6, 1906 and Executive Order No. 3852.

2. At 10 a.m. on October 15, 2002, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawals are no longer needed and has requested the revocations. The lands are located in several national forests throughout Utah.

Dated: August 28, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–23190 Filed 9–11–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–02–1430–ES; MTM 90728]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Montana

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The following described lands in Broadwater County, Montana have been examined and found suitable for classification for conveyance to Broadwater County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et.seq.). Broadwater County proposes to use the lands for expansion of an existing shooting range on county land.

Principal Meridian, Montana

T. 7 N., R. 1 E.,
Sec. 21: E½
Sec. 28: N½NE¼
Containing 400 acres.

The lands are not needed for Federal purposes. The patent is consistent with the Headwaters Resource Management Plan and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A limited reverter provision wherein the lands will revert back to the United States if they are not substantially developed on or before 5 years after issuance of patent. However, under no circumstances will any portion of the lands that have been used for any purpose that may result in the disposal, placement, or release of any hazardous substance revert to the United States.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Butte Field Office, 160 North Parkmont, Butte, Montana.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Butte Field Office, 106 North Parkmont, Butte, Montana 59701.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a shooting range. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: September 3, 2002.

Steve Hartmann,

Acting Field Manager.

[FR Doc. 02–23153 Filed 9–9–02; 12:08 pm]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–EU; NMNM–108570]

Notice of Realty Action: Notice of Direct Land Sale of Public Land, New Mexico

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The following described lands have been determined suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713):

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 11 W.,
Sec. 3: Lot 1.

Containing 0.52 acres of public land.

EFFECTIVE DATE: Comments must be received by October 28, 2002.

ADDRESSES: Interested parties may submit comments regarding the proposed direct sale to the Bureau of Land Management. Farmington Field Manager, 1235 La Plata Highway, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Mary Jo Albin, Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401, 505–599–6332.

SUPPLEMENTARY INFORMATION: The public lands have been found suitable for disposal for direct sale and will be sold to Charles and Joan Eavenson pursuant to Section 203 of FLPMA, at no less than fair market value.

The sale will be for the purpose of resolving an unauthorized use of public lands due to an error made in a private survey prior to the Eavensons purchase of the land. The error was discovered when the New Mexico State Highway and Transportation Department (Highway) had a survey done to upgrade Highway 550 to four lanes. The Bureau of Land Management did a cadastral survey to verify the unauthorized use of public land. The Eavensons have constructed a commercial building, set up a mobile home and landscaped the yard surrounding the mobile home, and built a pole barn on the property. The disposal is deemed necessary to allow the Eavensons the legal use of the property and avoid having to remove the improvements. The disposal is consistent with the Bureau's planning efforts, State and local government programs, and applicable regulations. The land has been examined and is suitable for disposal by direct sale pursuant to Section 203 of the FLPMA of 1976 (43 U.S.C. 1713). The direct sale will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to mine and to remove the minerals, under applicable laws and regulations to be established by the Secretary of the Interior. A more detailed description of this reservation, which will be incorporated in the document of conveyance.

Publication of this notice in the **Federal Register** will segregate the public land from settlement, location and entry under the public land laws including the mining laws but not from sale. All comments received within the allowed time, will be reviewed by the Field Office Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior.

Dated: August 20, 2002.

Joel E. Farrell,

Assistant Field Manager for Resources.

[FR Doc. 02–23192 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–VB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Royalty Policy Committee of the Minerals Management Advisory Board will meet at the

Sheraton Denver West Hotel in Lakewood, Colorado.

DATES: Tuesday, October 22, 2002, from 8:30 a.m. to 5 p.m.

ADDRESSES: The Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, Colorado, 80228, telephone (303) 987–2000.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Fields, Royalty Policy Committee Coordinator, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone (303) 231–3102, fax (303) 231–3781, email *gary.fields@mms.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established a Royalty Policy Committee on the Minerals Management Advisory Board to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals-related policies. Committee membership includes representatives from States, Indian tribes and allottee organizations, minerals industry associations, the general public, and Federal departments.

At this 15th meeting, the committee will elect a Parliamentarian and receive subcommittee reports on sodium/potassium, coal, and marginal properties. Previous committee recommendations on the appeals process will be discussed with the MMS Director. The MMS will present reports on financial management, the Strategic Petroleum Reserve, and the royalty-in-kind initiatives. The MMS will provide an update if new Energy Legislation is passed by Congress, and the Committee will discuss the possibility of forming a subcommittee to study potential implications of a Federal Energy Regulatory Commission decision on an offshore natural gas pipeline system handling Gulf of Mexico production.

The location and dates of future meetings will be published in the **Federal Register** and posted on our Internet site at *http://www.mrm.mms.gov//Laws_R_D/RoyPC/RoyPC.htm*. The meetings are open to the public without advance registration on a space available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to Mr. Fields at the mailing address listed in the **FOR FURTHER INFORMATION CONTACT** section. Transcripts of committee meetings will be available 2 weeks after each meeting for public inspection and copying at MMS's Minerals Revenue Management, Building 85, Denver Federal Center, Denver, Colorado. Meeting minutes will be posted on our Internet site at *http://www.mrm.mms.gov//Laws_R_D/RoyPC/ROYPC.htm* about 5 weeks after the meeting.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: August 28, 2002.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 02–23145 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Elwha Ecosystem Restoration Implementation; Olympic National Park; Clallam and Jefferson Counties, WA; Notice of Intent To Prepare a Supplemental Environmental Impact Statement

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the U.S. Department of the Interior, National Park Service, and its cooperating agencies are undertaking a conservation planning and environmental impact analysis process intended to supplement the 1996 Elwha River Ecosystem Restoration implementation final environmental impact statement (1996 EIS). Two dams, built in the early 1900s, block the river and limit anadromous fish to the lowest 4.9 river miles. The 1996 EIS is the second of two environmental impact statements that examined how best to restore the Elwha River ecosystem and native anadromous fishery in Olympic National Park. Dam removal was determined to be the preferred option for restoration, and the 1996 EIS also identified a desired suite of actions to remove the dams. As a step towards accomplishing these objectives, Congress directed purchase of the dams (which occurred in February 2000 for $29.5 million, as stipulated by Pub. L. 102–495). However, release of sediment from behind the dams would result in sometimes severe impacts to water quality or to the reliability of supply to downstream users during the dam removal impact period of about 3–5 years, which the 1996 EIS proposed mitigating through a series of specific measures (*see* below). Subsequently, new research and changes unrelated to the implementation project have emerged. Therefore, the primary purpose of this Supplemental EIS (SEIS) will be to identify and analyze potential impacts of a new set of water quality and supply related mitigation measures.

Background

Elwha Dam was built in 1911, and Glines Canyon Dam in 1925, limiting anadromous fish to the lowest 4.9 miles of river (blocking access to more than 70 miles of Elwha River mainstream and tributary habitat). The two dams and their associated reservoirs have also inundated and degraded important riverine and terrestrial habitat and severely affected fisheries habitat through increased temperatures, reduced nutrients, reduced spawning gravels downstream, and other changes. Consequently, salmon and steelhead populations in the river have been considerably reduced or eliminated, and the river ecosystem within Olympic National Park significantly and adversely altered.

In 1992, Congress enacted the Elwha River Ecosystem and Fisheries Restoration Act (PL 102–495) directing the Secretary of the Interior to fully restore the Elwha river ecosystem and native anadromous fisheries, while at the same time protecting users of the river's water from adverse impacts associated with dam removal. The records of decision associated with this process indicated removal of both dams was needed to fully restore the ecosystem. However, impacts to water quality and supply will result from release of sediments, which have accumulated behind the dams. The 1996 EIS proposed and analyzed mitigation measures to protect water quality and ensure supply for each of the major downstream users. These users included the city of Port Angeles' municipal and industrial consumers, the Lower Elwha Klallam Tribe's fish hatchery, the state chinook salmon rearing channel, and the Dry Creek Water Association. Many private wells along the river could also be affected, but mitigation proposed for these users would remain substantially the same.

Currently, surface water from a rock fill diversion and intake pipe at river mile 3.3 supplies the city's industrial clients and the state rearing channel. Mitigation to protect the city's industrial customers described in the 1996 EIS included the installation of an infiltration gallery to collect water filtered from the riverbed and open-channel treatment with flocculants, chemicals and polymers during dam removal. The city's municipal customers are supplied with a subsurface Ranney collector on the east-side of the river at river mile 2.8. To maintain water yield, the 1996 EIS

proposed a second Ranney collector be built on the river's west-side, opposite the current collector. A temporary "package" treatment plant to filter water from the Ranney wells would have been operational during dam removal. The rearing channel would have been closed during dam removal and chinook production transferred to another state facility.

The tribal hatchery at river mile 1 will be central in protecting and producing Elwha anadromous fish for restoration following dam removal. Water for the hatchery is currently provided through wells and a shallow infiltration gallery. Measures described to protect hatchery water during dam removal included the expansion of the gallery to ensure supply and drilling of two new wells to provide clean groundwater for dilution.

Dry Creek Water Association (DCWA) currently meets the needs of its members through groundwater wells. These wells would be subject to an increased frequency of flooding following dam removal, as well as increased sediment and mobilization of iron and manganese. The 1996 EIS analyzed two options for DCWA—connection to the city's water distribution system, or providing additional protection from flooding for the existing DCWA system and treating on site with filtration and chlorination.

Since December 1996 (when the most recent record of decision was signed), the U.S. Department of the Interior (including Bureau of Reclamation) and its cooperating agencies (including the U.S. Army Corps of Engineers and the Lower Elwha Klallam Tribe) have continued studying and refining elements of the selected alternative. As a result, they have found better solutions for protecting water quality and water supply during and following dam removal. In addition, changes in user needs have come about as a result of factors unrelated to the project. For example, chinook salmon and bull trout have both been listed as threatened since 1997, resulting in the requirement to keep the state rearing facility open during dam removal. Also, the city of Port Angeles must now meet new standards for the treatment of its municipal supplies. In addition, an industrial customer (Rayonier) which required very high quality water for its operation has since closed.

As a result of these and other changes, the agencies are pursuing an option of building permanent water treatment facilities with varying levels of treatment depending on the ultimate use of the water (for additional details, see Elwha River Water Quality Mitigation Project Planning Report at *www.nps.gov/olym/elwha/home.htm*). The locations and types of diversions may also change because water collected from the city's Ranney well is no longer considered to be purely groundwater, but is highly connected to the river and so must be treated as a surface supply. In addition, problems associated with subsurface intakes during the 3–5 year dam removal impact period may now outweigh the benefits. These problems include possible clogging and reduced yields, increased costs of providing flood protection, and increased environmental impacts associated with installing and maintaining subsurface structures in or very near the river. Sources of "true" groundwater, which are not so closely connected to the river have been investigated, but do not exist in the quantities required. This leaves surface water as a more attractive option. An alternative of replacing the existing intake structure will therefore be analyzed in the SEIS. Feasibility studies indicate surface water could be treated and used for the city's industrial customer, in combination with well water for the state's rearing facility and the Lower Elwha Klallam tribal hatchery, and as a backup for the city's municipal customers. It may also be evaluated as an option to supply DCWA customers.

The SEIS will also analyze changes unrelated to water quality mitigation where applicable. One of these changes is a re-evaluation of options to mitigate impacts to septic systems on the Lower Elwha Klallam Reservation. Many of the septic systems in the lower lying parts of the Reservation may become ineffective when the river level and associated groundwater table rises as a result of river channel aggradation following dam removal. Although the 1996 EIS examined a community mounding system, the number of residents living in the valley part of the Reservation has now increased. The SEIS will evaluate other options which are technically, economically, or environmentally preferable in light of these changes. At this time, the Tribe is considering a variety of options, including individual onsite systems with pressurized pumps, small group treatment options, offsite treatment by others, or combining with other valley residents (who would not be affected by dam removal) to create a community treatment system.

Since the release of the 1996 EIS, two species of fish cited for restoration have been listed as threatened, and the NPS has worked with USFWS and NMFS staff to further address these species during and following dam removal. Keeping the rearing channel open for chinook salmon production and modifying road culverts within the park to provide access for bull trout to additional tributary habitat are examples of some of the additional actions that the SEIS will examine.

Environmental Issues

Updated and additional information relevant to decision-making will be presented in the SEIS. In addition to the points summarized above, further detail has been added to the revegetation plan for the areas currently inundated by the reservoirs; thus, potential impacts of actions associated with such revegetation will be addressed. The 1996 EIS envisioned using one or more of nine solid waste disposal areas for rubble and other materials. Some of these may no longer be available, new sites might be added, or recycling of concrete may be economically preferable now.

Water quality or water supply mitigation issues that will be analyzed in the SEIS include impacts of rebuilding the existing rock diversion structure on riparian vegetation, wildlife, water quality and fish; land use related impacts of building permanent water treatment facilities, such as removal of vegetation and soil, use of heavy equipment to build the facilities and its impact on wildlife or visitors, and hazards of using chlorine and other chemicals required for treatment.

Other environmental issues not related to water quality or supply include providing access to Morse Creek and other tributaries for fisheries protection during dam removal, access to seed stock and protection of young plants in revegetating reservoir lands, changes in driving routes for trucks disposing of rubble, or noise of an onsite rubble crushing operation and its potential effects on wildlife and visitors.

Scoping/Comments

Public scoping for the SEIS will conclude 30-days from the date of publication of this notice. All interested individuals, groups, and agencies are encouraged to provide information relevant to the design, construction, location, or potential environmental effects of desired measures noted above. Please limit comments to the proposal as described in this notice, since prior decisions to restore the ecosystem and anadromous fisheries through dam removal, and selection of the River Erosion alternative as the dam removal scenario, are beyond the scope of environmental impact analysis targeted in the SEIS.

Additional information and periodic updates will be available at the Web site noted above or by contacting the Elwha Restoration Project Office at (360) 565–1320. All comments must be postmarked or transmitted no later than 30 days from the publication date of this notice; as soon as this date is determined it will be announced on the Web site noted. Written comments may be delivered by fax to: 360/565–1325; via e-mail to: *Brian_Winter@nps.gov;* or via postal mail or hand delivery during normal business hours to: Elwha Restoration Project Office, SEIS Comments, 826 East Front Street, Suite A, Port Angeles, WA 98362.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision

The SEIS will be prepared in accord with all applicable laws and regulations, including the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508), and the NPS Management Policies (2001) and NEPA guidelines (Director's Order 12). A 60-day public review of the Draft will be initiated upon its release, which at this time is expected in early 2003; then subsequently a Final will be prepared. Issuance of both documents will be announced via local and regional press, direct mailings, on the Web site noted above, and through the **Federal Register**. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation would be the Superintendent, Olympic National Park.

Dated: July 9, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–23124 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee Findings and Recommendations Regarding Cultural Items in the Possession of the Denver Art Museum

AGENCY: National Park Service, Interior.

ACTION: Notice.

After full and careful consideration of the information and statements submitted and presented by the Denver Art Museum and the Western Apache NAGPRA Working Group at the May 31-June 2, 2002, meeting of the Native American Graves Protection and Repatriation Review Committee, the review committee finds that this information is sufficient to establish by a preponderance of the evidence that the seven cultural items are sacred objects and objects of cultural patrimony that meet the definitions of "sacred objects" and "objects of cultural patrimony" under NAGPRA 25 U.S.C. 3001. It also finds that these cultural items are culturally affiliated with the constituent tribes of the Western Apache NAGPRA Working Group. The Western Apache NAGPRA Working Group is composed of the authorized representatives of the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona, San Carlos Apache Tribe of the San Carlos Reservation, Arizona, the Tonto Apache Tribe of Arizona, the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

The seven cultural items are a Dilzini medicine cord and pouch, a Dilzini wooden doll, two caps, and three Dilzini Gaan masks.

The review committee recognizes that the Denver Art Museum engaged in good faith consultation with the Western Apache NAGPRA Working Group for several years. An impasse seemed to have developed in the consultation process. Officials of the Denver Art Museum felt that the information provided was not sufficient to meet the standard of NAGPRA and requested additional information. The Western Apache NAGPRA Working Group felt that the information it had provided was sufficient and that it was unable to provide additional sensitive religious information. The Western Apache NAGPRA Working Group requested the assistance of the review committee in resolving the dispute.

During its May 31-June 2, 2002, meeting, the review committee considered the written information provided by both parties. In addition, the review committee was able to question both parties and obtain additional information regarding the identity and cultural affiliation of the seven items.

The review committee concurs with the Denver Art Museum that sufficient evidence is available to support the following determinations of cultural affiliation:1.The Dilzini medicine cord and pouch (accession number 1936.216.1) is culturally affiliated with the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.2.The Dilzini wooden doll (accession number 1936.216.2) is culturally affiliated with the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.3.The cap (accession number 1946.215) is culturally affiliated with the San Carlos Apache Tribe of the San Carlos Reservation, Arizona.4.The Dilzini Gaan mask (accession number 1947.256) is culturally affiliated with the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.5.Dilzini Gaan Mask (accession number 1947.257) is culturally affiliated with the San Carlos Apache Tribe of the San Carlos Reservation, Arizona.6.The Dilzini Gaan mask (accession number 1947.258) is culturally affiliated with the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Oral testimony provided at the review committee meeting regarding the seventh item, a second cap (accession number 19417.1749), indicated that the symbols on the cap represent an Apache sacred site. Oral tradition provided at the meeting indicates that the cap was associated with a medicine man from Cibeque, AZ.

The review committee finds that the evidence that the two parties provided to the review committee in advance of the review committee meeting, along with additional information that they provided at the meeting, is sufficient to support a determination that the seven items are objects that are specific ceremonial items that are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Mr. Levi DeHose and Mr. Carlyle Russell were identified as traditional Apache religious leaders responsible for the performance of specific healing ceremonies. The seven items were identified as being needed for the conduct of these specific healing ceremonies, and the items must be returned to their resting place in order to continue the healing process.

The review committee finds that the evidence that the two parties provided

in advance of the review committee meeting, along with additional information that they provided at the meeting, is sufficient to support a determination that the seven items have ongoing historical, traditional, or cultural importance central to the Apache themselves, rather than property owned by an individual tribal member. Information provided at the meeting indicated that the continuing use of the seven items was necessary for the continuation of the healing process for present and future generations. The serious social problems and wide-scale suffering among the Western Apache were attributed to the alienation of these and other ceremonial items from their resting places. The return of these items to their resting places will be beneficial to the health of the Apache people.

The review committee also reaffirms the importance of ongoing, good faith consultation between the parties as the most effective means for finding repatriation solutions and precluding disputes.Based on these findings, the review committee recommends that the Denver Art Museum consider the oral testimony provided by the Western Apache NAGPRA Working Group, consult with the anthropological literature, re-evaluate the determination for repatriation, and inform the review committee of the museum's findings within the next 90 days.

The Native American Graves Protection and Repatriation Act directs the Secretary of the Interior to establish and maintain an advisory committee composed of seven private citizens nominated by Indian tribes, Native Hawaiian organizations, and national museum organizations and scientific organizations (25 U.S.C. 3006). The responsibilities of the review committee include reviewing and making findings related to the identity or cultural affiliation of Native American human remains or other cultural items, or to the return of human remains or other cultural items; and facilitating the resolution of disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of human remains and other cultural items.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3006 (g). These findings and recommendations do not necessarily represent the views of the National Park Service or the Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters.

Dated: July 16, 2002

Armand Minthorn

Chair, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 02–23128 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Field Museum of Natural History, Chicago, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Field Museum of Natural History professional staff in consultation with representatives of the Stockbridge Munsee Community, Wisconsin.

In 1891, human remains representing four individuals were collected by F.M. Noe, a dealer in Indianapolis, IN. These human remains were later purchased by Franz Boas, who sold them to the Field Museum of Natural History in 1894. No known individuals were identified. No associated funerary objects are present.

According to F.M. Noe's notes, these human remains were recovered from a gravel bank in Muncie, IN, and were identified as "Muncie Indians."

The Munsee tribe that lived in the Lower Hudson River valley of New York at the time of its colonization by Europeans was known as the "Minsis". The name is subject to many different spellings in historical documents; the most commonly used at this time is "Munsee". The territory of the Munsee tribe extended from the Catskill Mountains to the head of the Delaware and Susquehanna Rivers, bounded on the west by the Hudson. After European contact, the Munsee were forced west, and spent a relatively short time in Indiana; it is from the name of the tribe that the town of Muncie gets its name. The tribe eventually settled with the Stockbridge Mohicans in Wisconsin. The present-day tribe most closely affiliated with the Munsee is the Stockbridge Munsee Community, Wisconsin.

Based on the above-mentioned information, officials of the Field Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Field Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Stockbridge Munsee Community, Wisconsin.

This notice has been sent to officials of the Absentee-Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Delaware Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahaville Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Stockbridge Munsee Community, Wisconsin; and Wyandotte Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jonathan Haas, MacArthur Curator of North American Anthropology, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7829, before October 15, 2002. Repatriation of the human remains and associated funerary objects to the Stockbridge Munsee Community, Wisconsin may begin after that date if no additional claimants come forward.

Dated: July 22, 2002.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–23135 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Fort Collins Museum, Fort Collins, CO

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Fort Collins Museum, Fort Collins, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary object was made by the Fort Collins Museum professional staff in consultation with Dr. Ann Magennis, Professor of Anthropology at Colorado State University, and representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, and Utah. The following tribes were invited to participate in consultations but were unable to attend: Apache Tribe of Oklahoma; Cheyenne River Sioux Tribe, South Dakota; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; and Pawnee Nation of Oklahoma. Museum officials also consulted with representatives of the White Mesa Ute Tribe, Utah, a nonfederally recognized Indian group.

In 1941, human remains representing one individual were donated to the Fort Collins Museum by F.C. Parker. The human remains consist of a partial skull. Donor records indicate that an "arrowhead was found embedded in eye cavity." The arrowhead is not in the possession of the Fort Collins Museum. F.C. Parker was the manager of the Fort Collins Opera Hall/Stage in the late 1890s-early 1900s. During the 1930s and 1940s, an "Indian relics" group was instrumental in establishing the Pioneer Museum, which later became the Fort Collins Museum. These human remains were likely acquired in fairly close proximity to present-day Fort Collins. It is believed that the human remains date to sometime after the mid-17th century when bows and arrows were introduced in the area.

In the 1940s, human remains representing one individual were excavated by Clyde L. Stanley near the town of Keota, Larimer County, CO. Mr. Stanley donated the human remains to the Fort Collins Museum in 1957. Donation records identify the human remains as an "Indian boy about 20 years." Dr. Magennis identified the remains as a 20-50 year old female Native American. No known individual was identified. No associated funerary objects are present. Archeological evidence indicates significant Native American occupation in the Keota area during the historic period. These human remains are believed to date to the historic period based on their good physical condition and their excavation from near a site occupied during the historic period.

Prior to 1951, human remains representing one individual were excavated at the "old Jack Currie farm," Larimer County, CO. Ansel E. Anderson donated the human remains to the Fort Collins Museum in 1951. The circumstances under which Mr. Anderson acquired the skull are not clear. A museum tag associated with the human remains reads "Indian skull of Araphahoe squaw." Physical examination of the remains reveal cranial and dental characteristics consistent with Native American males. No known individual was identified. The one associated funerary object present is a perforated, white shell.

In 1972, human remains representing one individual were excavated by G.W. Ravenscroft in a streambed in Larimer County, CO. Tests done by Colorado State University in 1974 indicate that the remains are Native American and predate the arrival of Euro-Americans in the area. Ravencroft donated the human remains to the Fort Collins Museum in 1976. No associated funerary objects are present. A bone awl originally recovered with the human remains was apparently misplaced prior to 1976.

All of the human remains and the associated funerary object described above are believed to date before 1884. Evidence of traditional territories, oral traditions, archeological context, ethnohistoric documents, cranial measurements, and dental characteristics of the human remains support a cultural affiliation between these human remains and the associated funerary object and the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.

On April 8-9, 2002, representatives of the above-mentioned Indian tribes were consulted regarding the cultural affiliation and disposition of these human remains and associated funerary object. The authorized representatives of nine of the above-mentioned Indian tribes submitted a joint claim of cultural affiliation on April 9, 2002. The authorized representative of the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah declined to sign the April 9, 2002 joint claim of cultural affiliation. The Authorized representatives of the Comanche Nation, Oklahoma and Pawnee Nation of Oklahoma subsequently added their signatures to the joint claim. The joint claim of cultural affiliation identified the Cheyenne-Arapaho Tribes of Oklahoma as lead Indian tribe.

Based on the above-mentioned information, officials of the Fort Collins Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Fort Collins Museum also have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above was reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, pursuant to 43 CFR 10.2(e), officials of the Fort Collins Museum have determined that there is a relationship of shared group identity

that can be reasonably traced between these Native American human remains and the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, Pawnee Nation of Oklahoma; South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe, South Dakota; Comanche Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux tribe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho; Shoshone Tribe of the Wind River Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah; White Mesa Ute Tribe, Utah; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Yankton Sioux Tribe of South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Brenda Martin, NAGPRA Coordinator, Fort Collins Museum, 200 Mathews Street, Fort Collins, CO 80524, telephone (970) 416-2702, before October 15, 2002. Repatriation of the human remains to the Cheyenne and Arapaho Tribes of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 17, 2002.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–23127 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Koshare Indian Museum, La Junta, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Koshare Indian Museum that meet the definition of "objects of cultural patrimony" and "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The three cultural items are a raven Chilkat robe, an eagle dagger, and an oyster catcher rattle.

In 1971, the Chilkat robe was purchased by J.F. Burshears for the Koshare Indian Museum. The robe was made by Anna Klaney, also known as K'aanakeek Tlaa, for her husband's family. Her husband was the housemaster of the Frog House, one of the Gaanaaxteidi clan houses in the village of Klukwan. The Gaanaaxteidi are of the Raven moiety of the Tlingit, and the emblem on the robe is a raven. Museum documentation and consultation evidence indicate that the Chilkat robe has ongoing historical, traditional, or cultural importance central to the Tlingit culture, and may not be alienated, appropriated, or conveyed by any individual.

At an unknown date, the eagle dagger came into the possession of the Koshare Indian Museum. The dagger consists of a carved wooden handle that contains an eagle crest that is common among Tlingit clans. Museum documentation and consultation evidence indicate that the eagle dagger was used for ceremonial purposes by Tlingit members, that it has ongoing historical, traditional, or cultural importance central to Tlingit culture, and may not be alienated, appropriated, or conveyed by any individual.

Based on the above-mentioned information, officials of the Koshare Indian Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these two cultural items have ongoing historical, traditional, or cultural importance central to the tribe itself, and may not be alienated, appropriated, or conveyed by any individual.

The oyster catcher rattle consists of a wooden fragment and was donated to the Koshare Indian Museum by Julian H. Salomon in 1984. Consultation evidence indicates that this rattle was removed from the specific burial site of an individual, and that rattles of this type are unique to the Tlingit and were used only by the ixt' (shaman) of the Tlingit, and were placed with the deceased shaman in above-ground burials.

Based on the above-mentioned information, officials of the Koshare Indian Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this one cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual.

Officials of the Koshare Indian Museum also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these objects of cultural patrimony and unassociated funerary object and the Central Council of Tlingit & Haida Indian Tribes.

This notice has been sent to officials of the Cape Fox Corporation, Central Council of Tlingit and Haida Indian Tribes, Chilkat Indian Village, Ketchikan Indian Corporation, Organized Village of Saxman, Sealaska Heritage Corporation, and Yakutat Tlingit Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects of cultural patrimony and unassociated funerary object should contact Tina Wilcox, Collections Manager, Koshare Indian Museum, 115 West 18th Street, P.O. Box 580, La Junta, CO 81050, telephone (719) 384-4411, before October 15, 2002. Repatriation of these objects of cultural patrimony and

unassociated funerary object to the Central Council of Tlingit & Haida Indian Tribes may begin after that date if no additional claimants come forward.

Dated: July 9, 2002

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–23133 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Minnesota Museum of American Art, Saint Paul, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Minnesota Museum of American Art that meets the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a shaman's dancing apron (Minnesota Museum of American Art accession number 57.14.16) made in about 1880-1900 from a Chilkat blanket and composed of wool leather, yarn, and deer claws. It measures 28 by 45 inches. Museum accession records describe the apron as "Made of the right end of a Chilkat blanket, whose design does not appear in Emmon's book. All of the lateral field and about 3 inches of the central field appear. The yellow figures are outlined in orange yarn. The white yarn is mountain goat wool. The top blue of the blanket is heavy four-ply brown cotton cord. The sidelines are twisted sinew. The apron has a buckskin fringe at the bottom with 39 deer hooves attached. It belonged to an Indian doctor Gambies Jim."

The apron, listed as number 632 of the Rasmussen Collection, was purchased by the Minnesota Museum of American Art in 1957 from the Portland Art Museum. The Portland Art Museum acquired these works from Mr. Axel Rasmussen who was superintendent of schools in Skagway, AK. Representatives of the Central Council of the Tlingit & Haida Indian Tribes have provided evidence that this shaman's dancing apron is needed for religious ceremonies by the Tlingit, and specifically by the Gaanax.adi clan. Representatives of the Central Council of the Tlingit & Haida Indian Tribes also provided evidence that this shaman's dancing apron has ongoing historical, traditional, or cultural importance to the Tlingit people, and that it could not have been alienated, appropriated, or conveyed by any individual.

Based on the above-mentioned information, officials of the Minnesota Museum of American Art have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Minnesota Museum of American Art also have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, or cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the Minnesota Museum of American Art have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this sacred object/object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

This notice has been sent to officials of the Central Council of the Tlingit & Haida Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object/object of cultural patrimony should contact Lin Nelson Mayson, Museum Curator, Museum of American Art, 505 Landmark Center, 75 West Fifth Street, Saint Paul, MN 55102, telephone (651) 292-4370, before October 15, 2002. Repatriation of this sacred object/object of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes of Alaska may begin after that date if no additional claimants come forward.

Dated: July 3, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–23131 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects information that was reported in a Notice of Inventory Completion published October 4, 2001 (Federal Register document 01-24936, pages 50672-50673), which was itself a correction of a Notice of Inventory Completion published May 3, 2001 (Federal Register document 01-11141, pages 22248-22250). In both notices, the name of a site where human remains and associated funerary objects were discovered was wrongly reported, as were dates of transfer in the collection history of objects from that site.

Paragraphs 16 and 17 of the October 4, 2001, notice reported human remains representing one individual and four associated funerary objects as coming from Jamestown, RI. The site name should be corrected to Burr's Hill Burial Ground, Warren, RI, and the information should be reported along with the human remains in the preceding two paragraphs. In paragraphs 14 and 15, dates of transfer in the collection history of objects from Burr's Hill Burial Ground were wrongly reported.

To correct this information, paragraphs 16 and 17 should be deleted, and the human remains representing one individual and four associated funerary objects should be included in paragraphs 14 and 15 to read:

(Paragraph 14) In 1894, human remains representing four individuals were recovered from the Burr's Hill Burial Ground, Warren, RI, by A.T. Vaughan, who donated these remains to the Museum of Natural History and Planetarium in 1900. No known individuals were identified. Museum documentation indicates that "curios" were found with these human remains, and were transferred in 1916 to the Heye Foundation (now the National Museum of the American Indian) as part of an exchange. Museum documentation also indicates that a fragment or fragments of one of the individuals were transferred in 1918 to the Heye Foundation (now the National Museum of the American Indian) as part of an exchange. The four associated funerary objects are fragments of bark, hair, iron, and cloth that are adhered to the human remains.

(Paragraph 15) Based on skeletal morphology and extensive copper staining, these individuals have been identified as Native American from the 17th century. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

Based on the above-mentioned information, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Museum of Natural History and Planetarium also have determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

This notice has been sent to officials of the Narragansett Indian Tribe of Rhode Island and the Wampanoag Tribe of Gay Head (Aquinnah). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Marilyn Massaro, Curator of Collections, Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI 02905, telephone (401) 785-9457, before October 15, 2002. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah) may begin after that date if no additional claimants come forward.

Dated: July 3, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–23130 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects information that was reported in a Notice of Inventory Completion published October 4, 2001 (Federal Register document 01-24936, pages 50672-50673), which was itself a correction of a Notice of Inventory Completion published May 3, 2001 (Federal Register document 01-11141, pages 22248-22250). This notice corrects the cultural affiliation for human remains and associated funerary objects from four sites that were included in the original May 3, 2001, notice and the October 4, 2001, correction notice. This notice also reports for the first time human remains and associated funerary objects from an additional site that was inadvertently omitted from both notices.

Review of museum documentation has revealed that human remains and associated funerary objects from the four sites listed below have been determined to be cultural affiliated exclusively to the Narragansett Indian Tribe of Rhode Island. Human remains and associated funerary objects from Field's Point, Providence, RI are reported here for the first time, and have been determined to be culturally affiliated to the Narragansett Indian Tribe of Rhode Island.

Paragraphs 5-8 and 11-13 of the October 4, 2001, notice are corrected by substituting the following paragraphs:(Paragraph 5) In 1899, human remains representing one individual were recovered from Jamestown, RI, by James H. Clarke and donated to the Museum of Natural History and Planetarium. No known individual was identified. The two associated funerary objects are an iron axe fragment and an animal bone fragment.

(Paragraph 6) Based on red ochre and copper staining on the human remains, this individual has been determined to be Native American from the contact period. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island.

(Paragraph 7) Before May 1939, human remains representing two individuals were recovered from Old Warwick, near Wharf Road, East Greenwich, RI, by Lincoln C. Bateson, who donated these human remains to the Museum of Natural History and Planetarium in May 1939. No known individuals were identified. No associated funerary objects are present. (Paragraph 8) Based on museum documentation and physical evidence, these individuals have been identified as Native American. Based on physical evidence and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island.

(Paragraph 11) In 1927, human remains representing one individual were recovered from London Street, East Greenwich, RI, and donated to the Museum of Natural History and Planetarium by W.E. Crease. No known individual was identified. No associated funerary objects are present. Accession information states these human remains

were "dug up on London Street, 10 feet deep." Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island.

(Paragraph 12) In 1936, human remains representing one individual were recovered from Melrose Street, West Ferry site, Jamestown, RI, by Roy Johnson, Louis Watson, and others. In 1937, these human remains were donated to the Museum of Natural History and Planetarium by Mr. Johnson. No known individual was identified. The one associated funerary object is a blanket fragment.

(Paragraph 13) Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island.

The following two paragraphs report for the first time human remains from Fields Point, Providence, RI.

In 1925, human remains representing one individual were recovered from Field's Point, Providence, RI, by Edwin Birch, who donated these human remains to the Museum of Natural History and Planetarium at an unknown date. No known individual was identified. There are no associated funerary objects.Based on skeletal morphology and the presence of copper staining, this individual has been identified as Native American from the contact or protohistoric period. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island. Based on the above-mentioned information, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the Museum of Natural History and Planetarium also have determined that, pursuant to 43 CFR 10.2 (d)(2), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Narragansett Indian Tribe of Rhode Island.

This notice has been sent to officials of the Narragansett Indian Tribe of Rhode Island and the Wampanoag Tribe of Gay Head (Aquinnah). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Marilyn Massaro, Curator of Collections, Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI 02905, telephone (401) 785-9457, before October 15, 2002. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe of Rhode Island may begin after that date if no additional claimants come forward.

Dated: July 3, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–23132 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona.

At a date prior to 1907, human remains representing at least one individual were removed from an unidentified location in "Hopi country," according to museum records, by Kate L. Cory. These human remains were donated to the Phoebe A. Hearst Museum of Anthropology in 1907. No known individual was identified. No associated funerary objects are present.The cultural affiliation was based on the museum records that referenced "Hopi country."Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Hopi Tribe of Arizona.This notice has been sent to officials of the Hopi Tribe of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before October 15, 2002. Repatriation of the human remains to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: July 22, 2002.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–23134 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona.

In 1926, human remains representing at least one individual were removed from a locality east of Somerton, Yuma County, AZ, by Dr. Elliott G. Colby and donated to the Phoebe A. Hearst Museum of Anthropology the following year. Museum records note that the human remains were removed from a "grave in Pima cemetery, Edge of mesa." No known individual was identified. The three funerary objects are a bowl, an iron chisel-like blade, and a clay ball.

The cultural affiliation was determined by the museum record reference to the "Pima cemetery," and to the presence of an Euroamerican object with the burial.

Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & California; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.

This notice has been sent to officials of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before October 15, 2002. Repatriation of the human remains and associated funerary objects to the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & California; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona may begin after that date if no additional claimants come forward.

Dated: July 22, 2002

C. Timothy McKeown,

Acting Manager, National NAGPRA Program

[FR Doc. 02–23136 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Pomona College, Claremont, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Pomona College, Claremont, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Pomona College Museum staff and a NAGPRA consultant in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date, human remains representing one individual were recovered from the Laveen site, Section 34, Maricopa County, AZ, by an unknown person. In 1951, Dr. E.H. Parker donated the remains to Pomona College. There is no information indicating how Dr. Parker acquired the remains. No known individual was identified. The one associated funerary object is a red-on-buff pottery jar, which held the cremated remains. The pottery jar dates to the Santa Cruz phase (A.D. 700-900) of the Hohokam culture of Arizona.

At an unknown date, human remains representing one individual were removed from Casa Grande, Pinal

County, AZ, by an unknown person. In 1951, Dr. E.H. Parker donated the remains to Pomona College. There is no information indicating how Dr. Parker acquired the remains. No known individual was identified. The one associated funerary object is a Gila Red pottery jar, which held the cremated remains. The pottery jar dates to the Soho phase (A.D. 1150-1300) of the Hohokam culture of Arizona.

At an unknown date, human remains representing one individual were removed from an unknown location in central Arizona by an unknown person. In 1951, Dr. E.H. Parker donated the remains to Pomona College. There is no information indicating how Dr. Parker acquired the remains. No known individual was identified. The one associated funerary object is a red-on-buff pottery jar, which held the cremated remains. The pottery jar dates to the Santa Cruz phase (A.D. 700-900), Colonial period, of the Hohokam culture of Arizona.

At an unknown date, human remains representing one individual were recovered from the Tonto Basin, Gila County, AZ, by an unknown person. In 1951, Dr. E.H. Parker donated the remains to Pomona College. There is no information indicating how Dr. Parker acquired the remains. No known individual was identified. The four associated funerary objects are shell rings, which are dated to the Colonial-Classic period (A.D. 550-1450) of Hohokam culture.

At an unknown date, human remains representing one individual were recovered from Gila Bend, Maricopa County, AZ, by an unknown person. In 1951, Dr. E.H. Parker donated the remains to Pomona College. There is no information indicating how Dr. Parker acquired the remains. No known individual was identified. The one associated funerary object is a salt-smudged, red pottery jar, which held the cremated remains. The pottery jar dates to the Civano phase (A.D. 1300-1450) of the Hohokam culture of Arizona.

In their book, Those Who Came Before: Southwestern Archeology in the National Park System (University of Arizona Press, 1983), Robert H. and Florence C. Lister describe the practices and accomplishments of the Hohokam Indians. Cremation was a common mortuary practice of the Hohokam. Ashes, unconsumed pieces of bone, and the damaged or destroyed funerary offerings of pottery or stone were buried in pits or trenches. The Hohokam are credited with creating simple tools, utilitarian objects, religious, and ornamental objects made from shell obtained through trade from the Gulf of California and the Pacific Coast.

These ethnographic materials and technology adaptations indicate affiliation to the historic and present-day Piman and O'odham cultures. Historic O'odham groups (Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona) have a strong cultural affiliation with the prehistoric Hohokam who occupied the middle Gila Valley and surrounding areas. Similarities in settlement patterns, economic systems, architecture, and material culture indicate a close relationship between the Hohokam and O'odham groups.

The Cocopah Tribe of Arizona also claims affiliation with the Hohokam, according to the Southwest Indian Relief Council Web site. About 3,000 Cocopah lived in the Southwest in the late 1600s. Like the Hohokam, the Cocopah became successful at irrigated farming.

The oral traditions of the Hopi Tribe and the Pueblo of Zuni provide evidence that the Hopi and Zuni are culturally affiliated with the Hohokam. The human remains and associated funerary objects were removed from an area historically occupied by these tribes.

Based on the above-mentioned information, officials of the Pomona College Museum of Art have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of Pomona College Museum of Art, also have determined that, pursuant to 43 CFR 10.2 (d)(2), the eight objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Pomona College Museum of Art, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Marjorie L. Harth, Director, Pomona College Museum of Art, 333 College Way, Claremont, CA 91711-6344, telephone (909) 607-2688, before October 15, 2002. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: July 18, 2002

C. Timothy McKeown,

Acting Manager, National NAGPRA Program

[FR Doc. 02–23126 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Texas Department of Transportation, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects

in the possession of the Texas Department of Transportation (TxDOT), Austin, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA and 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the professional staff of TxDOT, Center for Archeological Research of University of Texas at San Antonio, and University of Tennessee, in consultation with representatives of the Mescalaro Apache Tribe of the Mescalaro Reservation, New Mexico and Tonkawa Tribe of Indians of Oklahoma. Information regarding these human remains and associated funerary objects was provided to the Alabama-Coushatta Tribes of Texas; Apache Tribe of Oklahoma; Caddo Indian Tribe of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Kiowa Indian Tribe of Oklahoma; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma. TxDOT also consulted with representatives of the County of Refugio, TX; Catholic Diocese of Corpus Cristi, TX; Refugio County Historical Commission, and other parties interested in the non-Native American remains that were removed from this cemetery.

In 1999, human remains representing a minimum of 177 individuals were recovered from the cemetery of the late Spanish colonial Mission Nuestra Senora del Refugio (site 41RF1) in Refugio County, TX. No known individuals were identified. Osteological analysis of the human remains identified 32 individuals of Native American descent and 39 individuals of possible Native American descent. The remains of 106 individuals are of Hispanic, other European, or indeterminate ancestry. The 102 funerary objects found associated with the 71 Native American human remains are 1 Christian medallion, 1 metal crucifix, 53 beads (wooden, glass, and bone), 8 buttons (metal and bone), 3 pendants (shell and animal tooth), 1 worked shell, 1 marine shell, 1 metal arrow point, 1 copper or brass bell, 1 metal ring, 3 chunks of mica, 2 pieces of red pigment (ochre), 17 nails, and 9 unidentified metal objects.

Mission Nuestra Senora del Refugio was built around 1795 for use by the Karankawa Indians. The mission was closed around 1830.

Burial records for the mission are incomplete, but list 122 individuals buried in the mission cemetery. Fifty of the individuals listed in the burial records are identified as Native American, with the majority being Karankawa or one of their constituent bands (Copan, Cujan, etc.). Other individuals are identified as Lipan Apache, Malaquiit, Pajalache, Pamoque, Pihuique, and Toboso. The remaining individuals listed in the burial records are identified as being of Hispanic descent. Other church records indicate that the mission was also used by the Iaraname.

Archeological evidence in the cemetery suggested that seven of the individuals were interred in coffins. The remaining individuals were recovered from 38 irregular burial pits excavated into the clay substrate beneath the church floor. Twenty-nine of the burial pits contained multiple interments. Ethnicity within the multiple burial pits was mixed among Native American and non-Native interments. Of those human remains determined to be Native American, a number are concluded to be Karankawa due to the robust nature of their skeletal remains and their estimated height. Karankawa were frequently described in historic documents as tall and muscular. With few exceptions, no personal goods were found with the burials. Artifacts with Native American burials included both European (metal cross, metal buttons, cloth with brass or copper sequins, glass beads, etc.) and non-European (red ocher, metal arrow points, shell pendant, worked shells, animal tooth pendant, etc.) materials.

The Karankawa, Malaquiit, Pamoque, Pihuique, Pajalache, and Toboso relocated to Mexico in the 1850s. However, historical records indicate that there was considerable social and economic interaction between the Karankawa and the Tonkawa, including some intermarriage. The Lipan Apache were relocated to the Mescalero Apache reservation in the early 1900s where they remain today. Many of the Iaraname moved northward in the 19th century to live with the Tawakonie, now a constituent group of the Witchita. However, there is no evidence that any Iaraname were buried in the mission cemetery.

Based on the above-mentioned information, officials of TxDOT have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 71 individuals of Native American ancestry. Officials of TxDOT also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 102 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of TxDOT have determined pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Mescalaro Apache Tribe of the Mescalaro Reservation, New Mexico and Tonkawa Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Alabama-Coushatta Tribes of Texas; Caddo Indian Tribe of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Kiowa Indian Tribe of Oklahoma; Mescalaro Apache Tribe of the Mescalaro Reservation, New Mexico; Tonkawa Tribe of Indians of Oklahoma; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Nancy A. Kenmotsu, Supervisor of the Archeological Studies Program, Texas Department of Transportation, 125 E. 11th Street, Austin, TX 78701-2483, telephone (512) 416-2631, before October 15, 2002. Repatriation of these human remains and associated funerary objects to the Mescalaro Apache Tribe of the Mescalaro Reservation, New Mexico, and Tonkawa Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 9, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–23129 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice replaces, in part, information that was reported in a Notice of Inventory Completion published March 26, 1999 (Federal Register volume 64, number 58, pages 14754-14757) to reflect the resolution of a conflicting claim.

A detailed assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of the Pawnee Nation of Oklahoma.

In 1931, human remains representing one individual were recovered from Cache 3 of site 25BF1 near Sweetwater, NE, during excavations conducted by W.R. Wedel under the direction of W.D. Strong. No known individuals were identified. No associated funerary objects are present. This individual has been identified as Native American. Based on ceramic and stone tool assemblages, site 25BF1 has been identified as a Loup River Phase (Itskari Phase) occupation dating to between A.D. 1250-1450.

In 1940, human remains representing 20 individuals from site 25BO7, Boone County, NE, were recovered by John Champe during University of Nebraska salvage archeology. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. The location of this site is close to a Central Plains Tradition village site, and these individuals are believed to be associated with the Central Plains Tradition.

In 1935, human remains representing one individual were recovered from the Linwood site (25BU1), Butler County, NE, by W.R. Wedel. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. W.R. Wedel described an excavation by the Nebraska Archeological Survey in which a "flexed child burial" was found, along with trade material including iron hoes, axes, fragments of copper kettles, and bits of brass and glass. These human remains are most likely from the described child's burial. Wedel reports that the Linwood site (25BU1) is a Pawnee village "very probably inhabited about the year 1800, and may date, in part, from a much earlier period." The iron hoes, axes, fragments of copper kettles, and bits of brass and glass are not in the possession or control of the University of Nebraska.

At an unknown date, human remains representing one individual were recovered from the Ashland site (25CC1), Cass County, NE, under unknown circumstances. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American, most likely from the Central Plains Tradition period. Based on material culture and site organization, the Ashland site (25CC1) has been identified as a multi-component site, including a Central Plains Tradition component.

At an unknown date, human remains representing two individuals were recovered from the Rock Bluff site (25CC31[25CC0]) overlooking the Missouri River in southern Cass County, NE. No information is available as to how or when these remains came into University of Nebraska State Museum collections. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Between 1914 and 1968, the University conducted excavations at the nearby Walker Glimore site, during which these human remains were most likely collected. Archeological evidence from these excavations indicates the site is attributable to the Nebraska phase of the Central Plains Tradition.

In 1913, human remains representing 53 individuals from an ossuary (25CC9001) in Plattsmouth, Cass County, NE, were excavated by R.F. Gilder and others in an uncontrolled excavation following the discovery of the ossuary during a work project. No known individuals were identified. The associated funerary objects are 11 shell pendants or pendant fragments. These individuals have been identified as Native American. Based on burial location and manner of interment, this ossuary has been attributed to the Nebraska phase within the Central Plains Tradition.

In 1931, human remains representing one individual were recovered from the Wolfe site (25CX2) near the mouth of Shell Creek, Colfax County, NE, during excavations conducted by W.D. Strong and Waldo Wedel. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on ceramic and stone tool assemblages, the Wolfe site has been identified as a Lower Loup period (A.D. 1450-1550) occupation of the Central Plains Tradition.

In 1941, human remains representing 292 individuals were recovered from the Maxwell site (25DK13) near Homer, Dakota County, NE, during University of Nebraska/W.P.A. excavations conducted by L. Bartos, Jr., under the direction of John L. Champe and Paul Cooper. No known individuals were identified. The 44 associated funerary objects consist of 39 shell, bone, and stone beads, 3 shell pendants, and 2 teeth pendants. These individuals have been identified as Native American. Based on bone preservation and ceramic sherds in fill, the Maxwell site has been identified as a Central Plains Tradition occupation (A.D. 1050-1500).

Before 1909, human remains representing 11 individuals were recovered from the "Watson House" site (25DO0), Omaha, Dodge County, NE, during excavations conducted by R.F. Gilder. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on ceramic and stone tool assemblages, the "Watson House" site has been identified as a Nebraska Phase (A.D. 1050-1425) occupation of the Central Plains Tradition.

In 1913, human remains representing two individuals were recovered from site 25DO0 (11-25-5-13) in Omaha, Dodge County, NE, during house construction and donated to the University of Nebraska State Museum by R.H. Gilder. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on the condition of the remains and known archeological sites in this area, site 25DO0 (11-25-5-13) has been identified as a Nebraska phase (A.D. 1050-1425) occupation of the Central Plains Tradition.

In 1913, human remains representing one individual were excavated at 13th and Missouri Streets (25DO?2), Omaha, Dodge County, NE, by R.F. Gilder. These human remains became part of the Wallace collection and were donated to the University of Nebraska State Museum in 1913. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on the condition of the remains and the cultural material from this site,

this burial has been determined to be from the Nebraska phase (A.D. 1050-1425) of the Central Plains Tradition.

In 1906, human remains representing 42 individuals were collected from site 25DO26, Gilder's Mound, Long's Hill, Dodge County, NE, by R.F. Gilder. No known individuals were identified. No associated funerary objects are present. This site is also known as the "Loess Man" site, because the human remains were found in loess soil. Material culture collected from this site resembles Central Plains Tradition/ Woodland materials based on their poor to fair preservation. These individuals have been identified as Native American from the Nebraska phase (A.D. 1050-1425) of the Central Plains Tradition.

At an unknown date, human remains representing one individual were collected at site 25FR0, four miles north of the Riverton highlands, Franklin County, NE, by an unknown individual. No known individual was identified. The associated funerary objects are four coils of brass wire. This individual has been identified as Native American. Based on the coils of brass wire and location of site 25FR0, this burial has been attributed to the historic Pawnee ca. A.D. 1750-1850.

In 1983, human remains representing one individual were recovered in the Upper Republican midden layer of site 25FT145, Frontier County, NE, during excavations in a habitation area directed by T. Myers. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on the ceramics recovered in the midden, site 25FT145 has been identified as an Upper Republican Culture occupation (A.D. 950-1250) of the Central Plains Tradition.

At an unknown date, human remains representing one individual were recovered from the Goodrich site (25GY21), Greeley County, NE, by W.J. Hunt of the Department of Anthropology at the University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on material culture, the Goodrich site has been identified as a Central Plains Tradition (A.D. 950-1450) occupation.

In 1930, human remains representing four individuals were recovered from the Graham Ossuary site (25HN5), Harlan County, NE, during excavations conducted by W. Wedel under thedirection of W.D. Strong. No known individuals were identified. The minimum of 100 associated funerary objects include ceramic fragments, shell beads, bone beads, bracelets, copper ornaments, ceramics, and stone tools. These individuals have been identified as Native American. Based on the material culture, the Graham site has been identified as an Upper Republican phase occupation of the Central Plains Tradition.

In 1978, human remains representing one individual were recovered from the Schmidt site (25HW301), Howard County, NE, by S. Holen and C. Roberts. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on ceramic and stone tool assemblages, the Schmidt site has been identified as a Central Plains Tradition occupation.

In 1937, human remains representing one individual were recovered from the Hogan site (25KX5), Knox County, NE, by P. Newell for the Nebraska Archaeological Survey under W.P.A. Official Project Number 165-81-8095 Work Project 3140. One burial pit was found. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on poor preservation, the remains are attributed to the Central Plains Tradition.

Based on continuities of ceramic decoration, stone tool form and function, architecture, chronology, mortuary custom, subsistence pattern, settlement pattern, and geographic location, the Central Plains Tradition is recognized by many anthropologists as ancestral to the present-day Pawnee and Arikara. Pawnee and Arikara oral traditions also indicate cultural affiliation between the earlier Central Plains Tradition and these present-day tribes.

Based on the above-mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 436 individuals of Native American ancestry. Officials of the University of Nebraska also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 159 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pawnee Nation of Oklahoma.

This notice has been sent to officials of the Pawnee Nation of Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Priscilla Grew, Department of Geosciences, 301 Bessey Hall, University of Nebraska, Lincoln, NE 68588-0340, telephone (402) 472-7854, before October 15, 2002. Repatriation of the human remains and associated funerary objects to the Pawnee Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 19, 2002.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–23125 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice replaces, in part, information that was reported in a Notice of Inventory Completion published March 26, 1999 (Federal Register, volume 64, number 58, pages 14754-14757) to reflect the resolution of a conflicting claim.

A detailed assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of the Pawnee Nation of Oklahoma and the Ponca Tribe of Indians of Oklahoma.

In 1959, human remains representing five individuals were recovered from site 25BD1 overlooking Ponca Creek, Boyd County, NE, during excavations conducted under the direction of T. Witty. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on ceramic and stone tool assemblages, site 25BD1 has been identified as an Initial Coalescent occupation dated to circa A.D. 1400 and is believed to be associated with the Central Plains Tradition.

In 1934, human remains representing three individuals were excavated from Wiseman Village (25CD3) on the south bank of the Missouri River, Cedar County, NE, under the direction of E.H. Bell of the University of Nebraska. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on ceramics and stone tool assemblages, the Wiseman Village site has been identified as probable St. Helena Phase occupation. The St. Helena Phase is a component of the Central Plains Tradition.

In 1934, human remains representing 137 individuals were recovered from Wiseman Mounds site (25CD4) in Cedar County, NE, under the direction of E.H. Bell of the University of Nebraska. No known individuals were identified. The 58 associated funerary objects consist of 1 pot, 1 stone knife, 1 stone pipe, 1 shell needle, 43 disc beads, 5 cylindrical beads, and 6 worked and unworked shells. These individuals have been identified as Native American. Based on probable association with the Wiseman Village site, the Wiseman Mounds site has been identified as having a Central Plains Tradition component.

In 1941, human remains representing 200 individuals were recovered from Wynot Ossuary (25CD7), Cedar County, NE, during excavations conducted by R.B. Cuming for the Nebraska State Archeological Survey. No known individuals were identified. The four associated funerary objects are shell beads. These individuals have been identified as Native American. Based on ceramics and stone tool assemblages present in the fill, the Wynot Ossuary has been identified as being used during the St. Helena Phase (A.D. 1425-1500) of the Central Plains Tradition.

In 1978, human remains representing one individual were recovered from site 25CD13, Cedar County, NE, by J. Ludwickson of the University of Nebraska Department of Anthropology. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on artifacts collected from the site, site 25CD13 has been identified as a Central Plains Tradition occupation.

In 1939, human remains representing two individuals were recovered from the Bobier site (25DK1A), Dakota County, NE, during University of Nebraska/W.P.A. excavations conducted by S. Bartos, Jr., under the supervision of H. Angelino. No known individuals were identified. No associated funerary objects are present.

In 1939, human remains representing one individual were recovered from another part of the Bobier site (25DK1B), Dakota County, NE, during excavations conducted by S. Bartos, Jr. No known individual was identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on material culture of the sites, the Bobier sites have been identified as a Nebraska Phase (A.D. 1050-1425) of the Central Plains Tradition.

In 1940, human remains representing 130 individuals were recovered from the Murphy Ossuary (25DK9), Dakota County, NE, during excavations conducted by J. Champe. No known individuals were identified. The eight associated funerary objects consist of one bone needle and seven shell disc beads. These individuals have been identified as Native American. Based on ceramics, stone tools, and burial pattern, the Murphy Ossuary has been identified as a St. Helena Phase (A.D. 1425-1500) occupation of the Central Plains Tradition.

In 1941, human remains representing 16 individuals were recovered from an ossuary at the Hancock site (25DK14), Dakota County, NE, during excavations conducted by S. Bartos, Jr. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on ceramic and stone tool assemblage, the Hancock site has been identified as a St. Helena Phase (A.D. 1425-1500) occupation of the Central Plains Tradition.

In 1938 and 1939, human remains representing one individual were recovered from Cache Pit B of the Redbird site (25HT3), Holt County, NE, during legally authorized excavations conducted by E. Bell for the W.P.A. Work Project 4841. No known individual was identified. No associated funerary objects are present. This individual has been identified as Native American. Based on material culture and geographical location, the Redbird site has been identified as an Extended Coalescent Tradition site. Based on ceramic evidence and development, the Extended Coalescent Tradition has been identified as ancestral to the present-day Pawnee.

During 1936-1938, human remains representing 15 individuals were recovered from the Ponca Fort site (25KX1), Knox County, NE, during excavations conducted by the Nebraska State Archeological Survey under the direction of Perry Newell and S. Wimberly as part of WPA Official Project 165-81-8095, Work Project 3140. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on ceramics and stone tool assemblages, this portion of the Ponca Fort site has been identified as a Central Plains Tradition (A.D. 950-1250) occupation.

During 1936-1937, human remains representing one individual were recovered from the Minoric 1 site 25KX2, Knox County, NE, during excavations conducted by the Nebraska State Archeological Survey under the direction of H. Angelino as part of WPA Official Project 165-81-8095, Work Project 3140. The site is part of a village (25KX9) and is located 500 yards west of 25KX1. No known individuals were identified. No associated funerary objects are present. This individual has been identified as Native American. This site has been classified as Proto-historic/historic: Redbird focus village complex. Redbird is associated with the prehistoric (Extended Coalescent) period. There is also a historic Ponca component at 25KX9 (Holen 1995).

In 1961, human remains representing five individuals were recovered from site 25KX20, a small area of land extending into Lewis and Clark Lake near Crofton, Knox County, NE, during a survey conducted by P. Holder and R. Krause for the University of Nebraska Department of Anthropology. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on ceramics and stone tools, site 25KX20 has been identified as a Central Plains Tradition occupation dating to (A.D. 1050-1500).

In 1913, human remains representing three individuals were recovered from a small house ruin (25SY0/7-12-13) on a ridge near Mill Hollow in Sarpy County, NE, by R.F. Gilder. No known individuals were identified. No

associated funerary objects are present. These individuals have been identified as Native American. Based on material culture, site 25SY0 has been identified as a Nebraska phase (A.D. 1050-1425) occupation of the Central Plains Tradition.

In 1914, human remains representing nine individuals were recovered from the Childs Point site (25SY0) overlooking the Missouri River in Sarpy County, NE, under the direction of R.F. Gilder and were accessioned into the University of Nebraska State Museum. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on material culture, the Childs Point site has been identified as a Nebraska phase (A.D. 1050-1425) occupation of the Central Plains Tradition.

During 1908-1917, human remains representing 49 individuals were removed from the Wallace Mound site (25SY67) in Sarpy County, NE, under the direction of R.F. Gilder and accessioned into the University of Nebraska State Museum. No known individuals were identified. No associated funerary objects are present.

In 1913, human remains representing six individuals were removed from the Swoboda site (25SY67/31-8-14), part of the Wallace Mounds site, Sarpy County, NE, and were secured by Miss Edith Dennett who donated these remains to the University of Nebraska State Museum in 1914. No known individuals were identified. No associated funerary objects are present. These individuals have been identified as Native American. Based on the association with the Child's Point site, the Wallace Mound site has been identified as a Nebraska phase (A.D. 1050-1425) occupation of the Central Plains Tradition.

Based on continuities of ceramic decoration, stone tool form and function, architecture, chronology, mortuary custom, subsistence pattern, settlement pattern, and geographic location, the Central Plains Tradition is recognized by many anthropologists as ancestral to the present-day Pawnee and Arikara. Pawnee and Arikara oral traditions also indicate cultural affiliation between the earlier Central Plains Tradition and these present-day tribes.

Based on geographic area, oral traditions, and scholarly research, the Pawnee Nation of Oklahoma and the Ponca Tribe of Indians of Oklahoma report that the homelands of their peoples once encompassed an area that includes Cedar, Dakota, Holt, Knox, and other counties in north-central and northeastern Nebraska, where their ancestors lived, died and were buried. They state that geographic area, oral traditions, and scholarly research confirm a relationship of shared group identity between the individuals and funerary objects listed above and the Pawnee Nation of Oklahoma and the Ponca Tribe of Indians of Oklahoma.

Based on the above-mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 584 individuals of Native American ancestry. Officials of the University of Nebraska also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 70 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pawnee Nation of Oklahoma and the Ponca Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Pawnee Nation of Oklahoma; Ponca Tribe of Nebraska; Ponca Tribe of Indians of Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Priscilla Grew, Department of Geosciences, 301 Bessey Hall, University of Nebraska, Lincoln, NE 68588-0340, telephone (402) 472-7854, before October 15, 2002. Repatriation of the human remains and associated funerary objects to the Pawnee Nation of Oklahoma and the Ponca Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 19, 2002.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–23137 Filed 9–11–02; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–417–421 (Final) and 731–TA–953, 954, 956–959, 961, and 962 (Final)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On August 30, 2002, the Department of Commerce notified the Commission of its final determinations in these investigations. The Commission must make its final determinations in antidumping and countervailing duty investigations within 45 days after notification of Commerce's final determinations, or in these cases by October 15, 2002. The Commission is revising its schedule to conform with this statutory deadline.

The Commission's new schedule for the investigations is as follows: the Commission will make its final release of information on September 25, 2002; and final party comments are due on September 27, 2002.

For further information concerning these investigations see 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).

Authority: These investigations are 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: September 6, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–23101 Filed 9–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–479]

Certain Coamoxiclav Products, Potassium Clavulanate Products, and Other Products Derived From Clavulanic Acid; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 9, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of GlaxoSmithKline plc of the United Kingdom and SmithKlineBeecham Corp. d/b/a GlaxoSmithKline of Philadelphia, Pennsylvania. A supplement to the complaint was filed on August 28, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coamoxiclav products, potassium clavulanate products, and other products derived from clavulanic acid by reason of misappropriation of trade secrets and unfair competition. The complaint further alleges that there exists in the United States an industry as required by subsection (a)(1)(A) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained 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 at *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*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 4, 2002 *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain coamoxiclav products, potassium clavulanate products, or other products derived from clavulanic acid by reason of misappropriation of trade secrets, or unfair competition the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

GlaxoSmithKline plc, Brentford, Middlesex, TW8 9GS, United Kingdom;

SmithKlineBeecham Corp., d/b/a GlaxoSmithKline, One Franklin Plaza, P.O. Box 7929, Philadelphia, Pennsylvania 19101.

(b) The respondents are the following companies upon which the complaint is to be served—

Biochemie GmbH, Biochemiestrasse 10, A–6250 Kundl, Austria;

Biochemie SpA, Corso Verona 165, Rovereto, Trento 38068, Italy;

Novartis AG, Lichtstrasse 35, CH–4056, Basel, Switzerland;

Geneva Pharmaceuticals, Inc., 506 Carnegie Center, Suite 400, Princeton, New Jersey 08540.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–E, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: September 5, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–23103 Filed 9–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA–450]

Certain Integrated Circuits, Processes for Making Same, and Products Containing Same; Notice of Commission Determination To Extend the Target Date for Completion of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend

the target date for completion of the above-captioned investigation by one month, or until October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 6, 2001, based on a complaint filed on behalf of United Microelectronics Corp. of Hsinchu City, Taiwan; UMC Group (USA) of Sunnyvale, CA, and United Foundry Service, Inc. of Hopewell Junction, NY. 66 FR 13567 (2001). The previous target date for completion of this investigation was September 6, 2002. The Commission determined that the target date for completion of the investigation should be extended by one month, or until October 7, 2002, due to the number and complexity of the issues under review. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(a)).

Issued: September 6, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–23102 Filed 9–11–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: New Collection: Methamphetamine Project Status Update Report (SUR).

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1955. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for sixty days until November 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practice 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 of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Methamphetamine Project Status Update Report (SUR).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law Enforcement Agencies. Other: Universities and Private Non-Profit Agencies. Abstract: The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 responses from grantees. The estimated amount of time required for the average respondent to respond is: 3.0 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: August 27, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–23248 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: New collection; methamphetamine discretionary grant program application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for an additional 30 days from public comment until October 15, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(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 of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Methamphetamine Discretionary Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services *Form Number:* N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies experiencing a significant Methamphetamine problem. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's eligibility for funding under the COPS Methamphetamine Discretionary Grant Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 responses. The estimated amount of time required for the average respondent to respond is: 14 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,500 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: August 27, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–23247 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree ("Decree") in *United States* v. *Centel Corporation, et al.*, Civil Action No. 02–4090 was lodged with the United States District Court for the District of South Dakota on August 30, 2002.

The Decree resolves the United States' claims against Centel Corporation under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 106 and 107, Section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321, and Section 1002 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2702, for past response costs incurred at the Fawick Park site in Sioux Falls, South Dakota. The Decree requires Centel to pay the United States $1.9 million and to waive any claims it might have against the United States relating to removal activities at the Site.

The Department of Justice will accept written comments relating to the Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Centel Corporation, et al.*, Civil Action No. 02–4090, D.J. 90–5–1–1–07686/1.

The Consent Decree may be examined at the Office of the United States Attorney for the District of South Dakota, 230 South Phillips, Suite 600, Sioux Falls, South Dakota, 57104, and at U.S. EPA Region VIII, 999 Eighteenth Street, Suite 500, Denver, Colorado 80202–2466. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 2044–7611, or by fax from Tonia Fleetwood, fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–23111 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 29, 2002, a proposed consent decree in *United States* v. *Sprague Energy Corp. et al.*, Civil Action No. 7:01–CV–14–F(1), was lodged with the United States District Court for the Eastern District of North Carolina.

The defendants are Axel Johnson Inc. and Sprague Energy Corp. In this action the United States sought from both defendants the recovery of past response costs with respect to Old ATC Refinery Site in Wilmington, North Carolina under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and from Axel Johnson Inc., penalties under Section 109(c) of CERCLA, 42 U.S.C. 9609(c), for failure to comply with the terms of an Administrative Order on Consent and punitive damages under section 107(c)(3), 42 U.S.C. 9607(c)(3), for failing to properly provide removal action upon an Order of the President. The consent decree resolves claims for past response costs at the Site against both defendants and the claims for penalties and punitive damages against Axel Johnson Inc. Under the consent decree, defendants have agreed to pay $7,000,000 to the Superfund.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the

Assistant Attorney General, Environment and Natural Resources Division. P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Sprague Energy Corp. et al.*, DJ # 90–11–2–1192/3.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of North Carolina, 310 New Bern Avenue, Suite 800, Federal Building, Raleigh, NC 27601, and at the Region 4 office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States* v. *Sprague Energy Corp. et al.*, DJ # 90–11–2–1192/3.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–23110 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on July 31, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Wipro Technologies, Electronics City, Bangalore, INDIA; HCL Techonologies America, Inc., Sunnyvale, CA; Consonus, Salt Lake City, UT; Emtec Inc., Mount Laurel, NJ; and Interprom USA, Houston, TX have been added as parties to this venture. Telecom Italia Lab, Torino, Italy; Hub Information Technology Ltd., Grosvenor Place, Sydney, New South Wales, Australia; Interloci, Greenwich, CT; Integris, Bellerica, MA; Loudcloud, Sunnyvale, CA; Progress Software Corp., Bedford, MA; Netvien Corp., Santa Clara, CA; and ISP Co., LTD, Kangriam-ku, Seoul, Republic of Korea have been dropped as parties to this venture. Also, Omegon, Somerset, NJ has changed its name to Viola Networks; and the membership of SiteROCK, Emeryville, CA has been acquired by Avasta, Inc., San Francisco, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on May 3, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 18, 2002 (67 FR 41483).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–23114 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on July 19, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astron International Inc., Houston, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation ("POSC") intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, Petrotechnical Open Software Corporation ("POSC") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on May 10, 2002. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–23113 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Technologies for Target Assessment

Notice is hereby given that, on August 1, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Technologies for Target Assessment has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Paradigm Genetics, Inc., Research Triangle Park, NC; and LION Bioscience, Cleveland, OH. The nature and objectives of the venture are to assemble and develop a software suite and data solution that allows users to better identify targets of lead compound discovery and product development by integrating large streams of biological and biochemical data from heterogeneous sources into coherent data sets that accurately represent underlying biological relationships. If successful, the project will lead to a

Target Assessment Technologies Suite (TATS) of software and database products applicable to any organism or cell culture system. TATS goes beyond data integration to allow researchers to create, validate and analyze coherent data sets to identify high quality targets. The ability to compare data across multiple research platforms in a way that is biologically relevant and statistically sound will greatly improve the ability to identify gene function and increase the number of product leads that succeed in clinical trials in the pharmaceutical and agrochemical industries.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–23112 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Revision of Existing Collection; Comment Request

ACTION: 30-Day notice of information collection under review: application for permission to reapply for admission into the United States after deportation on removal; Form I–212.

The Office of Management and Budget (OMB) (approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 7, 2002 at 67 FR 10434, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 15, 2002. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Washington, DC 20503. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Robert B. Briggs, Department Clearance Officer, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies 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 functions 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 of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Admission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the application component of the Department of Justice sponsoring the collection:* Form I–212. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information furnished on Form I–212 will be used by the Immigration and Naturalization Service to adjudicate applications filed by aliens requesting the Attorney General's consent to reapply for admission to the United States after deportation, removal, or departure, as provided under section 212.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,200 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,400 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: September 5, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–23104 Filed 9–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 5, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Representative Payee Report, Representative Payee Report (Short Form), Physician's/Medical Officer's Report.

OMB Number: 1215–0173.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Estimated Time Per Response and Burden Hours:

Form name	Respondents/ responses	Frequency	Average response time (in minutes)	Total hours
CM–623	2,275	Annually	90	3,413
CM–623S	600	Annually	10	100
CM–787	223	On occasion	15	56
Total	3,098			3,569

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Black Lung Workers' Compensation Program. Under the Federal Mine Safety and Health Act (30 U.S.C. 901) benefits payable to a black lung beneficiary may be paid to a representative payee on behalf of the beneficiary when the beneficiary is unable to manage his/her benefits due to incapability, incompetence, or minority. The CM–623 is used to collect expenditure data regarding the disbursement of the beneficiary's benefits by the representative payee to assure that the beneficiary's needs are being met. The CM–623S is a shortened version of the CM–623 that is used when the representative payee is a family member. The CM–787 is a form used by OWCP to gather information from the beneficiary's physician about the capability of the beneficiary to manage monthly benefits to determine if it is in the beneficiary's best interests to have his/her benefits managed by another party. Regulatory authority for the collection of this information is at 20 CFR 725.506, 510, 511, and 513.

Marlene J. Howze,

Acting Departmental Clearance Officer.

[FR Doc. 02–23206 Filed 9–11–02; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of information for the proposed revision and extension of the Unemployment Insurance (UI) "Summaries UI Trust Fund Activities" reports.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before November 12, 2002.

ADDRESSES: James E. Herbert, Room C4526, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2926 (this is not a toll-free number). E-mail address is *jherbert@doleta.gov* and the fax number is (202) 693–3229.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(4) of the Social Security Act (SSA) and Section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA) require that all money received in the unemployment fund of a state be paid immediately to the Secretary of Treasury to the credit of the Unemployment Trust Fund (UTF). This is the "immediate deposit" standard.

Section 303(a)(5) of the SSA and Section 3304(a)(4) of the FUTA require that all money withdrawn from the UTF be used solely for the payment of unemployment compensation, exclusive of the expenses of administration. This is the "limited withdrawal standard".

Federal law (Section 303(a)(6) of the SSA) gives the Secretary of Labor the authority to require the reporting of information deemed necessary to assure state compliance with the provisions of the SSA.

Under this authority, the Secretary of Labor requires the following reports to monitor state compliance with the immediate deposit and limited withdrawal standards:

ETA 2112: UI Financial Transactions Summary, Unemployment Fund
ETA 8401: Monthly Analysis of Benefit Payment Account
ETA 8405: Monthly Analysis of Clearing Account
ETA 8413: Income—Expense Analysis UC Fund, Benefit Payment Account
ETA 8414: Income—Expense Analysis UC Fund, Clearing Account
ETA 8403: Summary of Financial Transactions—Title IX Funds

These reports are submitted to the Office of Workforce Security (OWS) in the ETA which uses them to:

• Monitor cash flows into and out of the UTF to determine state compliance

with the immediate deposit and limited withdrawal standards.

• Assure proper accounting for unemployment funds, an integral part of preparing the Department's consolidated financial statements, required by the Chief Financial Officer Act of 1990. The UTF is the single largest asset and liability on the statements.

• Reconcile the Department's records with the U.S. Treasury records.

• Develop UI research and actuarial reports, especially to monitor the solvency of the UTF.

The cited reports have been submitted monthly by the States the past several years in electronic format (with the exception of the ETA 8403). The Department is working with the U.S. Treasury to convert the ETA 8403 to an electronic format by December 31, 2003.

Since the reports are essential to the Department's financial statements and program oversight responsibilities, and the Department seeks Office of Management and Budget (OMB) approval for a three year extension to January 1, 2006.

II. Review Focus

The Department is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of the 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 submissions of responses.

III. Current Actions

This action is requested to provide information the Department needs to exercise oversight and to assure the security, solvency, and integrity of the unemployment fund. Furthermore, the Department needs the information to prepare the annual consolidated financial statements and UI statistical reports.

This information is not available from any other source. Because the reporting system has been operational on-line for several years, there is negligible burden on the states. The Department intends to expand the ETA 2112 by four lines to report deposits and withdrawals for current Federal emergency programs, *e.g.*, the Temporary Extended Unemployment Compensation program, and for future programs. This will disaggregate information currently reported on one line and explained in the "Comments" section of the report. It will not increase the amount of information collected.

Type of review: Extension.

Agency: Labor, employment and training administration.

Title: ETA Summaries UI Trust Fund Activities.

OMB Number: 1205–0154.

Agency Number: 1205.

Affected Public: 50 states, Washington, DC, Puerto Rico, and the Virgin Islands.

Total respondents: 53 states.

Frequency: ETA 8403: As needed. This report is submitted only when there is activity requiring update of the state's Reed Act account. ETA 2112, 8401, 8405, 8413, 8414: Monthly.

Total Responses: 53 states x 12 months = 636 responses.

Average time Per Response: ETA 2112, 8401, 8405, 8413, 8414: 636 × 2.5 hours = 1,590 hours. ETA 8403: 53 states × 6 annual responses × 30 minutes per response = 159 reporting hours.

Estimated Total Burden Hours: 1,749 hours.

Estimated Total Burden Cost: $25 × 1,749 = $43,725.

Comments in response to this notice will be summarized and/or included in the request to the OMB for approval; they will also become part of the public record.

Dated: September 5, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–23205 Filed 9–11–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, Media Arts Section (Arts on Radio and Television), will be held by teleconference from 2 p.m.–3 p.m. on Monday, September 30, 2002 in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: September 9, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–23231 Filed 9–11–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance, to Entergy Operations, Inc. (the licensee), of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section III.G of Appendix R. The licensee is the holder of Renewed Facility Operating License No. DPR–51, for operation of Arkansas Nuclear One, Unit 1 (ANO–1), located in Pope County, Arkansas. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of Section III.G of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." Specifically, this exemption applies to requirements for fire barriers for the auxiliary lube oil pump and associated conduits in the ANO–1 makeup pump rooms.

The proposed action is in accordance with the licensee's application dated June 8, 2001.

The Need for the Proposed Action

The proposed action is needed to resolve an issue involving the auxiliary lube oil pumps and associated conduits which are used during the starting of a reactor coolant makeup pump. The licensee was granted an exemption on March 22, 1983, which exempted the makeup pump rooms from the requirement to have an automatic fire suppression system. The equipment identified in the exemption as being needed for safe shutdown included the makeup pumps, the service water to lube oil cooler isolation valves, and associated cabling. The licensee subsequently classified the auxiliary lube oil pump (and associated conduits) as required for safe shutdown. Because the auxiliary lube oil pump was not addressed in the previous exemption, the licensee needed to either request a specific exemption or provide specific fire protection features for the auxiliary lube oil pump.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed exemption does not involve radioactive wastes, release of radioactive material into the atmosphere, solid radioactive waste, or liquid effluents released to the environment.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement related to the operation of ANO–1 (NUREG–0254) dated February 1973, and the Final Supplemental Environmental Impact Statement regarding ANO–1 (NUREG–1437, Supplement 3) dated April 2001.

Agencies and Persons Consulted

On August 26, 2002, the staff consulted with the Arkansas State official, Jared Thompson, of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 8, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of September 2002.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–23204 Filed 9–11–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medical Reports.

(2) *Form(s) submitted:* G–3EMP, G–250, G–250a, G–260, RL–11b, RL–11d.

(3) *OMB Number:* 3220–0038.

(4) *Expiration date of current OMB clearance:* 10/31/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit, non-profit institutions, State, Local or Tribal government.

(7) *Estimated annual number of respondents:* 29,950.

(8) *Total annual responses:* 29,950.

(9) *Total annual reporting hours:* 12,417.

(10) *Collection description:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–23144 Filed 9–11–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request copies available from: Securities and Exchange

Commission, Office of Filings and Information Services, Washington, DC 20549.

Reinstatement without change:
Form N–8b–4, SEC File No. 270–180, OMB Control No. 3235–0247

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for reinstatement without change of the previously approved collection of information discussed below.

Form N–8b–4—Registration Statement of Face-Amount Certificate Companies

Form N–8b–4 is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 [15 U.S.C. 80a–8(b)]. Form N–8b–4 requires disclosure about the organization of a face-amount certificate company, its business and policies, its investment in securities, its certificates issued, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act of 1940.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately 1 annual filing on Form N–8b–4. The Commission estimates that each registrant filing a Form N–8b–4 would spend 171 hours in preparing and filing the Form and that the total hour burden for all Form N–8b–4 filings would be 171 hours. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8b–4 is mandatory. The information provided on Form N–8b–4 will not be kept confidential. The Commission 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 6, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23237 Filed 9–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17f–2(d), SEC File No. 270–36, OMB Control No. 3235–0028

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") has submitted to the Office of Management and Budget a request for approval of extension on the following previously approved information collection.

Rule 17f–2(d) under the Securities Exchange Act of 1934 ("Exchange Act") was adopted on March 16, 1976, and was last amended on November 18, 1982. Paragraph (d) of the rule (i) requires that records produced pursuant to the fingerprinting requirements of Section 17(f)(2) of the Exchange Act be maintained, (ii) permits the designating examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and to maintain records required to be kept by this rule, and (iii) permits the required records to be maintained on microfilm.

The general purposes for Rule 17f–2 are: (i) To identify security risk personnel; (ii) to provide criminal record information so that employers can make fully informed employment decisions; and (iii) to deter persons with criminal records from seeking employment or association with covered entities.

Retention of fingerprint records, as required under paragraph (d) of the Rule, enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 9,468 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 32 new records per year, which takes approximately 2 minutes per record for the respondent to maintain, for an annual burden of 64 minutes per respondent. All records subject to the rule must be retained for the term of employment plus 3 years. The Commission estimates that the total annual cost to submitting entities is approximately $196,850. This figure reflects estimated costs of labor and storage of records.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 6, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23238 Filed 9–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46463; File No. SR–CBOE–2002–32]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Time and Manner in Which the Allocation Committee May Reallocate a Security

September 5, 2002.

On June 11, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend CBOE Rule 8.95, Allocation of Securities and Location of Trading Crowds and DPMs, to extend from six months to one year, the time in which the Allocation Committee may reallocate a security if the trading crowd or Designated Primary Market-Maker ("DPM") to which the security had been allocated fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. Notice of the proposed rule change appeared in the **Federal Register** on July 19, 2002.[3] The Commission received no comments on the proposed rule change. On August 28, 2002, the CBOE filed an amendment to the proposed rule change.[4] This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act[5] in general, and the rules and regulations thereunder.[6] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that an exchange's rule be designed to promote just and equitable principles of trade, and in general, to protect investors and the public interest. The Commission believes that CBOE's proposal to extend the initial review period from six months to one year should give the Allocation Committee a sufficient amount of time to monitor the trading patterns of DPMs and trading crowds while considering other relevant factors such as current market conditions, and if necessary, reallocate a security if the DPM or trading crowd fails to adhere to any market performance commitments in connection with receiving the allocation.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46183 (July 11, 2002), 67 FR 47584.

[4] *See* letter to Lisa N. Jones, Attorney, Division of Market Regulation, Commission, from Patrick Sexton, Assistant General Counsel, Legal Division, CBOE ("Amendment No. 1"). Amendment No. 1 corrects an inadvertently deleted word ("and") in the proposed rule text. This is a technical amendment and therefore is not subject to notice and comment.

[5] 15 U.S.C. 78f.

[6] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] The CBOE noted that market performance commitments may relate to pledges to keep bid-ask spreads within a particular width, or pledges to make every effort possible to become the exchange of choice in a particular option class, as measured during the initial months of trading by consistently achieving a certain market share if the class is listed on more than one options exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2002–32), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23236 Filed 9–11–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46461; File No. SR–PCX–2002–33]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval To Proposed Rule Change To Revise the Process for Designating Arbitrators for Member-to-Member Disputes

September 5, 2002.

On May 30, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PCX Rule 12.8(e) to revise the process for designating arbitrators for member-to-member disputes.

The proposed rule change was published for comment in the **Federal Register** on July 19, 2002.[3] The Commission received no comments regarding the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act[5] because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. The Commission notes that the proposed rule change would simplify the PCX arbitrator selection process for Member Controversies by coordinating the rule with existing rules on Public Controversies and provide uniformity with PCX Rules for Public Controversies by raising the amount in controversy from $10,000 to $30,000 as the threshold in determining whether the controversy would be heard by at least three arbitrators. The proposed rule would also provide for a consistent source of arbitrators by using the same arbitrator list for the selection of arbitrators for both Public and Member Controversies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PCX–2002–33) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23235 Filed 9–11–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46190 (July 11, 2002), 67 FR 47590.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 02–1p; Titles II and XVI: Evaluation of Obesity

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 02–1p. This Ruling supersedes SSR 00–3p and provides guidance on the evaluation of disability claims involving obesity following our deletion of listing 9.09, Obesity, from the Listing of Impairments (the listings). The final rule deleting listing 9.09 was effective on October 25, 1999 (64 FR 46122 (1999)).

EFFECTIVE DATE: September 12, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie Davis, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4172 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.ssa.gov*.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant

to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1). Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

We previously published SSR 00–3p on May 15, 2000 (65 FR 31039 (2000)), which provided guidance on the evaluation of claims involving obesity. However, since the date we published SSR 00–3p we have revised several of the rules that we apply under the SSR. The rules that we have revised since we published SSR 00–3p include the adult mental disorders listings (65 FR 50746 (2000)), the musculoskeletal listings for adults and children (66 FR 58010 (2001)), and the regulations that we use to evaluate disability in children claiming Supplemental Security Income benefits under title XVI of the Social Security Act (65 FR 54747 (2000)). We are superseding SSR 00–3p with this new ruling to reflect the changes to our rules that we have made since we published SSR 00–3p. We are not making any other substantive changes to the guidance that was contained in SSR 00–3p.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income)

Dated: September 5, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Evaluation of Obesity

This Ruling supersedes SSR 00–3p, Titles II and XVI: Evaluation of Obesity (65 FR 31039, May 15, 2000).

Purpose: To provide guidance on SSA policy concerning the evaluation of obesity in disability claims filed under titles II and XVI of the Social Security Act (the Act).

Citations: Sections 216(i), 223(d), 223(f), 1614(a), and 1614(c) of the Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1508, 404.1509, 404.1512, 404.1520, 404.1521, 404.1523, 404.1525, 404.1526, 404.1528, 404.1529, 404.1530, 404.1545, 404.1546, 404.1561, 404.1594, and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.908, 416.909, 416.912, 416.920, 416.921, 416.923, 416.924, 416.925, 416.926, 416.926a, 416.928, 416.929, 416.930, 416.933, 416.945, 416.946, 416.961, 416.994, and 416.994a.

Introduction: On August 24, 1999, we[1] published a final rule in the **Federal Register** deleting listing 9.09, *Obesity*, from the Listing of Impairments in 20 CFR, subpart P, appendix 1 (the listings). The final rule was effective on October 25, 1999. 64 FR 46122 (1999).

We stated in the preamble to the final rule that we deleted listing 9.09 because our experience adjudicating cases under this listing indicated that the criteria in the listing were not appropriate indicators of listing-level severity. In our experience, the criteria in listing 9.09 did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity.

However, even though we deleted listing 9.09, we made some changes to the listings to ensure that obesity is still addressed in our listings. In the final rule, we added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings that provide guidance about the potential effects obesity has in causing or contributing to impairments in those body systems. See listings sections 1.00Q, 3.00I, and 4.00F. The paragraphs state that we consider obesity to be a medically determinable impairment and remind adjudicators to consider its effects when evaluating disability. The provisions also remind adjudicators that the combined effects of obesity with other impairments can be greater than the effects of each of the impairments considered separately. They also instruct adjudicators to consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity.

When we published that final rule, in response to public comments, we stated that we would provide additional guidance in a Social Security Ruling (SSR). (64 FR at 46126) On May 15, 2000, we published SSR 00–3p (65 FR 31039) to provide that additional guidance by discussing how we evaluate obesity in disability claims filed by adults and children under titles II and XVI of the Act. Since then, we have published several final rules that revise some of the criteria we use to evaluate disability claims under titles II and XVI of the Social Security Act. We are issuing this SSR to reflect the changes to the rules that we have published since we published SSR 00–3p.

Policy Interpretation

General

1. What Is Obesity?

Obesity is a complex, chronic disease characterized by excessive accumulation of body fat. Obesity is generally the result of a combination of factors (*e.g.*, genetic, environmental, and behavioral).

In one sense, the cause of obesity is simply that the energy (food) taken in exceeds the energy expended by the individual's body. However, the influences on intake, the influences on expenditure, the metabolic processes in between, and the overall genetic controls are complex and not well understood.

The National Institutes of Health (NIH) established medical criteria for the diagnosis of obesity in its *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults* (NIH Publication No. 98–4083, September 1998). These guidelines classify overweight and obesity in adults according to Body Mass Index (BMI). BMI is the ratio of an individual's weight in kilograms to the square of his or her height in meters (kg/m^2). For adults, both men and women, the *Clinical Guidelines* describe a BMI of 25–29.9 as "overweight" and a BMI of 30.0 or above as "obesity."

The *Clinical Guidelines* recognize three levels of obesity. Level I includes BMIs of 30.0–34.9. Level II includes BMIs of 35.0–39.9. Level III, termed "extreme" obesity and representing the greatest risk for developing obesity-related impairments, includes BMIs greater than or equal to 40. These levels describe the extent of obesity, but they do not correlate with any specific degree of functional loss.

[1] The terms *we* and *us* in this Social Security Ruling have the same meaning as in 20 CFR 404.1502 and 416.902. *We* or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination; i.e., our adjudicators at all levels of the administrative review process and our quality reviewers.

In addition, although there is often a significant correlation between BMI and excess body fat, this is not always the case. The *Clinical Guidelines* also provide for considering whether an individual of a given height and weight has excess body fat when determining whether he or she has obesity. Thus, it is possible for someone whose BMI is below 30 to have obesity if too large a percentage of the weight is from fat. Likewise, someone with a BMI above 30 may not have obesity if a large percentage of the weight is from muscle. However, in most cases, the BMI will show whether the individual has obesity. It also will usually be evident from the information in the case record whether the individual should not be found to have obesity, despite a BMI of 30.0 or above. See question 4, below.

The *Clinical Guidelines* do not provide criteria for diagnosing obesity in children. However, a BMI greater than or equal to the 95th percentile for a child's age is generally considered sufficient to establish the diagnosis of obesity. (BMIs in the 95th percentile vary by age and sex of the child.) BMI-for-age-and-gender charts are published in medical textbooks or professional journals and by the National Center for Health Statistics. As with adults, the amount of body fat is considered in making the diagnosis of obesity in children.

Treatment for obesity is often unsuccessful. Even if treatment results in weight loss at first, weight lost is often regained, despite the efforts of the individual to maintain the loss. See question 13, below, for additional discussion of obesity treatment.

2. How Does Obesity Affect Physical and Mental Health?

Obesity is a risk factor that increases an individual's chances of developing impairments in most body systems. It commonly leads to, and often complicates, chronic diseases of the cardiovascular, respiratory, and musculoskeletal body systems. Obesity increases the risk of developing impairments such as type II (so-called adult onset) diabetes mellitus-even in children; gall bladder disease; hypertension; heart disease; peripheral vascular disease; dyslipidemia (abnormal levels of fatty substances in the blood); stroke; osteoarthritis; and sleep apnea. It is associated with endometrial, breast, prostate, and colon cancers, and other physical impairments. Obesity may also cause or contribute to mental impairments such as depression. The effects of obesity may be subtle, such as the loss of mental clarity and slowed reactions that may result from obesity-related sleep apnea.

The fact that obesity is a risk factor for other impairments does not mean that individuals with obesity necessarily have any of these impairments. It means that they are at greater than average risk for developing the other impairments.

3. How Do We Consider Obesity in the Sequential Evaluation Process?[2]

We will consider obesity in determining whether:

- The individual has a medically determinable impairment. See question 4.
- The individual's impairment(s) is severe. See question 6.
- The individual's impairment(s) meets or equals the requirements of a listed impairment in the listings. See question 7. (We use special rules for some continuing disability reviews. See question 11.)
- The individual's impairment(s) prevents him or her from doing past relevant work and other work that exists in significant numbers in the national economy. However, these steps apply only in title II and adult title XVI cases. See questions 8 and 9.

4. How Is Obesity Identified as a Medically Determinable Impairment?

When establishing the existence of obesity, we will generally rely on the judgment of a physician who has examined the claimant and reported his or her appearance and build, as well as weight and height. Thus, in the absence of evidence to the contrary in the case record, we will accept a diagnosis of obesity given by a treating source or by a consultative examiner. However, if there is evidence that indicates that the diagnosis is questionable and the evidence is inadequate to determine whether or not the individual is disabled, we will contact the source for clarification, using the guidelines in 20 CFR 404.1512(e) and 416.912(e).

When the evidence in a case does not include a diagnosis of obesity, but does include clinical notes or other medical records showing consistently high body weight or BMI, we may ask a medical source to clarify whether the individual has obesity. However, in most such cases we will use our judgment to establish the presence of obesity based on the medical findings and other evidence in the case record, even if a treating or examining source has not indicated a diagnosis of obesity. Generally, we will not purchase a consultative examination just to establish the diagnosis of obesity.

When deciding whether an individual has obesity, we will also consider the individual's weight over time.[3] We will not count minor, short-term weight loss. We will consider the individual to have obesity as long as his or her weight or BMI shows essentially a consistent pattern of obesity. (See question 13 for a discussion of weight loss and medical improvement.)

Finally, there are a number of methods for measuring body fat and, if such information is in a case record, we will consider it. However, we will not purchase such testing. In most cases, the medical and other evidence in the case record will establish whether the individual has obesity.

5. Can We Find an Individual Disabled Based on Obesity Alone?

If an individual has the medically determinable impairment obesity that is "severe" as described in question 6, we may find that the obesity medically equals a listing. (In the case of a child seeking benefits under title XVI, we may also find that it functionally equals the listings.) We may also find in a title II claim, or an adult claim under title XVI, that the obesity results in a finding that the individual is disabled based on his or her residual functional capacity (RFC), age, education, and past work experience. However, we will also consider the possibility of coexisting or related conditions, especially as the level of obesity increases. We provide an example of when we may find obesity to medically equal a listing in question 7.

Sequential Evaluation: Step 2, Severe Impairment

6. When Is Obesity a "Severe" Impairment?

As with any other medical condition, we will find that obesity is a "severe" impairment when, alone or in combination with another medically

[2] For ease of reading, we refer in this Ruling only to the steps of the sequential evaluation processes for initial adult and childhood claims. 20 CFR 404.1520, 416.920, and 416.924. We use separate sequential evaluation processes when we do continuing disability reviews; i.e., reviews to determine whether individuals who are receiving disability benefits are still disabled or when we determine whether an individual has a "closed period of disability." These rules are set out in 20 CFR 404.1594, 416.994, and 416.994a, and the guidance in this Ruling applies to all of the appropriate steps in those regulations as well. However, in some continuing disability review cases, we will still consider the provisions of former listings 9.09 and 10.10. See question 11.

[3] As with all impairments, to establish a finding of disability based on obesity, in whole or in part, the statutory duration requirement must be satisfied. See 20 CFR 404.1509 or 416.909, and SSR 82–52, "Titles II and XVI: Duration of the Impairment" (superseded in part by SSR 91–7c).

determinable physical or mental impairment(s), it significantly limits an individual's physical or mental ability to do basic work activities. (For children applying for disability under title XVI, we will find that obesity is a "severe" impairment when it causes more than minimal functional limitations.) We will also consider the effects of any symptoms (such as pain or fatigue) that could limit functioning. (See SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe" and SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms In Determining Whether a Medically Determinable Impairment Is Severe.") Therefore, we will find that an impairment(s) is "not severe" only if it is a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the individual's ability to do basic work activities (or, for a child applying under title XVI, if it causes no more than minimal functional limitations).

There is no specific level of weight or BMI that equates with a "severe" or a "not severe" impairment. Neither do descriptive terms for levels of obesity (*e.g.*, "severe," "extreme," or "morbid" obesity) establish whether obesity is or is not a "severe" impairment for disability program purposes. Rather, we will do an individualized assessment of the impact of obesity on an individual's functioning when deciding whether the impairment is severe.

Sequential Evaluation

Step 3, The Listings

7. How Do We Evaluate Obesity at Step 3 of Sequential Evaluation, the Listings?

Obesity may be a factor in both "meets" and "equals" determinations.

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

For example, when evaluating impairments under mental disorder listings 12.05C, 112.05D, or 112.05F, obesity that is "severe," as explained in question 6, satisfies the criteria in listing 12.05C for a physical impairment imposing an additional and significant work-related limitation of function and in listings 112.05D and 112.05F for a physical impairment imposing an additional and significant limitation of function. We will find the requirements of listing 12.05 are met if an individual's impairment satisfies the diagnostic description in the introductory paragraph of listing 12.05 and any one of the four sets of criteria in the listing. In the case of an individual under age 18, we will find that the requirements of listing 112.05 are met if the child's impairment satisfies the diagnostic description in the introductory paragraph of listing 112.05 and any one of the six sets of criteria in the listing. (See sections 12.00A and 112.00A of the listings.)

We may also find that obesity, by itself, is medically equivalent to a listed impairment (or, in the case of a child applying under title XVI, also functionally equivalent to the listings). For example, if the obesity is of such a level that it results in an inability to ambulate effectively, as defined in sections 1.00B2b or 101.00B2b of the listings, it may substitute for the major dysfunction of a joint(s) due to any cause (and its associated criteria), with the involvement of one major peripheral weight-bearing joint in listings 1.02A or 101.02A, and we will then make a finding of medical equivalence. (See question 8 for further discussion of evaluating the functional effects of obesity, including functional equivalence determinations for children applying for benefits under title XVI.)

We will also find equivalence if an individual has multiple impairments, including obesity, no one of which meets or equals the requirements of a listing, but the combination of impairments is equivalent in severity to a listed impairment. For example, obesity affects the cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems. Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Because the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. Thus, we may find that the combination of a pulmonary or cardiovascular impairment and obesity has signs, symptoms, and laboratory findings that are of equal medical significance to one of the respiratory or cardiovascular listings.[4]

However, we will not make assumptions about the severity or functional effects of obesity combined with other impairments. Obesity in combination with another impairment may or may not increase the severity or functional limitations of the other impairment. We will evaluate each case based on the information in the case record.

Sequential Evaluation

Steps 4 and 5, Assessing Functioning in Adults

Step 3, Assessing Functional Equivalence in Children

8. How Do We Evaluate Obesity in Assessing Residual Functional Capacity in Adults and Functional Equivalence in Children?

Obesity can cause limitation of function. The functions likely to be limited depend on many factors, including where the excess weight is carried. An individual may have limitations in any of the exertional functions such as sitting, standing, walking, lifting, carrying, pushing, and pulling. It may also affect ability to do postural functions, such as climbing, balance, stooping, and crouching. The ability to manipulate may be affected by the presence of adipose (fatty) tissue in the hands and fingers. The ability to tolerate extreme heat, humidity, or hazards may also be affected.

The effects of obesity may not be obvious. For example, some people with obesity also have sleep apnea. This can lead to drowsiness and lack of mental clarity during the day. Obesity may also affect an individual's social functioning.

An assessment should also be made of the effect obesity has upon the individual's ability to perform routine movement and necessary physical activity within the work environment. Individuals with obesity may have problems with the ability to sustain a function over time. As explained in SSR 96–8p ("Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"), our RFC assessments must consider an individual's maximum remaining ability to do sustained work activities in an ordinary work setting on

[4] For our regulations and rulings on the consideration of medical or psychological consultant opinions in determining medical equivalence, see 20 CFR 404.1526(c) and 416.926(c), and SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence."

a regular and continuing basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.[5] In cases involving obesity, fatigue may affect the individual's physical and mental ability to sustain work activity. This may be particularly true in cases involving sleep apnea.

The combined effects of obesity with other impairments may be greater than might be expected without obesity. For example, someone with obesity and arthritis affecting a weight-bearing joint may have more pain and limitation than might be expected from the arthritis alone.

For a child applying for benefits under title XVI, we may evaluate the functional consequences of obesity (either alone or in combination with other impairments) to decide if the child's impairment(s) functionally equals the listings. For example, the functional limitations imposed by obesity, by itself or in combination with another impairment(s), may establish an extreme limitation in one domain of functioning (*e.g.*, Moving about and manipulating objects) or marked limitations in two domains (*e.g.*, Moving about and manipulating objects and Caring for yourself).

As with any other impairment, we will explain how we reached our conclusions on whether obesity caused any physical or mental limitations.

9. How Can We Consider Obesity in the Assessment of RFC When SSR 96–8p says, "Age and Body Habitus Are Not Factors in Assessing RFC"?

The SSR goes on to say that "[i]t is incorrect to find that an individual has limitations beyond those *caused by his or her medically determinable impairment(s) and any related symptoms,* due to such factors as age and natural body build, and the activities the individual was accustomed to doing in his or her previous work." (Emphasis added.) We included the italicized statement in the SSR to distinguish between individuals who have a medically determinable impairment of obesity and individuals who do not. When we identify obesity as a medically determinable impairment (see question 4, above), we will consider any functional limitations resulting from the obesity in the RFC assessment, in addition to any limitations resulting from any other physical or mental impairments that we identify.

Effect of the Rules Change: Claims in Which Prior Listings Apply and Do Not Apply

10. How Does the Deletion of Listing 9.09 Affect Claims Pending on October 25, 1999?

The final rules that deleted the listing became effective on October 25, 1999. The final rules deleting listing 9.09 apply to claims that were filed before October 25, 1999, and that were awaiting an initial determination or that were pending appeal at any level of the administrative review process or that had been appealed to court. The change affected the entire claim, including the period before October 25, 1999. This is our usual policy with respect to any change in our listings.

However, different rules apply to individuals who were already found eligible to receive benefits prior to October 25, 1999. For an explanation of how we apply listing 9.09 in continuing disability reviews, see question 11.

11. How Does Deletion of Listing 9.09 Affect Claims Already Allowed?

Deletion of listing 9.09 does not affect the entitlement or eligibility of individuals receiving benefits because their impairment(s) met or equaled that listing. We will not find that their disabilities have ended just because we deleted listing 9.09.

We must periodically review all claims to determine whether the individual's disability continues. When we conduct a periodic continuing disability review (CDR), we will not find that an individual's disability has ended based on a change in a listing. For individuals receiving disability benefits under title II and adults receiving payments under title XVI, we apply the medical improvement review standard described in 20 CFR 404.1594 and 416.994.

We will first evaluate whether the individual's impairment(s) has medically improved and, if so, whether any medical improvement is related to the ability to work. If the individual's impairment(s) has not medically improved, we will find that he or she is still disabled, unless we find that an exception to the medical improvement standard applies. Even if the impairment(s) has medically improved, we will find that the improvement is not related to the ability to work if the impairment(s) continues to meet or equal the same listing section used to make our most recent favorable decision. This is true even if we have since deleted the listing section that we used to make the most recent favorable decision. See 20 CFR 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). We apply a similar provision when we do CDRs for individuals who have not attained age 18 and who are eligible for title XVI benefits based on disability (20 CFR 416.994a(b)(2)).

Even if the individual's impairment(s) has medically improved and no longer meets or equals prior listing 9.09, we must still determine whether he or she is currently disabled, considering all of the impairments.

12. What Amount of Weight Loss Would Represent "Medical Improvement"?

Because an individual's weight may fluctuate over time and minor weight changes are of little significance to an individual's ability to function, it is not appropriate to conclude that an individual with obesity has medically improved because of a minor weight loss. A loss of less than 10 percent of initial body weight is too minor to result in a finding that there has been medical improvement in the obesity. However, we will consider that obesity has medically improved if an individual maintains a consistent loss of at least 10 percent of body weight for at least 12 months. We will not count minor, short-term changes in weight when we decide whether an individual has maintained the loss consistently.

If there is a coexisting or related condition(s) and the obesity has not improved, we will still consider whether the coexisting or related condition(s) has medically improved.

If we find that there has been medical improvement in obesity or in any coexisting or related condition(s), we must also decide whether the medical improvement is related to the ability to work. If necessary, we will also decide whether any exceptions to the medical improvement review standard apply and, if appropriate, whether the individual is currently disabled.

13. What Are the Goals and Methods of Treatment for Obesity?

Obesity is a disease that requires treatment, although in most people the effect of treatment is limited. However, if untreated, it tends to progress.

A common misconception is that the goal of treatment is to reduce weight to a "normal" level. Actually, the goal of realistic medical treatment for obesity is only to reduce weight by a reasonable amount that will improve health and quality of life. People with extreme obesity, even with treatment, will

[5] However, see footnote 2 of SSR 96–8p. That footnote explains that the ability to work 8 hours a day for 5 days a weeks is not always required for a finding at step 4 of the sequential evaluation process for adults when an individual can do past relevant work that was part-time work, if that work was substantial gainful activity, performed within the applicable period, and lasted long enough for the person to learn to do it.

generally continue to have obesity. Despite short-term progress, most treatments for obesity do not have a high success rate.

Recommended treatment for obesity depends upon the level of obesity. At levels I and II (BMI 30.0–39.9), treatment usually consists of behavior modification (diet and exercise) with the option of medication, usually either in the form of a fat-blocking drug or an appetite suppressant. Some people do not respond to medication, while others experience negative side effects. (In making our decision, we will also consider any side effects of medication the individual experiences.) Individuals with coexisting or related conditions may not be able to take medication because of its effects on their other conditions.

Generally, physicians recommend surgery when obesity has reached level III (BMI 40 or greater). However, surgery may also be an option at level II (BMI 35–39.9) if there is a serious coexisting or related condition. Obesity surgery modifies the stomach, the intestines, or both in order to reduce the amount of food that the individual can eat at one meal or the time food is available for digestion and absorption. Surgery is generally a last resort with individuals for whom other forms of treatment have failed. Some individuals also experience significant negative side effects from surgery (*e.g.*, "dumping syndrome"—that is, rapid emptying of the stomach's contents marked by various signs and symptoms).

Obesity is a life-long disease. Even when treatment has been successful, individuals with obesity generally need to stay in treatment or they will gain weight again, just as individuals with other impairments may need to stay in treatment. Individuals who have had surgery should receive continuing follow-up care because of health risks related to the surgery. As with other chronic disorders. effective treatment of obesity requires regular medical follow-up.

14. How Do We Evaluate Failure To Follow Prescribed Treatment in Obesity Cases?

Before failure to follow prescribed treatment for obesity can become an issue in a case, we must first find that the individual is disabled because of obesity or a combination of obesity and another impairment(s). Our regulations at 20 CFR 404.1530 and 416.930 provide that, in order to get benefits, an individual must follow treatment prescribed by his or her physician if the treatment can restore the ability to work, unless the individual has an acceptable reason for failing to follow the prescribed treatment. We will rarely use "failure to follow prescribed treatment" for obesity to deny or cease benefits.

SSR 82–59, "Titles II and XVI: Failure To Follow Prescribed Treatment," explains that we will find failure to follow prescribed treatment only when all of the following conditions exist:

- The individual has an impairment(s) that meets the definition of disability, including the duration requirement, and
- A treating source has prescribed treatment that is clearly expected to restore the ability to engage in substantial gainful activity, and
- The evidence shows that the individual has failed to follow prescribed treatment without a good reason.

If an individual who is disabled because of obesity (alone or in combination with another impairment(s)) does not have a treating source who has prescribed treatment for the obesity, there is no issue of failure to follow prescribed treatment.

The treatment must be prescribed by a treating source, as defined in our regulations at 20 CFR 404.1502 and 416.902, not simply recommended. A treating source's statement that an individual "should" lose weight or has "been advised" to get more exercise is not prescribed treatment.

When a treating source has prescribed treatment for obesity, the treatment must clearly be expected to improve the impairment to the extent that the person will not be disabled. As noted in question 13, the goals of treatment for obesity are generally modest, and treatment is often ineffective. Therefore, we will not find failure to follow prescribed treatment unless there is clear evidence that treatment would be successful. The obesity must be expected to improve to the point at which the individual would not meet our definition of disability, considering not only the obesity, but any other impairment(s).

Finally, even if we find that a treating source has prescribed treatment for obesity, that the treatment is clearly expected to restore the ability to engage in SGA, and that the individual is not following the prescribed treatment, we must still consider whether the individual has a good reason for doing so. In making this finding, we will follow the guidance in our regulations and SSR 82–59, which provide that acceptable justifications for failing to follow prescribed treatment include, but are not limited to, the following:

- The specific medical treatment is contrary to the teaching and tenets of the individual's religion.
- The individual is unable to afford prescribed treatment that he or she is willing to accept, but for which free community resources are unavailable.
- The treatment carries a high degree of risk because of the enormity or unusual nature of the procedure.

In this regard, most health insurance plans and Medicare do not defray the expense of treatment for obesity. Thus, an individual who might benefit from behavioral or drug therapy might not be able to afford it. Also, because not enough is known about the long-term effects of medications used to treat obesity, some people may be reluctant to use them due to the potential risk.

Because of the risks and potential side effects of surgery for obesity, we will not find that an individual has failed to follow prescribed treatment for obesity when the prescribed treatment is surgery.

EFFECTIVE DATE: This Ruling is effective upon publication in the **Federal Register**.

Cross-References: SSR 82–52, "Titles II and XVI: Duration of the Impairment;" SSR 82–59, "Titles II and XVI: Failure To Follow Prescribed Treatment;" SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe;" SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms In Determining Whether a Medically Determinable Impairment Is Severe;" SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence;" SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims;" and Program Operations Manual System sections DI 23010.005 ff., DI 24510.006, DI 24570.001, DI 34001.010, DI 34001.014, and DI 34001.016.

[FR Doc. 02–23148 Filed 9–11–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4120]

Imposition of Lethal Military Equipment Sanctions Against the Government of Russia and Waiver of These Sanctions and Imposition of Discretionary Measures Against Three Russian Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that the Government of Russia transferred lethal military equipment to countries determined by the Secretary of State to be state sponsors of terrorism. The United States Government determined that, despite the transfers, furnishing assistance to the Government of Russia, (excluding the three entities responsible for the transfer should they be otherwise eligible for assistance) is important to the national interest of the United States. Further, it is the policy of the United States Government to deny all U.S. Government assistance, contracts, and defense-related licenses to these entities.

EFFECTIVE DATE: August 13, 2002.

FOR FURTHER INFORMATION CONTACT: On general issues: Ron Parson, Office of Export Controls and Conventional Arms Nonproliferation Policy, Bureau of Nonproliferation, Department of State, (202–647–0397).

SUPPLEMENTARY INFORMATION: Pursuant to provisions of Section 620H of the Foreign Assistance Act (FAA) of 1961, as amended (22 U.S.C. 2378) and Section 544 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002 (Pub. L. 107–115), and Executive Order 12163, as amended, on August 2, 2002, the United States Government determined that the Government of Russia provided lethal military equipment to countries determined by the Secretary of State to be state sponsors of terrorism. Also on August 2, 2002 and pursuant to the aforementioned provisions of law, the United States Government determined that furnishing assistance restricted by these provisions to the Russian Government, with the exceptions that follow, is important to the national interests of the United States. As a matter of policy, United States Government assistance to the following three entities, to the extent they are otherwise eligible, United States Government procurement contracts, new licenses and other approvals for exports of defense articles and services to, and, where appropriate, imports of defense articles and services from, the entities, are prohibited. Exceptions to these restrictions may be considered on a case by case basis where the Department of State determines that United States Government interests would be best served by such an exception.

Tula Design Bureau of Instrument Building (Tula KBP);

The State Scientific Production Enterprise Bazalt (Bazalt);

Rostov Airframe Plant 168 (Rostvertol).

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for one year.

Dated: September 6, 2002.

Susan Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–23240 Filed 9–11–02; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on October 8–10, 2002, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- October 8:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting)
  - Status of Working Group 4, VHF Data Link (VDL)–3 Implementation
  - Status of Working Group 5, Operational Safety Analysis, System Performance Requirements (OHA/SPR), for NEXCOM VDL–3
  - Status of Working Group 6, Interoperability of NEXCOM
  - Resolve Final Review and Comments (FRAC) on draft WG–5 document DO–XXX, OHA/SPR for NEXCOM VDL–3 for plenary approval
- October 9:
  - Continue resolution of FRAC comments on draft WG–5 document DO–XXX, OHA/SPR for NEXCOM VDL–3, for plenary approval
- October 10:
  - WG–4, NEXCOM Transition
  - WG–6, Interoperability of NEXCOM VDL Mode 3

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–23116 Filed 9–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Savannah International Airport, Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice 02–22122 appearing on page 55912 in the issue of Friday, August 30, 2002, under **SUPPLEMENTARY INFORMATION**, in the second column, in the 17th, 18th, and 19th lines, should replace, "Date 120 Days Past Receipt Application or Supplement," with, "October 10, 2002."

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, 404–305–7152.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–23117 Filed 9–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34248]

Dallas, Garland & Northeastern Railroad, Inc.—Trackage Rights Exemption—Dallas Area Rapid Transit

Dallas, Garland & Northeastern Railroad, Inc. (DGNO), has agreed to acquire by assignment from Union Pacific Railroad Company exclusive trackage rights over Dallas Area Rapid Transit's (DART) Elam Branch line between approximately milepost 308.80 near Elam, TX, and approximately milepost 314.84 near Briggs, TX, a total distance of approximately 6.04 miles.[1]

The transaction was scheduled to be consummated on or shortly after August 30, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to enable DGNO to provide freight rail service on DART's rail line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34248, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Gary Laakso, Vice President Regulatory Counsel, 5300 Broken Sound Blvd., NW., 2nd Floor, Boca Raton, FL 44487.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov*."

Decided: September 5, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–23093 Filed 9–11–02; 8:45 am]

BILLING CODE 4915–00–P

[1] An unredacted version of the Trackage Rights Agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with the motion for a protective order. That motion was granted and a protective order was issued in a decision served on September 5, 2002.

DEPARTMENT OF THE TREASURY

Customs Service

Fees for Customs Services at User Fee Airports

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of an increase in the fees charged user fee airports by Customs for providing Customs services at these designated facilities. These fees are based on actual costs incurred by Customs in purchasing equipment and providing training and one Customs inspector on a full-time basis, and, thus, merely represent reimbursement to Customs for services rendered. The fees to be increased are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with Customs to become a user fee airport, and the annual fee thereafter charged user fee airports.

EFFECTIVE DATE: The new fees will be effective October 1, 2002, and will be reflected in quarterly, user fee airport billings issued on or after that date.

FOR FURTHER INFORMATION CONTACT: Cynthia Sargent, Budget Division, Office of Finance (202) 927–0609.

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 Stat. 2992) (codified at 19 U.S.C. 58b), as amended, authorizes the Secretary of the Treasury to make Customs services available at certain specified airports and at any other airport, seaport, or other facility designated by the Secretary pursuant to specified criteria, and to charge a fee for providing such services. (The list of user fee airports is found at § 122.15 of the Customs Regulations (19 CFR 122.15).) The fee that is charged is in an amount equal to the expenses incurred by the Secretary in providing Customs services at the designated facility, which includes purchasing equipment and providing training and inspectional services, *i.e.*, the salary and expenses of individuals employed by the Secretary to provide the Customs services. The fees being raised are the initial fee charged a user fee airport after it signs a Memorandum of Agreement with Customs so that it can begin operations (currently set at $118,000), and the annual fee subsequently charged so that user fee airports can continue to offer Customs services at their facilities (currently set at $88,500). The notice announcing the current user fee rates was published in the **Federal Register** (66 FR 48739) on September 21, 2001. The user fees charged a user fee airport are typically set forth in a Memorandum of Agreement between the user fee facility and Customs. While the amount of these fees are agreed to be at flat rates, they are periodically adjustable, as costs and circumstances change.

Adjustment of User Fee Airport Fees

Customs has determined that, in order for the user fee to fully reimburse Customs for expenses incurred in providing requested services, the initial fee must be increased from $118,000 to $129,125, and the recurring annual fee subsequently charged must be increased from $88,500 to $115,400. Since inception, Headquarters has administered the program through the assignment of resources on a part time basis. The Headquarters' costs have been included in the fees. The program has experienced significant growth and, consequently, related costs for providing Headquarters' administrative services have increased to a level necessary for Customs to dedicate a permanent resource at Headquarters to manage and administer the program on a full time basis. The added resource will enable Customs to more adequately and efficiently manage the program. The increase in the recurring annual fee covers the increased costs. The new fees will be effective October 1, 2002, and will be reflected in quarterly, user fee airport billings issued on or after that date.

Dated: September 6, 2002.

Carol A. Dunham,

Acting Assistant Commissioner, Office of Finance.

[FR Doc. 02–23232 Filed 9–11–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the annual meeting of the VA Voluntary Service (VAVS) National Advisory Committee (NAC) will be held at the Radisson Hotel, City Center, 31 West Ohio Street, Indianapolis, Indiana, on Monday, October 14, 2002, from 8 a.m. until 4 p.m., and on Tuesday, October 15, 2002, from 8 a.m. until 12 noon.

The NAC consists of sixty national organizations and advises the Under Secretary for Health and other senior VA officials on how to coordinate and promote volunteer activities within VA facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC annual meetings.

On October 14, the business topics include: An update on Veterans Health Administration and the VAVS program's progress since the 2001 NAC annual meeting; Parke Board update; review of the 2001 annual meeting evaluations; and plans for the 57th NAC annual meeting. On October 15, the business topics include: 2005 NAC annual meeting planning; membership report; review recommendations approved at the 2001 NAC annual meeting; subcommittee reports; Standard Operating Procedure Revisions; new business and Executive Committee appointments.

The meeting is open to the public. Individuals interested in attending are encouraged to contact: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–8392.

Dated: September 5, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–23197 Filed 9–11–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will conduct site visits to the James A. Haley Veterans Hospital, 13000 Bruce B. Downs Boulevard, Tampa, FL 33612, and several other VA facilities in the area. The site visits will be held on September 23–27, 2002, from 8 a.m. until 4 p.m. each day.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to healthcare, rehabilitation, compensation, outreach, and other programs and activities administered by the VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The five day series of visits will feature the following presentations, briefings and tours.

Monday, 9/23

- Richard Silver, Director, James A. Haley Veterans Hospital, Welcoming Remarks, Introduction of Key Leadership Group
- Elwood Headley, MD, Director, Veterans Integrated Service Network (VISN) 8, Welcoming Remarks and Overview of VISN 8
- Toni Lawrie, RN, MPA, VISN 8 Lead Women Veterans Program Manager, Review of VISN 8 Women Veterans Workgroup Activities, Presentations by Women Veterans Program Managers (WVPM), VISN 8, Donald Freyburger, Chief Prosthetics, VISN 8, Overview of the Prosthetics Program, Medical Center Tour (Conducted in two groups)

Tuesday, 9/24

- Drs. Washko and McGinn, Mss. Sorrick, Keyes and Mikelonis, Primary Care Providers in Women's Clinic
- Robert McCammon, MD, Chief, Gynecology, Ann Schrecengost, ARNP, Overview of the Gynecological Services at Tampa: Opportunities for Improvement and Future Needs
- Inez Joseph, Ph.D., ARNP, and Staff, Nursing Home Care Unit (NHCU)/ Geriatric Clinic
- Steven Scott, MD, Chief Rehab Medicine, Laureen Dolorsco ACOS, Rehabilitation and Mental Health, Brenda Kelley, R.N., and others (To Be Announced), Introduction and Tour: New Spinal Cord Injury Unit (SCI)
- Drs. Catalano, Poreda, and Jenkins, Women's Center Mental Health Program
- Patricia Ordorica, MD, Chief Mental Health & Behavioral Science, Arthur Rosenblatt, Ph.D., MST Coordinator, Glenn Smith, Ph.D., and Martha Brown, MD, Overview of the Mental Health Programs—Strengths and Weaknesses, Alcohol and Substance Abuse, Sexual Trauma, Post Traumatic Stress Disorder
- Patricia Ordorica, Arthur Rosenblatt, Wendy Hellickson, Carol Griffiths, Overview of the Homeless Program and Home Grant Per Diem Program

Wednesday, 9/25

St. Petersburg VA Medical Center Bay Pines, Marr Conference Room, 10000 Bay Pines Blvd., Bay Pines, FL 33744

- Tour of the 4B Women's Clinic
- Introductions and discussion with Key Leadership/Management, Susan Angell Silva, Associate Director, Pramod K. Mohanty, MD, Chief of Staff, Joy Easterly, ACOS/Nursing and Patient Care Services, Dominique Thuriere, MD, ACOS for Mental Health, Larry Atkinson, ACOS for Primary Care, Carol O'Brien, Ph.D., Director, Sexual Trauma Services
- Irene Trowell-Harris, Director, Center for Women Veterans, Overview of the Center for Women Veterans and the Women Veterans Health Program Mission and Goals
- Maria Crane Psy.D., Team Leader, Katherine McKay, Ph.D., MST Counselor, Overview of the St. Petersburg Veterans Center
- Drs. O'Brien, Garrison, Connelly and Mss. Chaffin, LCSW, Desmarais, RN, Parker, RT, Harter-McBride, Program Assistant, Overview of Sexual Trauma Treatment Program
- Mr. Billy Murphy, Director Florida National Cemeteries, Ms. Gloria Crandell, Tour Bay Pines National Cemetery, 10,000 Bay Pines Blvd., Bay Pines, FL 33744
- William D. Stinger, Director, VA Regional Office, Lori Cowen, WVC, St. Petersburg VA Regional Office, 9500 Bay Pines Blvd., Bay Pines, FL 33744
- Larry Ashlock, Director, Readjustment Counseling, Region 3A

Thursday, 9/26

South St. Petersburg Community-based Outpatient Clinic, 3420 8th Avenue S., St. Petersburg, FL 33711

- Gloria Cafeo, Community-based Outpatient Clinic
- Pat Neal and Staff, Tour St. Petersburg Veterans Center
- Dawn Johnson, Manager, Tour Fisher House
- Drs. Keller, Narasimaiah, Stolar, Shriner, Hemadeh, Mss. Hill, ARNP, Headley, RN, Huggins, LCSW, Armatrage, R.Ph., Integration of Physical and Behavioral Care Services for Women, 4A Conference Room

- Laverne Feaster, MSW Domiciliary Chief, and Staff, Tour Domiciliary; Discussion on the Homeless Program, Substance Abuse Treatment Program, Stress Treatment Program, and Sexual Trauma
- Dr. Dominique Thuriere, Tour Inpatient Psychiatry

Friday, 9/27

James A. Haley VA Medical Center

- Open Forum with Women Veterans Community in the James A. Haley Veterans Hospital Auditorium
- Exit Interview with Key Leadership, Individuals from Tampa and Bay Pines VA Medical Centers

All sessions will be open to the public. Those who plan to attend should contact Ms. Maryanne Carson at the Department of Veterans Affairs, Center for Women Veterans, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–6193.

Dated: September 5, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–23196 Filed 9–11–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 177

Thursday, September 12, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46425; File No. SR –NYSE–2002–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control")

August 28, 2002.

Correction

In notice document 02–22605 beginning on page 56863 in the issue of Thursday, September 5, 2002 make the following correction:

On page 56863, in the second column, in the subject heading, in the seventh line, the date should appear as set forth above.

[FR Doc. C2–22605 Filed 9–11–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
September 12, 2002

Part II

Environmental Protection Agency

40 CFR Part 451

Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 451

[FRL—7263–2]

RIN 2040–AD55

Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This action presents the U.S. Environmental Protection Agency's (EPA's) proposed effluent limitations guidelines and standards for wastewater discharges from the concentrated aquatic animal production (CAAP) industrial point source category. The proposed regulation proposes new technology-based effluent limitations guidelines and standards for wastewater discharges associated with the operation of new and existing concentrated aquatic animal production facilities.

EPA estimates that compliance with this regulation, as proposed, would reduce the discharge of total suspended solids (TSS) by at least 4.1 million pounds per year and would cost industry an estimated $1.5 million and Federal and State permitting authorities an estimated $3,337 on an annual basis. EPA expects that the control of TSS would reduce the discharge of biochemical oxygen demand (BOD) and nutrients by at least 8.7 million pounds per year. EPA also believes that by implementing the best management practices (BMP) plans any toxic and non-conventional pollutants that may be discharged will be controlled. EPA estimates that the annual quantifiable benefits of the proposal would be approximately $22,000–$113,000.

DATES: Comments on the proposal must be postmarked by December 11, 2002. EPA will conduct two or three public meetings to discuss the proposed rule. The information on dates, times and locations of the public meetings will be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit written comments to Ms. Marta Jordan, Office of Water, Engineering and Analysis Division (4303T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For hand-deliveries or Federal Express, please send comments to Ms. Marta Jordan, Office of Water, Engineering and Analysis Division, Room 6233M, 1201 Constitution Avenue, NW., 6th Floor, Connecting Wing, Washington, DC 20004. Comments may be sent by e-mail to the following e-mail address: *aquaticanimals@epa.gov*. For additional information on how to submit comments, see "**SUPPLEMENTARY INFORMATION,** How to Submit Comments."

The public record for this proposed rulemaking has been established under docket number W–02–01 and is located in the Water Docket, EPA West Room B135,1301 Constitution Ave. NW., Washington DC, 20004.The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials, call (202) 566–2426 to schedule an appointment. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's proposed rule, contact Ms. Marta Jordan at (202) 566–1049. For economic information, contact Mr. Nicolaas Bouwes at (202) 566–1002.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	Primary NAICS codes
Industry	Facilities engaged in concentrated aquatic animal production, which may include the following sectors:.	
	Finfish Farming and Fish Hatcheries.	112511
	Other Animal Aquaculture.	112519

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 451.1, 451.10, 451.20, and 451.30. You should also examine the description of the proposed scope of each subpart in Section VI.B of this document. If you have questions regarding the applicability of this proposed action to a particular entity, contact the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How To Submit Comments

EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Please submit any copies of references cited in your comments.

Comments may also be sent via e-mail, see **ADDRESSES.** Electronic comments must specify docket number W–02–01 and must be submitted as an ASCII, Word, or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments on this proposal may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

Protection of Confidential Business Information (CBI)

EPA notes that certain information and data in the record supporting the proposed rule have been claimed as CBI and, therefore, are not included in the record that is available to the public in the Water Docket. Pursuant to EPA regulations at 40 CFR 2.203 and 2.211, EPA treats all information for which a claim of confidentiality is made as confidential unless and until it makes a determination to the contrary under 40 CFR 2.205. Further, the Agency has not included in the docket some data not claimed as CBI because release of this information would indirectly reveal information claimed to be confidential. To provide the public with as much information as possible in support of the proposed rulemaking, EPA is presenting in the public record certain information in aggregated form or, alternatively, is masking facility identities or employing other strategies in order to preserve confidentiality claims. This approach ensures that the information in the public record both explains the basis for today's proposal and allows for a meaningful opportunity for public comment, without compromising CBI claims.

Some tabulations and analyses of facility-specific data claimed as CBI are available to the company that submitted the information. To ensure that all data or information claimed as CBI is protected in accordance with EPA regulations, any requests for release of such company-specific data should be submitted to EPA on company letterhead and signed by a responsible official authorized to receive such data.

The request must list the specific data requested and include the following statement, "I certify that EPA is authorized to transfer confidential business information submitted by my company, and that I am authorized to receive it."

Supporting Documentation

The rules proposed today are supported by several documents:

1. "Economic and Environmental Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Industry Point Source Category" (EPA–821–R–02–015). Hereafter referred to as the CAAP Economic Analysis, this document presents the analysis of compliance costs; facility, firm, small business and market impacts; and water quality impacts and potential benefits. In addition, this document presents an analysis of cost-effectiveness. (DCN 20141)

2. "Development Document for Proposed Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Industry Point Source Category" (EPA–821–R–02–016). Hereafter referred to as the CAAP Development Document, the document presents EPA's technical conclusions concerning the CAAP proposal. This document describes, among other things, the data collection activities, the wastewater treatment technology options, effluent characterization, effluent reduction of the wastewater treatment technology options, estimate of costs to the industry, and estimate of effects on non-water quality environmental impacts. (DCN 61552)

3. "Draft Guidance for Aquatic Animal Production Facilities to Assist in Reducing the Discharge of Pollutants" (EPA–821–B–02–002). Hereafter referred to as the AAP Technical Guidance Manual, the document presents best management practices (BMPs) in use at concentrated aquatic animal facilities. The guidance manual presents general BMPs that can be applied throughout the industry and BMPs that apply to specific sectors of the industry. (DCN 61553)

How To Obtain Supporting Documents

All documents are available from the National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH 45242–2419, (800) 490–9198 and the EPA Water Resource Center. The supporting technical documentation (*e.g.*, CAAP Development Document, Economic Analysis and AAP Technical Guidance Manual) can be obtained on the Internet, located at *http://www.epa.gov/ost/guide/aquaculture/*. This website is also linked to an electronic version of today's proposed rule.

Overview

The preamble describes the legal authority for the proposal, background information, the technical and economic methodologies used by the Agency to develop these proposed regulations and, in an appendix, the definitions, acronyms, and abbreviations used in this document. This preamble also solicits comment and data generally, and on specific areas of interest.

Table of Contents

I. Legal Authority

These regulations are proposed under the authority of sections 301, 304, 306, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1318, 1342, and 1361.

II. Background

A. Clean Water Act

Congress passed the Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." (33 U.S.C. 1251(a)).

The CWA establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S. except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The CWA also requires EPA to establish national technology based effluent limitation guidelines and standards (effluent guidelines or ELG) for discharges from different categories of point sources, such as industrial, commercial and public sources.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs). See section 307(b) and (c), 33 U.S.C. 1317(b) & (c). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers that may pass through, interfere with or are otherwise incompatible with POTW operations. Generally, pretreatment standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements. See 40 CFR 403.5.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits. Indirect dischargers, who discharge through POTWs, must comply with pretreatment standards. Effluent limitations in NPDES permits are derived from effluent limitations guidelines and new source performance standards promulgated by EPA, as well as from water quality standards. The effluent limitations guidelines and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

EPA promulgates national effluent limitations guidelines and standards of performance for major industrial categories for three classes of pollutants: (1) Conventional pollutants (*i.e.*, total suspended solids, oil and grease, biochemical oxygen demand, fecal coliform, and pH); (2) toxic pollutants (*e.g.*, toxic metals such as chromium, lead, nickel, and zinc; toxic organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene); and (3) non-conventional pollutants (*e.g.*, ammonia-N, formaldehyde, and phosphorus). EPA considers development of six types of effluent limitations guidelines and standards for each major industrial category, as appropriate.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

EPA may promulgate BPT effluent limits for conventional, toxic, and non-conventional pollutants. For toxic pollutants, EPA typically regulates priority pollutants which consist of a specified list of toxic pollutants. 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, engineering aspects of the control technologies, any required process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. See CWA 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. If, however, existing performance is uniformly inadequate, EPA may establish limitations based on higher levels of control than currently in place in an industrial category when based on an Agency determination that the technology is available in another category or subcategory, and can be practically applied.

2. Best Control Technology for Conventional Pollutants (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify additional levels of effluent reduction 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 CWA requires that EPA establish BCT limitations after consideration of 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: biochemical oxygen demand measured over five days (BOD_5), total suspended solids (TSS), fecal coliform, 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).

3. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of facilities in the industrial subcategory or category. The CWA establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts including energy requirements, and such other factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, EPA determines economic achievability on the basis of total costs to the industry and the effect of compliance with BAT limitations on overall industry and subcategory financial conditions. As with BPT, where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Section 306 of the CWA

New Source Performance Standards 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 should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (that is, conventional, nonconventional, 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.

5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

Pretreatment Standards for Existing Sources are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTW). Categorical pretreatment standards are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. These regulations establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586 (Jan. 14, 1987).

6. Pretreatment Standards for New Sources (PSNS)—Section 307(c) of the CWA

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources at the same time it promulgates new source performance standards. Such pretreatment standards must prevent the discharge of any pollutant into a POTW that may interfere with, pass through, or may otherwise be incompatible with the POTW. EPA promulgates categorical pretreatment standards for existing sources based principally on BAT technology for existing sources. EPA promulgates pretreatment standards for new sources based on best available demonstrated technology for new sources. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Consent Decree

Section 304(m) requires EPA to publish a plan every two years that consists of three elements. First, under section 304(m)(1)(A), EPA is required to establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). Section 304(b) applies to effluent limitations guidelines for direct dischargers and requires EPA to revise such regulations as appropriate. Second, under section 304(m)(1)(B), EPA must identify categories of sources discharging toxic or nonconventional pollutants for which EPA has not published BAT effluent limitations guidelines under 304(b)(2) or new source performance standards under section 306. Finally, under 304(m)(1)(C), EPA must establish a schedule for the promulgation of BAT and NSPS for the categories identified under subparagraph (B) not later than three years after being identified in the 304(m) plan. Section 304(m) does not apply to pretreatment standards for indirect dischargers, which EPA promulgates pursuant to sections 307(b) and 307(c) of the Clean Water Act.

On October 30, 1989, Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with CWA Section 304(m). Plaintiffs and EPA agreed to a settlement of that action in a consent decree entered on January 31, 1992. The consent decree, which has been modified several times, established a schedule by which EPA is to propose and take final action for four point source categories identified by name in the decree and for eight other point source categories identified only as new or revised rules, numbered 5 through 12. EPA selected the aquatic animal production industry as the subject for New or Revised Rule #12. Under the decree, as modified, the Administrator is required to sign a proposed rule for the aquatic animal production industry no later than August 14, 2002, and to take final action on that proposal no later than June 30, 2004.

III. Rulemaking History and Industry Profile

A. Concentrated Aquatic Animal Production Effluent Guideline Rulemaking History

EPA actions to regulate aquatic animal production facilities under the National Pollutant Discharge Elimination System (NPDES) permitting program date back to 1973, when EPA proposed and promulgated NPDES permit application rules for concentrated aquatic animal production facilities. 38 FR 10960 (May 3, 1973)(proposed), 38 FR 18000 (July 5, 1973). After some litigation over the NPDES regulations, EPA proposed and took final action to re-establish the concentrated aquatic animal production facility requirements. *NRDC* v. *Costle,* 568 F.2d 1369 (D.C. Cir.1977); 43 FR 37078 (Aug. 21, 1978); 44 FR 32854 (June 7, 1979). The 1979 version of the regulations has not substantively changed since then.

The NPDES regulations specify the applicability of the NPDES permit requirement to a concentrated aquatic animal production facility. 40 CFR 122.24 and appendix C to part 122. To be a concentrated aquatic animal production facility, the facility must either meet the criteria in 40 CFR appendix C or be designated on a case-by-case basis. 40 CFR 122.24(b). A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds, aquatic animals in either of two categories: cold water or warm water. The cold water species category includes ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include: Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) per year; and facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) during the calendar month of maximum feeding. The warm water category includes ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include: closed ponds which discharge only during periods of excess runoff; or facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) per year. 40 CFR part 122, appendix C. EPA does not propose to revise the NPDES regulation by today's action.

Prior to today's proposal, EPA had not proposed effluent limitations guidelines and standards for the aquatic animal production industry. In the early 1970s, however, EPA staff did evaluate fish hatcheries and fish farms to develop recommendations on whether EPA should propose effluent guidelines. Ultimately, EPA did not propose any such regulations because the 1977 Clean Water Act amendments re-focused the Agency's attention on establishing effluent limitations guidelines for industry sectors with effluents containing toxic metals and organics. EPA's evaluation of fish hatcheries and fish farms did not reveal significant contributions of toxic metals or organic chemical compounds in the wastes discharged from those hatcheries and farms. That draft development document, however, did serve to assist NPDES permit writers in the exercise of their "best professional judgment" to develop permits for those fish hatcheries and fish farms that were considered "concentrated aquatic animal production facilities," and thus required to apply for NPDES permits under EPA regulations.

B. Environmental and Human Health Impacts

The operation of CAAP facilities may introduce a variety of pollutants into receiving waters. Under some

conditions, these pollutants can be harmful to the environment. According to the 1998 USDA Census of Aquaculture (USDA, 2000, DCN 60605), there are approximately 4,200 commercial aquatic animal production (AAP) facilities in the United States. Aquaculture has been among the fastest-growing sectors of agriculture until a recent slowdown that began several years ago caused by declining or level growth among producers of several major species. EPA analysis indicates that many CAAP facilities have treatment technologies in place that greatly reduce pollutant loads. However, in the absence of treatment, pollutant loads from individual CAAP facilities such as those covered by today's proposed rule can contribute up to several thousand pounds of nitrogen and phosphorus per year, and tens to hundreds of thousands of pounds of TSS per year (see CAAP Economic Analysis). These pollutants, if discharged, can contribute to eutrophication and other aquatic ecosystem responses to excess nutrient loads and BOD effects. In recent years, Illinois, Louisiana, North Carolina, New Hampshire, New Mexico, Ohio and Virginia have cited the AAP industry as a potential or contributing source of impairment to water bodies (EPA, 2000, DCN 40319). State authorities in Idaho, Michigan, and Maine, for example, have set water quality based permit requirements for CAAP facilities in addition to technology based limits based on BPJ.

Another area of potential concern relates to non-native species introductions from CAAP facilities, which may pose risks to native fishery resources and wild native aquatic species from the establishment of escaped individuals (Carlton, 2001, DCN 61434; Volpe *et al.*, 2000, DCN 60611). Some CAAP facilities may also employ drugs, such as formalin, and chemicals, such as a variety of copper-containing pesticides, that may be released into receiving waters. For some applications of these drugs and chemicals, there is a belief that further information is needed to fully evaluate risks to ecosystems and human health associated with their use in some situations. Finally, CAAP facilities also may inadvertently introduce pathogens into receiving waters, with potential impacts on native biota. Today's proposed rule attempts to address a number of these environmental concerns.

C. Industry Profile

The concentrated aquatic animal production industry includes sites that fall within the North American Industry Classification System (NAICS) codes 112511 (finfish farming and fish hatcheries), 112512 (shellfish farming), 112519 (other animal aquaculture), and part of 712130 (aquariums, part of zoos and botanical gardens). SBA sets up standards to define whether an entity is small and eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the NAICS. See 13 CFR part 121 for more detailed information. The first three groups (NAICS 112511, 112512, and 112519) have Small Business Administration (SBA) annual revenue based size standards of $0.75 million while the SBA size standard for NAICS 712130 is $6.0 million. EPA uses these SBA size standards to conduct preliminary analyses to determine the number of small businesses in an industrial category and whether the proposed rule would have a significant impact on a substantial number of small entities.

USDA reports that there were approximately 4,200 commercial aquaculture facilities in the 1998 Census of Aquaculture (DCN 60605). Based on revenues from aquaculture sales alone (not including other farm-related revenues from other agricultural crops at the facility), more than 90 percent of the facilities have revenues less than $0.75 million annually and thus may be considered small businesses. The Small Business Administration's size standard is based on annual revenue at the company level for all products, so using facility revenue from aquaculture sales reported in the 1998 Census of Aquaculture is likely to over-estimate the proportion of small businesses in the industry. Although aquaculture facilities exist in every State, there tends to be regional specialization by species as a result of local climate and the quality and quantity of water available for aquaculture (for example, catfish in the Southeast, salmon on the Northern coasts, and trout in Idaho).

In 1999, commercial farm level aquatic animal sales totaled nearly $1 billion (842 million pounds). The range of products includes: Finfish raised for food and recreation (including food fish, sport or game fish, baitfish, or ornamental fish); crustaceans and molluscs raised for food; and other aquatic animals such as alligators, frogs, and turtles. Catfish and trout sales account for nearly fifty percent of the commercial market (>$400 million and $64 million in production, respectively).

The industry includes several types of ownership structures: (1) Commercial; (2) Federal and State; (3) Tribal; (4) academic and research; and (5) nonprofit. Within the private or commercial sector, ownership structures range from small family farms to large multinational firms. The non-commercial sector is also diverse. The U.S. Fish and Wildlife Service (FWS) operates 66 Federal hatcheries, six Fish Technology Centers, and nine Fish Health Centers. Its goals are to conserve, restore, enhance, and manage the Nation's fishery resources and ecosystems for the benefit of future generations. FWS distributes more than 50 aquatic species primarily to Federal, Tribal, State, and local governments. Many States operate fish hatcheries for stocking recreational fisheries, and EPA identified approximately 500 State hatchery facilities.

As an approximate measure of the size of the governmental aquatic animal production, fish distributions from the FWS in 1999 totaled 5.5 million pounds. *Fisheries* magazine published an overview of State coldwater fishery programs that listed 23.7 million pounds of trout and salmon distributed from State hatcheries in 1996 (Epifanio, 2000, DCN 60851). EPA estimate that production from 17 Tribal programs is more than 1.3 million fish.

EPA identified approximately 30 academic and research institutions that maintain facilities ranging from small research projects to full-scale systems for training the next generation of aquatic animal producers. Information on the magnitude of these operations nationwide is currently being sought by EPA through a detailed industry survey.

Nonprofit organizations in the CAAP industry that were identified by EPA include Alaskan salmon hatcheries and non-taxable aquariums. Alaskan salmon hatcheries are different from salmon and finfish production facilities in the continental United States. Certain types of production activities related to the farming of salmon and other finfish in Alaska were outlawed in 1990 (ADFG, 2002, DCN 61556). Instead, Alaska permits nonprofit "ocean ranching", where native salmon species are reared from egg to fingerling (chum and pink salmon) or smolt (coho, chinook, or sockeye salmon) stage in hatcheries. The chum and pink salmon produced in the hatchery are then placed in pens in the ocean waters, and after a short additional growing period (approximately two months), are released into public waters to be available as adults for harvest by fishermen. Two types of nonprofit organizations exist—four regional aquaculture associations and eight private nonprofit corporations—with a

total permitted production of approximately 2 billion smolts for ocean release. EPA identified approximately 50 aquariums, some of which are non-taxable establishments.

Aquatic animals raised for commercial purposes are very diverse, ranging from species produced for human consumption as food to species raised for their hides. As mentioned above, governments also produce aquatic animals, usually for recreational purposes. The animals may be raised in a variety of different production systems. The choice of a production system is influenced by a variety of factors including species, economics of production, markets, local water resources, land availability, and operator preference. Some production systems, especially those needed to produce species intended for release into the wild or other natural environments, are intended to provide a suitable environment that imitates the natural environment of the species. CAAP systems include ponds, flow-through systems, recirculating systems and open water systems. Each of these production systems is described below.

1. Pond Systems

Pond systems are distinguished from other systems used to produce aquatic animals by the frequency of discharge. Typically, ponds do not have a continuous discharge. They will discharge water either as a result of a storm event or when the pond is drained for harvest or to make repairs. Aquatic animals produced in ponds include: catfish, shrimp, hybrid striped bass, tilapia, crawfish, baitfish and many ornamental and sport fish species. The largest species sector produced in ponds is catfish.

Many pond producers must pump well water to fill their ponds and are constantly balancing the need to conserve water and reduce pumping costs with keeping ponds full. Most aquatic animal producers minimize the frequency or degree to which the ponds are drained because the water is a valuable asset. Some species require operators to drain the pond to allow for harvesting, while others can be harvested without draining by using seines (large nets) to capture the fish. Aquatic animals that are more difficult to capture in the seines, may require partial draining of the pond to harvest.

Pond system operators must maintain a level of water quality that will support the aquatic animal population. In most cases, water quality maintenance requires that the pond be mechanically aerated to maintain sufficient oxygen levels. The growth of algae is promoted by the presence of nutrients made available either through excess feed or animal excretions. Planktonic algae (the desired form of algae) process these nutrients and improve water quality. Too much, or the wrong kinds of, algae can degrade water quality in ponds by contributing to excess turbidity and reduced oxygen levels. Producers monitor the dissolved oxygen and turbidity levels to evaluate pond water quality and protect their animal crops from rapid shifts in oxygen or other important water quality parameters. This monitoring also ensures that the pond is serving as an efficient waste treatment system. The pond system itself has the ability to decompose biological material and settle out solids such as fecal materials, sediment, and uneaten feed. Drugs, such as oxytetracycline (added in feed to treat certain diseases) and chemicals, such as copper sulfate and other aquatic herbicides (used to treat excessive aquatic vegetation or algae), readily bind to sediment and other particles in the pond system. Thus, pond systems are capable of treating and reducing the pollutants in the system. When the ponds are drained, the pollutant loads are likely to have been significantly reduced or contained within the sediment at the bottom of the pond. Draining practices that minimize disturbance of the sediments at the bottom of the pond will ensure that the water quality discharged is relatively high in quality.

While most producers use drainage practices that minimize disturbance of the pond bottom (*e.g.*, catfish, hybrid striped bass, and many sportfish), several species require specific drainage practices that have the potential to discharge higher levels of sediments in order to harvest. For example, shrimp require rapid draining. The shrimp are carried along with the drainage water and captured in external harvest structures. These harvest/draining practices are likely to result in the disturbance of the sediment on the bottom of the pond. To reduce pollutant loads and minimize escapement of the valuable animal crop, the water drained from shrimp ponds is typically routed through some type of sediment control structure (*e.g.*, sedimentation basins, harvest boxes or vegetated ditches) prior to discharge.

Most of the historical research on pond water quality and the various management practices to improve pond effluent quality was conducted in the catfish sector. Catfish production is the largest aquatic animal production sector in the United States, and the dominant species produced in ponds. Over the past few decades there has been considerable research leading to the improvement of management practices and the reduction of pollutants discharged from catfish ponds. One of the most significant changes has been the reduced drainage frequency in producing food sized catfish. Today, the predominant practice is to drain only to repair or rework the pond banks. Industry representatives indicate that ponds used to grow fish to food size are drained, on average, once every 5 to 7 years. Other practices that are being actively encouraged and promoted include water level management to maximize the capture of rainwater. Water level management minimizes the need for operators to pump well water to refill ponds, especially during the drier summer months, and also minimizes the occurrence of overflows (from precipitation). There are a number of other best management practices (BMPs) that have been or are being developed by various States to reduce pollutant discharges from pond systems. For example, BMPs to reduce the impacts from erosion in and around ponds include erosion control on pond banks through establishment of vegetative cover on all pond banks and rip rap where wave action is especially strong. Pond operators can also reduce erosion by the proper positioning of stationary and emergency aerators to prevent erosion during their operation, closing pond drains as soon as possible after draining, and quickly repairing any damaged areas of berms. Other BMPs include practices to reduce overflow and draining effluent volumes, feed management, proper use and storage of chemicals and therapeutic agents, and planning for emergencies.

Pollutants discharged in overflow from catfish production ponds have been well studied in Mississippi and Alabama. The research shows variation in pollutant concentration by season, with the summer months having the highest levels of pollutants in effluent overflows and discharges. The measured pollutants and seasonal average ranges included settleable solids (0.01–0.2 mg/L), total suspended solids (29–135 mg/L), total nitrogen (1.9–7.0 mg N/L), total ammonia (0.27–2.76 mg N/L), total phosphorus (0.09–0.54 mg P/L) and biochemical oxygen demand (5.3–26.1 mg O_2/L) (Tucker *et al.*, 2002, DCN 61555).

Hybrid striped bass is another species that is often produced in pond systems. The body of knowledge needed for the culture of hybrid striped bass for foodfish production grew from the expanded efforts throughout the southeastern United States to provide

striped bass and hybrid *Morone* species for stocking public reservoirs for recreational fishing and fisheries management. Responses to EPA's screener survey indicates that 77% of striped bass/hybrid striped bass producers use earthen ponds, 17% use recirculating systems, and 6% use flow-through systems.

Ponds used to raise food sized hybrid striped bass must be completely harvested before the pond can be restocked, otherwise the larger fish will feed on the smaller fish. Ponds are drained for harvest either annually or biennially, depending on stocking size. The ponds must be completely drained to ensure that all fish are captured. Some producers use an EPA registered pesticide to kill any remaining fish after harvest. If a pesticide is used, water conservation is the goal and the pond does not need to be drained. The most commonly used pesticide is rotenone, which degrades fairly quickly allowing the pond to be restocked within a short period of time.

Other species that are raised in ponds that must be drained either partially or completely to be harvested include tilapia, baitfish, and sport fish. Tilapia can escape seines or nets by jumping over or swimming under them. Therefore, ponds are partially drained to make it more difficult for the tilapia to escape the nets. Most baitfish are harvested with seines, but ponds must be drained and all fish removed prior to starting a new crop. However, most baitfish producers conserve the water that is drained from a pond by moving it to another pond.

2. Flow-Through Systems

The predominant form of flow-through systems, raceways, are constructed to mimic a stream, with fresh water continuously entering at the top of the system and discharging from the bottom (or downstream end) of the system. Between the top and the bottom of the raceway system are a series of production units, which can be either small ponds or raceways of earthen or concrete material. Smaller, younger fish are typically placed in the units at the top of the system near the water source, which is the highest quality water. As the fish grow they can tolerate lesser quality water and they are moved to downstream units.

Flow-through systems are used to produce species that must have very high quality water. Trout and salmon are two examples of fish that require very high quality water with high dissolved oxygen levels and consistent cold temperatures. The predominant species raised in flow-through systems is trout. Salmon fry are also raised in flow-through systems until they are moved to a marine environment.

The most significant pollutant discharged from flow-through systems is solids from uneaten feed and feces that settle to the bottom of the raceways. These solids are primarily composed of organic matter including BOD, organic nitrogen and organic phosphorus. Many flow-through systems have barriers in the lower portion of each raceway to create a quiescent zone. The quiescent zone allows the solids to settle and be collected. Restricting the fish from entering the quiescent zone keeps the solids from becoming resuspended. The captured solids are periodically transferred to an off-line settling basin for additional settling. Water is then typically decanted off and recombined with the rest of the water being discharged from the facility. Some facilities have installed additional solids polishing treatment, such as filtration or an additional settling basin. Facilities that do not use quiescent zones may treat the total flow-through a settling basin to remove solids. Older and smaller facilities that have earthen raceways or ponds generally use lower flow rates to prevent scouring and erosion of the production unit, allowing solids to accumulate and decompose by natural processes.

Flow-through facilities typically are fed by wells, springs, or by diverting a portion of a stream. Springs and wells are preferred because they usually provide water that is of consistent temperature, high quality, and free from disease organisms. Free flowing springs also have the advantage of little or no pumping costs. Some flow-through system facilities require source waters to be pretreated to remove substances such as sediment or iron and to add oxygen.

Fish in flow-through systems are fed on a scheduled basis, allowed to self feed by activating a feeding mechanism. or a combination of the two. Dead fish are removed from the raceways on a regular basis to prevent accumulation at the end of the raceway that impedes the flow of water from the facility.

3. Recirculating Systems

Recirculating systems are used to raise fish in a controlled environment. The fish are raised in tanks with continuously flowing water that is recirculated through a water treatment system and returned to the production tanks. The treatment may include mechanical filters to remove solids and biological filters to degrade the BOD and nitrify the ammonia, and oxygenation. Most recirculating systems replace about 10% of the system water volume daily to make up for evaporation and water supply loss associated with solids filter backwash, and to compensate for inefficiencies in the filtration process. Several facilities reported treating their effluent with primary solids settling and solids polishing filtration.

Because construction requires considerable capital investment, the fish produced in these systems are generally high valued species. Species produced include tilapia, hybrid striped bass, and ornamental fish species. Recirculating systems are well suited to maintaining water temperature and can be built almost anywhere.

4. Net Pen and Open Water Systems

Net pens and open water systems take advantage of an existing water body's circulation to wash away wastes and bring fresh water to the animals. Presently, the most common species raised in open water systems are molluscan shellfish (oysters, clams, and mussels) that are primarily grown on floating rafts or prepared bottoms, and salmon that are grown to market size in net pens. Lobster pounds, found only in Maine, are placed in coves along the shoreline to hold lobsters for favorable markets. There is considerable interest and research being conducted to raise additional species of fish in net pen systems.

In the case of molluscs, producers may plant the animals on the bottom of an intertidal area or suspend them above the bottom in racks or trays or on lines. The molluscs, which are filter feeders, reduce concentrations of nutrients through feeding. Molluscs do excrete wastes, but generally, this has a minimal impact on the environment.

Net pen structures are mostly used to grow finfish to food size and are constructed in rectangular, octagonal or round shapes. Nets are suspended from a floating structure to contain the crop of fish. The mesh size of this net is usually increased as the fish grows to provide more water circulating inside the net. The net pen structures are designed to float at the surface and are constructed with "jump nets" that extend above the water line to prevent the fish from jumping out. There is another net, which surrounds the primary net in the pen to keep predators from reaching the confined fish. The pens are anchored to the sea floor, but are designed to have some movement with the tidal and wave action. These structures are often placed in bays and are sited to benefit from tidal and current action to move wastes away from the pens and bring oxygenated, high quality water to the net pen. Because these systems are placed in

open waters, anything that is added to the system may contribute to pollution. Feed and fish metabolic excretions will contribute solids, BOD and nutrients to the water column. Other potential pollutants include zinc, that is added in trace amounts to the feed as a mineral supplement and copper from an antifouling compound that is used on some of the nets. Pollutant discharges from some net pen operations have been found to cause impacts to the benthic community. Net pen facilities have also been linked to water circulation impacts and changes in the natural flushing around the facility that occurs from decreased tidal action when nets become fouled.

5. Feed, Diseases, and Non-Native Species

Some concerns about certain aspects of producing aquatic animals have arisen. Among these are the feed (because of the nutrient content), diseases and possible ways of treating diseases when they occur through the use of drugs and chemicals, and escapement of non-native species. Each of these is summarized below.

a. Feed. Most aquatic animal production requires active feeding of the animals being raised. A few species, such as molluscs, feed from naturally occurring sources. For some species, conditions are created to promote the growth of natural sources of feed (such as fertilizing ponds to stimulate the algae growth as the source of food). This is common practice in the production of baitfish, ornamental, and finfish fingerlings of many species. Commercial feed for the major species produced has undergone substantial improvements in recent years. The feed has been improved both in terms of its nutritional content (allowing for the reduction in some ingredients that are not processed by the fish, such as phosphorus), and its physical properties (a lower density and moisture rate allows the feed to float longer, increasing fish consumption and decreasing the amount of uneaten feed). Open water facilities offer little, if any, opportunity for treatment and removal of pollutants, such as excess feed, prior to discharge, thus feed management is a very important component of pollution control at net pen facilities. Pond facilities represent the other end of the spectrum. Ponds, as described above, act as a waste treatment system and have capacity to absorb pollutants resulting from uneaten feed and feces. Recirculating systems and flow-through systems perform better (i.e., discharge less waste) with the practice of proper feed management. These systems can remove some of the pollutants associated with uneaten feed, but most flow-through systems do not have the technology to treat excess feed as it breaks down and releases dissolved pollutants. The decomposition of uneaten feed will put a greater demand on the filtration system used by recirculating systems to clean the water as it is being recirculated. Feed is the most expensive production input for most CAAP facilities, so operators have a financial incentive to minimize excess feed, independent of concerns about water quality.

b. Diseases. By providing food and oxygen, aquatic animal production facilities can produce fish and other aquatic animals in greater numbers than natural conditions would allow. This means that system management is important to ensure that the animals do not become overly stressed, making them more vulnerable to disease outbreaks. When diseases do occur, facilities may be able to treat diseased aquatic animals with drugs. Operators producing aquatic animals that are being produced for human consumption must comply with requirements established by the Food and Drug Administration (FDA) with respect to the drugs that can be used legally to treat their animals, the dose that can be used, and the withdrawal period that must be achieved before the animals can be processed for consumption. Drugs can be divided into four categories: approved drugs, investigational drugs, extra-label use drugs, and unapproved drugs. Approved drugs have already been screened by the FDA to determine whether they cause significant adverse public health or environmental impacts when used in accordance with label instructions. Currently, there are six approved drugs for selected CAAP species and disease conditions. The currently approved drugs are: (1) Chorionic gonadotropin (Chorulon®) used for spawning, (2) oxytetracycline (Terramycin®) which is an antibiotic, (3) Sulfadimethoxine, ormetoprim (Romet-30®) which is an antibiotic, (4) tricaine methanesulfonate (Finquel® and Tricaine-S) which is an anesthetic, (5) formalin (Formalin-F®, Paracide-F® and PARASITE–S®) used for fungus and parasite treatment, and (6) sulfamerazine which is an antibiotic.

The FDA authorizes use of investigational drugs on a case-by-case basis to allow a way of gathering data for the approval process. 21 U.S.C. 360b(j). Study protocols establish quantities and conditions of use. NPDES permits sometimes have required reporting of the use of drugs and chemicals. To EPA's knowledge, very few permits have established limitations on the use of drugs and chemicals, probably due to their intermittent use and the lack of analytical methods to measure such drugs and chemicals in wastewater matrices. Extra-label drug use is restricted to use of approved animal and human drugs only by the order of a licensed veterinarian, and must be within the context of a valid veterinarian-client-patient relationship. New unapproved animal drugs are sometimes used in discrete cases where the FDA exercises its regulatory discretion.

c. Non-Native Species. Many of the aquatic animal species in commercial production are "non-native" to the geographic area of production. These are species that have been brought into the United States from abroad or into a region of the United States where they would not occur naturally. When non-native species are introduced to an area, there may be a potential for these species to become invasive, out-competing and threatening the survival of the native species. There may also be the potential that the introduction of non-native species will introduce diseases against which native populations have no natural defenses. The Department of Interior's Fish and Wildlife Service along with the Department of Commerce's National Marine Fisheries Service oversee the introduction of non-native species into the United States. In addition, many State Departments of Fish and Wildlife have established programs to control the introduction and release of non-native species within their States. The United States, however, has banned the importation of very few non-native species. There are several examples of species becoming established in the wild, in part through aquatic animal production, that some States have defined as non-native to specific areas of the United States (*e.g.*, Atlantic salmon—non-native to the Pacific Northwest, bighead and grass carp, and some ornamental species). It should be noted that aquatic animal production is one of several causes of non-native or invasive species introductions; ballast water, for example, has been associated with non-native or invasive species introductions.

IV. Summary of Data Collection

A. Primary and Secondary Sources of Data and Information

The Agency evaluated the following databases to locate data and information to support regulatory development: the Agency's PCS database, the Aquatic Sciences and Fisheries Abstracts database, the USDA's AGRICOLA

database, the 1998 USDA Census of Aquaculture, the SEC's EDGAR Database, the Dun & Bradstreet Million Dollar Directory, and the Hoover's database. In addition, the Agency conducted a thorough collection and review of secondary sources, which include data, reports, and analyses published by government agencies; reports and analyses published by the aquatic animal production industry and its associated organizations; and publicly available financial information compiled by both government and private organizations.

EPA used all of the documents cited above in developing the industry profile, a survey sampling frame, and for stratifying the survey sampling frame. In addition to these publications, EPA examined many other documents that provided useful overviews and analysis of the aquatic animal production industry. EPA also conducted general Internet searches by company name.

B. Industry Surveys

EPA developed a survey questionnaire because the existing primary and secondary sources of information available to EPA did not contain the information necessary to fully evaluate regulatory options. In particular, EPA evaluates facility/site specific technical and economic information to evaluate the costs and benefits of regulation. EPA made every reasonable attempt to ensure that the AAP industry Information Collection Request (ICR) did not request data and information currently available through less burdensome mechanisms. Prior to publishing a notice in the Federal Register on September 14, 2000(65 FR 55522), EPA met with and distributed draft copies of the survey questionnaires to the Joint Subcommittee on Aquaculture's Aquaculture Effluents Task Force (JSA/AETF), which includes representatives from various government agencies, industry and trade associations, academia, and other interested stakeholders.

On September 14, 2000, EPA announced its intent to submit the Aquatic Animal Production Industry Survey Information Collection Request (ICR) to OMB (65 FR 55522). The September 14, 2000 notice requested comment on the draft ICR and the survey questionnaire. EPA received 44 sets of comments during the 60 day public comment period. Commentors on the ICR included: National Oceanic and Atmospheric Administration, U.S. Trout Farmers Association, American Farm Bureau Federation, North Carolina State University, Louisiana Rice Growers Association, Michigan Department of Natural Resources, Mississippi Farm Bureau Federation, Idaho Farm Bureau Federation, and the Freshwater Institute. EPA made significant revisions to the survey methodology and questionnaires as a result of these public comments. Based on the comments, EPA revised the questionnaire and divided it into two survey versions. The first version is the screener survey (short version) and the second version is the detailed survey (the longer version). The two primary reasons for the Agency splitting the survey were: (1) Comments to the effect that the Agency would not know how much emphasis to place on rarely occurring facility types without a census and (2) the need to target specific types of aquatic animal production facilities that could not be identified using information obtained from the databases available to the Agency at that time. After evaluating the comments received on the September 14, 2000 notice, EPA drafted a revised detailed survey, which was sent to the JSA/AETF for review and comment. EPA worked with the JSA/AETF via conference call and written comments to further refine the detailed survey. EPA also conducted two conference calls with the economic technical subgroup of the JSA/AETF to discuss the economic and financial questions in the survey. To the extent possible, EPA incorporated comments and suggestions from these reviews into the survey.

EPA published a second notice in the **Federal Register** on June 8, 2001 (66 FR 30902), announcing the Agency's intent to submit another, revised aquatic animal production industry Survey Information Collection Request (ICR) to OMB. The June 8, 2001, notice requested comment on the draft ICR supporting statement, the short screener survey and the detailed survey questionnaire. EPA received 9 sets of comments during the 30 day public comment period. Commenters on the ICR included: North Carolina Department of Agriculture and Consumer Services, Ohio Aquaculture Association, Catfish Farmers of America, National Aquaculture Association, National Association of State Aquaculture Coordinators, U.S. Trout Farmers Association, American Farm Bureau Federation, and Florida Department of Agriculture and Consumer Services. EPA obtained approval from OMB for the use and distribution of the short screener survey on August 1, 2001 (66 FR 64817). EPA obtained approval from OMB for the use and distribution of the detailed survey on November 28, 2001 (67 FR 6519).

1. Description of the Surveys

In August 2001, EPA mailed a short screener survey, entitled "Screener Questionnaire for the Aquatic Animal Production Industry" to approximately 6,000 potential Aquatic Animal Production facilities. A copy of the screener is included in the record (USEPA, 2001, DCN 10001). The screener survey consisted of eleven questions to solicit general facility information, including confirmation that the facility was engaged in aquatic animal production, species and size category produced, type of production system, wastewater disposal method, and the total production at the facility in the year 2000. EPA used the information collected from the screener survey to describe industry operations and wastewater disposal practices. EPA also used the responses to the facility production question to classify whether or not each facility is "small" according to the Small Business Administration regulations at 13 CFR part 121.

EPA designed the second survey to collect detailed site-specific technical and financial information. A copy of the detailed survey is included in the record (USEPA, 2002e, DCN 10002). The detailed survey is divided into three parts. The first two parts collect general facility, technical, and cost data. The first set of questions in part A request general facility site information, including facility contact information, facility size, and NPDES permit information. The general facility information questions also ask the facility to identify species and production type and confirm that, in fact, it is engaged in aquatic animal production. The second set of questions in part A focused on system descriptions and wastewater control technologies.

The wastewater control technology section is divided into six parts, one part for each type of production system (pond, flow-through, recirculating, net pens and cages, floating aquaculture and bottom culture, and other systems). The individual system sections have been tailored with specific questions and responses. Each of these sections asks the respondent to describe (1) the system, (2) water use, (3) pollutant control practices, and (4) discharge characteristics.

The second part of the survey asks the respondent for facility cost information. The cost information is intended to provide EPA with a complete description of all cost elements associated with the pollution control practices and technologies used at the facility. Separate tables show the details

of capital and annual operating costs. The cost section also evaluates the current discharge monitoring practices, product losses, and feed information.

The third part of the detailed survey elicits site-specific financial and economic data. EPA intends to use this information to characterize the economic status of the industry and to estimate potential economic impacts of wastewater regulations. The survey requests financial and economic information for the fiscal years ending 1999, 2000 and 2001—the most recent years for which data are available.

The Agency intends to use this information to refine the regulation proposed today. The Agency also would use data that identifies treatment technologies in place to determine the feasibility of regulatory options, and to refine its estimates of compliance costs, pollutant loading and load reductions associated with the technology-based options, and potential environmental impacts associated with the regulatory options EPA considers for final rulemaking. The data gathered through this survey and any revisions to the proposed regulation that may result from this additional data would subsequently be published in a notice in the Federal Register to provide the public an opportunity to comment on this data.

2. Development of Survey Mailing List

The mailing list (sample frame) for EPA's screener survey was developed by synthesizing facility information found in the Dunn and Bradstreet database, EPA's Permit Compliance System (PCS), contacts with EPA regional permit writers, EPA site visits, State aquaculture contacts, assistance from the Bureau of Indian Affairs on tribal facilities, universities, recent issues of *Aquaculture Magazine*, and an extensive collection of Web sites with aquaculture references. The mailing list EPA developed contained approximately 6,000 facilities. This number seemed to compare favorably with the roughly 4,000 commercial facilities found in the 1998 Census of Aquaculture and the additional Federal, State, Tribal, research, and non-profit facilities not found in the 1998 Census of Aquaculture (USDA, 2000, DCN 60605). EPA believes that this mailing population was as current as possible and reasonably complete.

3. Response to the Screener Survey

EPA sent the screener survey to all 6,000 facilities on its mailing list. EPA received responses from 4,900 facilities, with about 2,300 facilities reporting that they do produce aquatic animals. The discrepancy between the number of surveys sent and the number of facilities reporting that they are aquatic animal producers is largely attributed to the fact that the list was compiled from general industry sources and included aquatic animal processors, retailers, etc.

As described in Section V, EPA is proposing to establish effluent limitations guideline regulations for various segments of the concentrated aquatic animal production sector, thus, the Agency sent the detailed survey to a sample of 263 facilities. EPA used the results of the screener survey to ensure that the facilities that received the detailed questionnaire, in fact, produce aquatic animals and that a high percentage are conducting operations that would be included in the scope of today's proposal.

4. Sample Selection for the Detailed Survey

Respondents to the detailed questionnaire were selected at random from within groups (stratified random selection) that were identified using results of the screener survey. The sample and the questionnaires described above are expected to provide EPA with the additional information that will be used to re-estimate the costs and benefits associated with the proposed regulatory options. These results along with results from any additional evaluations based on comments on the proposal will be published in the Notice of Data Availability (NODA) prior to final action.

C. Site Visits and Wastewater Sampling

During 2000 and 2001, EPA conducted site visits at more than 70 AAP facilities. EPA conducted some of these site visits as part of AAP conferences that EPA attended to better understand the industry. The purposes of these site visits were: (1) To collect information on aquatic animal operations; (2) to collect information on the generation of wastewater and waste management practices used by the AAP facilities; and (3) to evaluate each such facility as a candidate for multi-day sampling.

In selecting candidates for site visits, EPA attempted to identify facilities that were representative of various CAAP operations, as well as both direct and indirect dischargers. EPA specifically considered the type of aquatic animal production operation (production method and species produced), geographical region, age of the facility, size of facility (in terms of production), wastewater treatment processes employed, and best management practices/pollution prevention techniques used. EPA also solicited recommendations for good-performing facilities (*e.g.*, facilities with advanced wastewater treatment practices) from EPA Regional offices, State agencies, and members of the JSA/AETF. The site-specific selection criteria are discussed in site visit reports prepared for each site visited by EPA (DCN 30987–30998 and 61615–61652) and summarized in the CAAP Development Document. The sites visited reflect a cross section of the industry that is fairly complete and proportionally representative of the industry.

During each site visit, EPA collected information on the facility and its operations, including: (1) General production data and information; (2) the types of aquatic animal production wastewaters generated and treated on-site; (3) water source and use; (4) wastewater treatment and disposal operations. EPA used the site visit reports to prepare multi-day sampling and analysis plans (SAPs) for each facility that would undergo multi-day sampling. For those facilities selected for sampling episodes, EPA also collected information on potential sampling locations for wastewater (raw influent, within the treatment system, and final effluent); and other information necessary for developing a sampling plan for possible multi-day sampling episodes.

Based on data collected from the site visits, EPA selected three facilities for multi-day sampling (two flow-through systems and one recirculating system). The purpose of the multi-day sampling was to characterize pollutants in raw wastewaters prior to treatment as well as document wastewater treatment performance (including selected unit processes). Selection of facilities for multi-day sampling was based on an analysis of information collected during the site visits as well as the following criteria: (1) The facility activities and operations were representative of CAAP facilities and (2) the facility utilized in-process treatment and/or end-of-pipe treatment practices that EPA was considering for technology option selection.

The Agency collected the following types of information during each sampling episode: (1) Dates and times of sample collection; (2) flow data corresponding to each sample; (3) production data corresponding to each sample; (4) design and operating parameters for source reduction, recycling, and treatment; technologies characterized during sampling; (5) information about site operations that had changed since the site visit or that

were not included in the site visit report; and (6) temperature, pH, and dissolved oxygen (DO) of the sampled waste streams.

During each multi-day sampling episode, EPA sampled facility influent and effluent wastestreams over a 5-day period. Samples also were collected at intermediate points throughout the wastewater treatment system to assess the performance of individual treatment units. Samples were obtained using a combination of composite and grab samples, depending upon the pollutant parameter to be analyzed. EPA selected the duration for sampling the composites to reflect feeding and non-feeding conditions at the facilities and to minimize risk to sampling personnel. The composite time frames ranged from 12 hours to 24 hours. EPA had the samples analyzed for a variety of conventional (BOD, TSS, oil and grease, and pH), nonconventional (nutrients, microbiological, drugs and chemicals), and toxic (metals and organic compounds) pollutants. When possible for a given parameter, EPA collected 24-hour composite samples in order to capture the variability in the waste streams generated throughout the day (*e.g.*, production wastewater during feeding and non-feeding periods.)

Data collected from the sampling episodes contributed to characterization of the industry, development of the list of pollutants of concern, and development of raw wastewater characteristics. EPA used the data collected from the influent, intermediate, and effluent points to analyze the efficacy of treatment at the facilities, and to develop current discharge concentrations, loadings, and the treatment technology options for the Concentrated Aquatic Animal Production industry. EPA used effluent data to calculate the long-term averages (LTAs) and limitations for each of the proposed regulatory options. EPA intends to use industry-provided data from the CAAP detailed survey and other sources to complement the sampling data for these calculations in final rulemaking. During each sampling episode, EPA collected flow rate data corresponding to each sample collected and production information from each associated production system for use in calculating pollutant loadings. EPA has included in the public record all information collected for which a facility has not asserted a claim of Confidential Business Information (CBI) or which would indirectly reveal information claimed to be CBI.

After conducting the sampling episodes, EPA prepared sampling episode reports for each facility and included descriptions of the wastewater treatment processes, sampling procedures, and analytical results. EPA documented all data collected during sampling episodes in the sampling episode report for each sampled site. Non-confidential business information from these reports is available in the public record for this proposal. For detailed information on sampling and preservation procedures, analytical methods, and quality assurance/quality control procedures see the Quality Assurance Project Plan (QAPP) (DCN 61558) and SAPs (DCN 61557, DCN 61710, and DCN 61711) for today's proposed rule.

D. Pollutants Sampled and Analytical Methods

The Agency collected, preserved, and transported all samples according to EPA protocols as specified in the AAP QAPP.

EPA collected composite samples for most parameters because the Agency expected the wastewater composition to vary over the course of a day. The Agency collected grab samples from unit operations for oil and grease and microbiologicals (*e.g.*, total and fecal coliform, fecal streptococcus, *Aeromonas, Mycobacterium marinum, E. coli,* and *Enterococcus faecium*). Composite samples were collected either manually or by using an automated sampler. Individual aliquots for the composite samples were collected at a minimum of once every four hours over each 12-hour period. Oil and grease samples were collected two or three times per composite time frame and microbiologicals were collected once a day.

Table IV.D–1 lists the parameters sampled at the majority of the facilities, some of which have not been identified as pollutants of concern.

TABLE IV.D–1: CAAP SAMPLED PARAMETERS

Settleable Solids	Oil and grease
pH	Sulfate
Biochemical oxygen demand (BOD^5)	Metals (*e.g.*, arsenic, chromium,
Chemical oxygen demand (COD)	copper, mercury, zinc)
Total organic carbon (TOC)	Volatile Organics
Total suspended solids (TSS)	Semivolatile Organics
Total dissolved solids (TDS)	Total coliform
Total volatile solids (TVS)	Fecal coliform
Chloride	*Escherichia coli*
Total Chlorine	Fecal streptococci
Ammonia as nitrogen	*Aeromonas*
Nitrate/nitrite	*Mycobacterium marinum*
Total Kjeldahl nitrogen (TKN)	*Enterococcus faecium*
Total phosphorus (TP)	Oxytetracycline
Total dissolved phosphorus (TDP)	Toxicity:
Orthophosphate	Fathead Minnow, *Pimephales promelas*
Temperature	Cladoceran, *Ceriodaphnia dubia*
Dissolved Oxygen	Green Alga, *Selenastrum capricornatum*
Turbidity	
Conductivity	
Salinity	

All wastewater sample analyses, except for the field measurements of temperature, turbidity, conductivity, salinity, total chlorine, dissolved oxygen, settleable solids, and pH were completed by EPA contract laboratories. EPA collected field measurements of temperature, dissolved oxygen, and pH at the sampling site. The analytical chemistry methods used, as well as the sample volume requirements, detection limits, and holding times, were consistent with the laboratory's quality assurance and quality control plan. Laboratories contracted for CAAP sample analysis followed EPA approved analysis methods for all parameters except some microbials and drugs (*i.e.*, oxytetracycline) for which no current EPA approved method has been formally developed. The protocols used to measure those pollutants are available in the docket to today's proposal.

The EPA contract laboratories reported data on their standard report sheet and submitted them to EPA's sample control center (SCC). The SCC reviewed the report sheets for completeness and reasonableness. EPA reviewed all reports from the laboratory to verify that the data were consistent with requirements, reported in the proper units, and complied with the applicable protocol.

E. Other Data Collection

EPA conducted a number of other data collection efforts to supplement information gathered through the survey process, facility sampling activities, site visits, meetings with industry experts, the general public, and government funded studies. The main purpose of these other data collection efforts was to obtain information on documented environmental impacts of aquatic animal production facilities, additional

data on aquatic animal production waste characteristics, pollution prevention practices, wastewater treatment technology innovation, and facility management practices. These other data collection activities included a literature search, a review of current NPDES permits, and a review of NPDES Discharge Monitoring Reports.

1. Literature Search on Environmental Impacts

EPA conducted a literature search to obtain information on various aspects of the aquatic animal production industry, including pollutants causing environmental impacts, water quality and ecological impacts from these pollutants, non-native species impacts, and other potential impacts. EPA performed extensive Internet and library searches for applicable information. EPA has included a summary of the case studies in the public docket (DCN) associated with today's proposal and in Chapter 9 of the CAAP Economic Analysis (DCN 20141). The primary sources for the case studies include technical journal articles, newspaper articles, industry experts, and government contacts for aquaculture.

EPA also conducted a separate literature search for case studies that characterize the AAP industry, or more specifically the typical effluents associated with different production system types and species. The primary sources for the case studies were technical journal articles.

2. Current NPDES Permits

EPA extracted information from the Agency's Permit Compliance System (PCS) to identify concentrated aquatic animal production industry point source dischargers with NPDES permits. This initial extraction was performed by searching the PCS using reported Standard Industrial Classification (SIC) codes used to describe the primary activities occurring at the site. Specifically, EPA used the following SIC Codes: 0273Animal Aquaculture and 0921 Fish Hatcheries and Preserves.

EPA identified a total of 1,174 concentrated aquatic animal production facilities in the PCS database which does not include the number identified in the screener. Some of these facilities may have permits, but are not in the PCS database. Based on the NPDES permits found in the PCS database, EPA estimates that 377 facilities have active permits (*i.e.*, facilities that are still in business and are required to be permitted).

EPA selected a sample from this universe of dischargers. The Agency then reviewed NPDES permits and permit applications to obtain information on facility type, production methods and systems, species produced, and effluent treatment practices for each of the aquatic animal production sectors. EPA used this information as part of its initial screening process to identify the universe of AAP facilities that would be covered under the proposal. In addition, this information was used to better define the scope of the information collection requests and to supplement other information collected on waste management practices in the industry. EPA will continue to refine its estimates of direct dischargers to further incorporate information from the PCS database.

3. Discharge Monitoring Reports

The Agency collected long-term effluent data from facility Discharge Monitoring Reports (DMRs) to supplement the PCS database in an effort to perform a check on the achievability of today's proposed requirements. DMRs summarize the quality and volume of wastewater discharged from a facility under a NPDES permit. DMRs are critical for monitoring compliance with NPDES permit provisions and for generating national trends on Clean Water Act compliance. DMRs may be submitted monthly, quarterly, or annually depending on the requirements of the NPDES permit.

EPA extracted discharge data and permit limits from these DMRs to help identify regulated pollutants and to identify better performing facilities. EPA was able to collect DMR information on a total of 157 facilities. Of those 157 facilities, EPA was able to identify 57 flow-through and 2 recirculating systems for which basic facility characteristics are available. EPA does not have sufficient information on the facility characteristics for the remaining 98 facilities. EPA collected 38,096 data points on 126 separate pollutant parameters (including nitrogen, phosphorus, solids, flow, chemicals such as formalin, diquat, and copper).

Indirect dischargers file compliance monitoring reports with their control authority (*e.g.*, POTW) at least twice per year as required under the General Pretreatment Standards (40 CFR 403) while direct dischargers file discharge monitoring reports with their permitting authority at least once per year. EPA did not collect compliance monitoring reports for CAAP facilities that are indirect dischargers because: (1) A vast majority of CAAP indirect dischargers add only small volumes of wastewater to POTWs and typically do not discharge toxic compounds and (2) this information is less centralized and much harder to collect.

F. Summary of Public Participation

EPA encouraged the participation of all interested parties throughout the development of the proposed aquatic animal production effluent limitations guidelines and standards. EPA conducted outreach to the major trade associations via the JSA/AETF (participants include producers, trade associations, academics, federal and state agencies and environmental organizations). EPA also participated in several JSA/AETF meetings and gave presentations on the status of the regulation development. EPA also met with environmental groups, including the Natural Resources Defense Council, concerning this proposal.

In the development of the surveys, which were used to gather facility specific information on this industry, EPA consulted with the various JSA/AETF technical subgroups to ensure that the information being requested was asked for in such a way as to be understandable and that it would be available in the form requested.

EPA also met with representatives from USDA, FDA, National Marine Fisheries Service (NMFS) of Department of Commerce and United States Fish and Wildlife Service (USFWS) of Department of Interior to discuss this regulation. EPA met with the Animal and Plant Health Inspection Service (APHIS) of USDA to discuss potential regulations related to aquatic pathogens. EPA met with FDA's Center of Veterinary Medicine to discuss the new drug approval process. EPA met with NMFS and USFWS representatives to discuss non-native species and the regulatory authority various agencies have over non-native species. EPA met with representatives from State and local governments to discuss their concerns with concentrated aquatic animal production facilities and how EPA should evaluate options to regulate discharges from these facilities.

EPA learned about the regulatory framework that some of these agencies operate under. Specifically, EPA's discussion with USFWS focused on intentional and unintentional introductions and what authority USFWS has to control unintentional releases of non-native species. In discussions with FDA, the major concern raised was the use of investigational new animal drugs and extra label use of drugs.

V. Scope/Applicability of Proposed Regulation

EPA solicits comments on various issues regarding applicability of today's proposed national effluent limitations guidelines and standards. The following discussion descibes the applicability for three subcategories of concentrated aquatic animal production facilities that would be subject to the regulations proposed today.

A. Facilities To Be Subject to 40 CFR Part 451

EPA is proposing new effluent limitations guidelines and standards for three subcategories of the concentrated aquatic animal production industry: Flow-through systems, recirculating systems, and net pens. EPA does not propose to establish effluent limitations for CAAP facilities in any subcategory that produce cold water species with annual production between 20,000 pounds and 100,000 pounds annually. EPA also does not propose to establish effluent limitations guidelines for floating and bottom culture systems for molluscan shellfish (*e.g.*, mussel rafts) or for ponds, but EPA does invite comment on whether EPA should regulate rapid drain discharges from such ponds. EPA does not propose categorical pretreatment standards for any production subcategory.

B. Facilities Not Subject to 40 CFR Part 451

EPA developed the production rate thresholds based on 1998 Census of Aquaculture data and the AAP screener survey data, which was available prior to proposal. EPA used six production size categories that correspond with the revenue classifications used in the 1998 Census of Aquaculture (*i.e.*, $1,000–$24,999; $25,000–$49,999; $50,000–$99,999; $100,000–$499,999; $500,000–$1,000,000; and >$1,000,000) to develop model facilities representing these size ranges for each species evaluated. EPA also used these size ranges to group facility production data reported in the AAP screener surveys. EPA used national average product prices taken from the 1998 Census of Aquaculture to estimate the production (in pounds) for the dominant species that were reported grown in flow-through (*e.g.*, trout, salmon, tilapia) recirculating (*e.g.*, tilapia, hybrid striped bass) and net pen (*e.g.*, salmon) systems. For alligator systems reported in the AAP screener survey, data from industry reports was used to estimate production value and create groupings of the facilities. EPA used these size classification groupings to more accurately estimate costs, loadings, non-water quality impacts (NWQIs), and economic impacts of the proposed limitations and standards for each of the size classifications within the various species (or aquatic animal types) cultured inthis industry. That is, rather than assume one model facility for each of the three regulatory subcategories, EPA used a minimum of 6 model facilities for each facility type (*e.g.*, commercial, government, research) and species size combinations (*e.g.*, fingerlings, stockers, food size) for better accuracy in its analyses (*see* also CAAP Development Document for further details on how these production based thresholds were developed). EPA applied these size classifications to the AAP screener survey data to derive the model facility characteristics that have been used to support this proposed regulation.

In evaluating the AAP screener survey data related to facility annual production, EPA identified several variables distinguishing various types of facilities. Aquatic animal production facilities varied by type of facility operation (*i.e.*, species and production method) and type of wastewater management (*e.g.*, direct discharger, indirect discharger, no discharge/wastes applied to land on site). EPA identified annual production levels (by mass) at facilities and then identified the corresponding model facility. For the purposes of estimating costs, loads, economic impacts and Non Water Quality Impacts (NWQIs), EPA only considered the data for the model facilities that would meet the definition of a CAAP facility as defined in 40 CFR 122.24 and appendix C to part 122. EPA invites comments on the appropriateness of using this method of estimating production thresholds to characterize concentrated aquatic animal production facilities and to determine applicability of the proposed regulations.

The production-based threshold in today's proposal were based on a determination that the facilities below this threshold would likely experience adverse economic impacts if they were subject to the proposed requirements. EPA made this determination based on the results of the model facility analysis and thus would likely find the regulations not economically achievable. As described above, the model facilities represent specific size ranges (in pounds) derived from annual revenue ranges from the 1998 Census of Aquaculture, using price data. Most of the impacts that EPA identified would adversely affect trout producers below the 94,000 pounds annual threshold. Therefore, the Agency proposes to establish the applicability threshold for this effluent guideline at 100,000 pounds annually based on the trout model facility. EPA believes it would needlessly complicate the regulation, with little corresponding environmental benefit, to try to establish different applicability thresholds for different species. EPA believes this applicability threshold is reasonable and will minimize the adverse economic impacts that would be imposed by this proposed regulation. See Section IX of this notice for a more detailed discussion of the economic impact analysis. EPA intends to conduct more detailed evaluations of potential thresholds using responses to the detailed survey. Further evaluation may warrant a change in the proposed production-based applicability threshold.

Most smaller CAAP facilities (*i.e.*, those producing below the applicability threshold) are not included within the scope of today's proposal for a number of reasons: (1) Small CAAP facilities, as a group, discharge less than 18% of the total suspended solids (or 1.1 million lbs/year) and less than 18% of the nutrients and BOD (or 1.1 million lbs/year) when compared to all discharges from the entire CAAP industry; (2) EPA determined that only a limited amount of loadings removal would be accomplished by improved treatment at the BPT/BAT level of control; and (3) EPA estimated that the small facilities would experience compliance costs that exceeded 5% of their revenues which is higher than for large facilities. Therefore, EPA is not proposing limitations and standards for discharges from the smallest facilities. Instead, an NPDES permit for such a smaller facility that is defined as a CAAP facility under the NPDES regulations would include limits based on the "best professional judgment" of the permit writer.

As explained above, EPA's proposed applicability is based on the screener data available for this proposal. EPA invites comment on these estimates and conclusions based on modeled data, especially because EPA is aware that many permitted flow-through facilities producing less than 100,000 pounds of cold water species in Idaho, in fact, can achieve similar requirements that EPA is proposing for large facilities. EPA invites comment on the cost-reasonableness of lower cost BMP plans for smaller facilities (*e.g.*, BMP option without numeric limits on TSS). EPA will re-evaluate this size threshold based on new data (*i.e.*, the detailed survey responses) and intends to invite comment on that data in a notice in the **Federal Register**. EPA is also soliciting comment on alternative size thresholds

at different production levels. A supplemental analysis in the record (CAAP Economic Analysis) compares the proposed size categories in terms of costs, pollutant removals, and economic impacts on the affected facilities. EPA specifically is requesting comment on how alternative thresholds might be justified using the factors discussed above (*e.g.* economic impact, small pollutant loadings, *etc.*) and/or other relevant factors.

By today's action, EPA also does not propose effluent limitations guidelines and standards for certain species/production system combinations for reasons unrelated to economics, specifically, either because EPA does not believe the species/production system adds more than trivial amounts of pollutants or because no feasible pollutant control technologies are available to reduce pollutant loads in more than *de minimis* amounts. EPA is not proposing regulations for discharges from:

—*Ponds.* The culture of aquatic animals in ponds requires high quality water to sustain and grow the aquatic animal crop. For many aquatic animals raised in ponds, the pond itself serves as a natural biological treatment system to reduce wastes generated by animals in the pond (including excess feed, manure, and dead aquatic animals). The NPDES regulations for warm water concentrated aquatic animal production facilities exclude discharges from "closed ponds which discharge only during periods of excess runoff" and does not apply to facilities that discharge less than 30 days per year. Given these circumstances, and given that overflow pipes in ponds tend to drain passively from the top surface of the pond, discharges due to excess runoff should be of comparatively high water quality. As such, EPA does not propose nationally-applicable effluent guidelines regulations for pond system discharges related to sediment, erosion, nutrients, or feeds. See section VIII for additional discussion on pond systems. EPA invites comment on its proposal not to adopt ELGs for ponds. In addition, EPA specifically invites comments on effluent limitations related to the use of drugs and chemicals in ponds should be considered, BMPs related to escapement of non-native aquatic animal species raised in ponds, and limits to control discharges from the technique of rapid pond drainage used in certain pond production systems, particularly shrimp, should be considered.

—*Lobster pounds.* Intertidal impoundments are used for live storage of marine crustaceans (*e.g.*, lobsters, crabs, *etc.*) to keep wild caught animals alive pending sale. EPA is not proposing nationally-applicable effluent limitations regulation at this time for lobster pounds because the Agency has not found any applicable pollutant control technologies to reduce discharges, EPA continues to evaluate BMPs that might apply for these types of facilities (see AAP Technical Guidance Manual). EPA invites comment, however, on whether controls and/or reporting of the use of drugs and chemicals that EPA is proposing for other production systems would be appropriate for intertidal pounds.

—*Crawfish.* Crawfish are typically raised in conjunction with plant crops, as part of a rice, soybean, crawfish crop rotation because crawfish maintain aeration of the growing media. EPA is not proposing nationally-applicable effluent limitations guidelines regulation for discharges associated with crawfish operations because crawfish producers do not add feed, drugs, or chemicals to manage the crawfish operations and because any associated pollutants tend to be assimilated with the soils used to grow plant crops. EPA invites comment on not proposing regulations for discharges associated with production of crawfish.

—*Molluscan shellfish production in open waters.* For large-scale production of molluscs for food, operators typically use bottom culture, bottom anchored racks, or floating (but tethered to the bottom) rafts in open waters. Because such operations do not typically add materials to waters of the United States, and because EPA has not found any generally-applicable pollutant control technologies to reduce any discharge, the Agency is not proposing effluent limitations guidelines and standards for discharges from open water mollusc culture. EPA notes that molluscs are filter feeders and, in some cases, are recommended not only as a food source, but also a pollution control technology in and of themselves. Molluscs remove pollutants from ambient waters via filtration. EPA also is aware that molluscs have been incorporated into polyculture aquatic animal production operations to minimize discharges of pollutants. EPA invites comment on not proposing regulations for open water molluscan production.

—*Aquariums.* Public aquariums are AAP facilities that display a variety of aquatic animals to the general public and conduct research on many different threatened and endangered aquatic species. EPA has determined, through the AAP screener survey and site visits, that most aquariums are indirect dischargers and if these facilities discharge directly into waters of the U.S., it is only done in emergency situations requiring rapid dewatering of tanks. These systems maintain low stocking densities and very clean, clear water to enhance the visual display of the animals. Discharges from aquariums are likely to be low in TSS and nutrients because of the low stocking densities. Because most of the drugs used to treat stressed or ill animals are injected directly into the animal, EPA believes that discharges of drugs would be minimal. Few chemicals are used and include pH buffers and chemicals used to make artificial sea salt. Based on these preliminary evaluations, EPA proposes no regulation for discharges from these types of operations. EPA is exploring the potential releases of drugs and chemicals and technologies that can and are being used to remove drugs and chemicals through the detailed survey. Pending results from the detailed survey, EPA solicits comments on whether this regulatory approach is appropriate and also requests any data on the use of drugs and chemicals in public aquariums.

—*Alligators.* EPA evaluated screener survey data to determine the scope of the alligator industry and the range of treatment technologies that are currently used. Alligator production facilities range in size from producers with less than 100 animals to some with many thousands of animals. As described through contacts with industry experts (Hochheimer 2002d DCN 61794), alligator production facilities do not discharge effluents from their aliigator production systems. Instead, effluents are treated in one or two-stage lagoons and then land applied to crop or forested land. EPA intends to verify this through the collection of detailed survey information. Based on this information EPA believes alligator producers would not meet the definition of a CAAP because they would not exceed minimum threshold of discharging 30 days annually.

—*Alaskan Net Pen Systems.* In Alaska, salmon fry are raised for stocking under an arrangement that does not exist elsewhere in the United States. Non-profit, non-governmental salmon producers raise only native species for the purpose of supplementing natural populations and maintaining Alaska's fishing industry. Producers raise salmon in flow-through systems, which are transferred to net pen systems as they mature. Net pen rearing of salmon in Alaska occurs primarily for pink and chum salmon for two months of the year (mid-March to mid-May). Fish are placed in the pens weighing about 0.4 grams and reared until they reach about 2.0 grams. The industry reports achieving about a 1:1 feed conversion ratio since added feed is supplemented by naturally occurring zooplankton. Once the fish are released into the ocean the nets and pens are fallow until the following year. The Agency is not aware of any drug or chemical use in these non-profit Alaska net pen system operations. For these reasons the Agency proposes to exclude from today's proposed regulation discharges from the net pen phase of operations at non-profit Alaska salmon production based on the current provisions of Alaska law. The Agency solicits comments on any environmental impacts caused by these net pen facilities, in particular the use of drugs or chemicals such as anti-foulants. EPA may consider requiring these facilities to develop and implement BMP plans similar to the plans included in today's proposal for other net pen discharges in order to minimize the potential discharge of solids and other pollutants associated with net pen systems generally. EPA would consider the costs and economic impacts associated with the development and implementation of BMPs and would provide prior notice and opportunity for public comment on any such costs and impacts in a subsequent notice. The Agency solicits comments on this possible approach.

VI. Subcategorization

A. Factors Considered in Developing Proposed Subcategories

The CWA requires EPA, when developing effluent limitations guidelines and pretreatment standards, to consider a number of different factors. For example, when developing limitations that represent the best available technology economically achievable for a particular industry category, EPA must consider, among other factors, the age of the equipment and facilities in the category, location, manufacturing processes employed, types of treatment technology to reduce effluent discharges, the cost of effluent reductions and non-water quality environmental impacts. See Section 304(b)(2)(B) of the CWA, 33 U.S.C. 1314(b)(2)(B). The statute also authorizes EPA to take into account other factors that the Administrator deems appropriate and requires the BAT model technology chosen by EPA to be economically achievable, which generally involves consideration of both compliance costs and the overall financial condition of the industry. EPA took these factors into account in considering whether to establish subcategories and found that dividing the industry into subcategories leads to better tailored regulatory standards, thereby increasing regulatory predictability and diminishing the need to address variations among facilities through a variance process. See *Weyerhaeuser Co.* v. *Costle*, 590 F. 2d 1011, 1053 (D.C. Cir. 1978).

EPA used published literature, site visit data, industry screener survey data and EPA sampling data for the subcategorization analysis. Various subcategorization criteria were analyzed for trends in discharge flow rates, pollutant concentrations, and treatability to determine where subcategorization was warranted. Equipment and facility age and facility location were not found to impact wastewater generation or wastewater characteristics; therefore, age and location were not used as a basis for subcategorization. An analysis of non-water quality environmental characteristics (*e.g.*, solid waste and air emission effects) showed that these characteristics also did not constitute a basis for subcategorization (*see* Section XI).

Facility size (*e.g.*, acreage, number of employees, production rates) directly affects the effluent quality, particularly the quantity of pollutants in the effluent and size was used as a basis for subcategorization because more stringent limitations would not be economically achievable for smaller aquatic animal production facilities (*see* Section V for definition of "small" and "non-small" facilities for each subcategory). See SectionV for a description on how and why EPA established production based thresholds for CAAP facilities.

EPA also identified types of production system (*e.g.*, pond, flow-through system, net pen, etc) as a determinative factor for subcategorization due to variations in operating practices, quality and quantity of effluent type and discharge frequency. Based on the results of an initial evaluation, EPA determined that using the production system employed at each facility most appropriately subcategorizes the CAAP industry. Additional subdivision was evaluated to better characterize the influence of water management strategies on discharge frequency, volume, and quality.

When subcategorized by production system, the AAP industry consists of six major subcategories: Pond systems, flow-through systems, recirculating systems, net pens and cages, floating aquaculture and bottom culture, and alligator systems. AAP facilities can be characterized by the relative amount of water used to produce a unit of product, the general design of the facility, and the processes used to treat production water. Wastewater flow rates, water usage, and water requirements and characteristics are considered similar within each subcategory.

EPA's analyses indicate that, in most cases, species is not a significant factor in determining differences in production system effluent characteristics. The management practices for a particular species dictate stocking densities, feed types, feeding rates and frequencies, and the overall management strategy. Species, however, does not appear to be a major determinant in the quality or quantity of effluent from the particular type of production system.

The following section describes the proposed Concentrated Aquatic Animal Production industry subcategorization.

B. Proposed Subcategories

In today's notice, EPA proposes new limitations and standards for facilities in the following CAAP subcategories: flow-through systems, recirculating systems, and net pens. EPA developed the proposed limits based on the differences in quality and quantity of discharges from these types of facilities. Flow-through systems tend to have high effluent flows. Some facilities may treat two discharge points: a bulk discharge and a discharge from a settling basin referred to as off-line settling. The solids generated from the production process are collected and treated in the basin through settling. The discharge from the off-line settling basin is small in volume and more concentrated in pollutants such as TSS, BOD, or nutrients. Other facilities opt to treat their entire discharge (full flow settling) which includes the solids generated from the production process. Recirculating

systems have relatively small effluent volumes of treated effluents that are high in TSS, BOD and nutrients. Net pen systems discharge TSS, BOD and nutrients directly to receiving waters. See Section III. EPA chose to further segment the subcategories by facility size (*i.e.* by the amount of aquatic animals produced) because of economic considerations (see Section IX).

VII. Control Technology Options, Costs, Wastewater Characteristics, and Pollutant Reductions

A. Description of Wastewater Treatment Technologies and Management Practices in the CAAP Industry

Most of the wastewater treatment technologies and management practices evaluated as options for AAP facilities are potentially applicable to all of the system subcategory types, including (1) feed management; (2) health management; (3) control of non-native species escapes; (4) drug and chemical use management; (5) water quality monitoring; (6) primary solids settling; (7) disinfection; and (8) additional solids removal. The following is a description of each of these treatment technologies and management practices as they apply to all systems followed by a description of any system-specific practices evaluated. The descriptions of the practices below, however, do not necessarily reflect what EPA proposes to require.

1. Treatment Technologies and Management Practices Considered for All Systems

a. Feed Management. Feed management recognizes the importance of effective, environmentally sound use of feed. All AAP operators should continually evaluate feeding practices to ensure that feed placed in the production unit is consumed. It is important to eliminate excess feeding to reduce the input of solids and nutrients in the production unit. The goal of good feed management is to increase the ability of fish to efficiently convert food to flesh. By observing feeding behavior and noting the presence of excess feed, operators can adjust feeding rates to ensure minimal excess and waste. Use of high quality feed that meets the nutritional requirements of the species being cultured can also help to minimize excess feed. Proper storage and handling can be important for some types of feed in order to reduce the production of small feed particles (or fines) that most animals will not eat. Uniform feeding applications are another tool for achieving effective feed management. Feeding as much of the rearing unit (*e.g.*, pond, raceway, or tank) surface as possible to ensure that all of the animals have feed available to consume prevents waste and improves the quality of fish production. Because feed is the most expensive production input for most facilities, operators have a strong financial incentive to minimize excess feed.

b. Health Management. As a practice to promote health management, some operators have developed health management plans that include an assessment of the potential animal health problems that may be encountered at a facility and the environmental problems that may result from disease outbreaks. The plan outlines the actions needed to minimize the impacts of disease outbreaks, including the use of drugs and chemicals.

As part of health management practices, AAP facility operators sometimes conduct health screenings by collecting samples of the cultured species and screening for diseases, parasites, and body weight. Health screening allows for the early detection of certain diseases and parasites, which would otherwise not be detected until the outbreak had spread through the cultured population. Most States have disease diagnostic services available to assist in screening aquatic animals and identifying potential problems. Measuring weight allows producers to evaluate general health, determine how well the crop is performing, and constantly update the feeding regimes so that the most efficient feed rates are used. Health screening can also reduce the need for medicated feeds by detecting the disease problems early. However, health screening can be expensive and its effectiveness is highly site- and species-specific. Operators have a strong financial incentive to conduct health screening to the extent that it is cost-effective at their facility.

Mortality of the cultured species in small numbers is a common occurrence in aquaculture systems. Mortality removal is another health management practice that helps prevent the spread of disease and the introduction of excess pollutants into the system. Many of the mortalities float to the surface of the culture water and can be collected by hand or using nets.

c. Control of Non-Native Species Escapes. When culturing non-native species, it is important to control escapes of the cultured animals if there is a potential for adverse impact on wild populations. Where this potential exists, it can be minimized by the preparation of a non-native species escapement plan to address control of escapes. This plan would include a mechanism to minimize or prevent the potential for escapement. Some examples in existing plans include screens or other barriers over discharge pipes to prevent escapement of aquatic animals, use of double nets in net pen operations, and training of employees to carefully transfer fish when moving or harvesting animals to prevent escapes.

EPA is considering requiring CAAPs to report escapes of non-native species to the permitting authority. With this information, the permitting authority, in coordination with the state agency responsible for fisheries, the U.S. Fish and Wildlife Service (USFWS), and/or the National Marine Fisheries Service (NMFS) would evaluate the potential for the escaped fish to become established and cause ecological harm. Timely notification of any escapes would allow the State, USFWS, or NMFS to take measures to control the spread of the non-natives.

EPA is also considering banning the intentional release of any non-native species with the potential to cause adverse impacts on wild species from CAAPs. EPA is aware of the possibility that non-native species may be intentionally released, especially from net pens, if they are not growing rapidly enough to justify continued feeding. States or USFWS would determine which species the ban would be applied to.

EPA is soliciting comment on the appropriateness and efficacy of a ban on intentional releases, the appropriate entity to define which species the ban should be applied to, and the practicality of reporting requirements for escaped non-native species. EPA is aware of the concern that national ELGs under the CWA may not be an effective mechanism to address non-native species, since many facilities would be outside the scope of the ELGs.

d. Drug and Chemical Use. Facility operators may develop drug and chemical plans that list all of the drugs and chemicals that will be used, the conditions for use, safe handling and storage practices, and actions being taken to minimize their use (*e.g.*, maintaining water quality to minimize stress).

EPA is evaluating whether to include a whole effluent toxicity (WET) test as a screening step for potential adverse environmental effects when a facility uses investigational new animal drugs or an extra label use drug. EPA solicits comment on: (1) The use of WET tests to determine any toxic effects that the addition of drugs could have on the receiving water body, (2) when such a test might be appropriate (*e.g.*, to reflect

how the investigational drug use might otherwise impair local benthos) and (3) choice of test species.

e. Production Unit Water Quality Monitoring. Water quality monitoring of the production unit water helps ensure that conditions are optimal for the species being cultured. Good water quality minimizes stress, which reduces the number of disease outbreaks. Routine monitoring, especially for dissolved oxygen, ammonia, nitrite, alkalinity, pH, and other key parameters will promote the health of the fish. For flow-through and net pen systems, the volume of water that flows through a system on a daily basis is quite large and the quality of the process water changes slowly, if at all. For these systems, once a baseline of water quality is determined, the operator rarely needs to monitor process water quality. Because pond and recirculating systems can have variable water quality, routine monitoring will also help system operators monitor the quality of potential effluent from the system.

f. Primary Solids Control. Solids, which come from feces and uneaten feed, are the largest mass of pollutants generated in CAAP facilities. There are several technologies that can be used for primary solids removal from process waters, in addition to BMPs to control solids generated at CAAP facilities. The general strategy is to combine BMPs with the removal of solids from the bulk waste stream as efficiently as possible and to treat these solids in an environmentally sound way.

Ponds continually process solids by a combination of physical (settling in pond) and biochemical (microbial decomposition of solids) processes. Since high production AAP pond facilities use additional aeration to keep the ponds well mixed and aerated, the processing of solids in ponds results in low organic content solids that accumulate on the pond bottom that can be periodically used to rebuild pond banks. As a result of the long residence times of water and the accumulating solids in a pond system, EPA believes in-pond solids settling to be an effective form of primary solids control.

In flow-through systems, quiescent zones and other in-system solids collection practices help reduce TSS and associated pollutants in the effluent. The water velocities in most flow-through systems are rarely high enough to keep solids entrained in the water column. The swimming action of the cultured fish or the use of baffles to increase tank bottom water velocities, however, tend to keep most of the solids suspended in the effluent of the flow-through system. Quiescent zones are an effective way to enhance solids settling in flow-through systems, though they do reduce the production capacity of the system.

Because flow-through system animal production capacity is governed by the flow rate of water into the rearing unit and species type and stage of growth, most raceway flow-through systems utilize excess tank volume for installing quiescent zones, which use approximately 10% of the bottom of the raceway as a settling area for solids (Hochheimer, 2002a, DCN 61791). Quiescent zones usually have a wire mesh screen, which extends from the bottom of the raceway to above the maximum water height to prohibit the cultured species from entering the quiescent zone. When the quiescent zones are cleaned, the solids collected in the system are moved to the sedimentation basin for solids holding and dewatering. This is called off-line settling. The goal of sedimentation basins (referred to as off-line settling basins or OLSBs) is to collect and store the solids captured in the quiescent zone. Some facilities use sedimentation basins which are larger than those designed for offline settling for treating all of the flow from the raceway. This is called full flow settling.

EPA believes most flow-through systems collect solids in quiescent zones and remove this concentrated solids stream to a settling basin for further treatment. The water that is decanted off this settling basin at many facilities is commingled with the full flow discharge from the production system to be discharged through a single outfall. EPA is proposing to establish monthly average and daily maximum limits that would apply to the commingled effluent. EPA is also proposing to allow, at the permitting authority's discretion, facilities to comply with the TSS limits through development of a BMP plan designed to meet the limits without having to monitor discharges to demonstrate compliance. EPA solicits comment on this compliance alternative that would allow compliance with a BMP plan designed to minimize sediment discharges that was not explicitly tied to particular numeric limits.

g. Disinfection. Another water treatment technology option is disinfection, which is used to remove most of the pathogens (both aquatic animal and human health) from the effluent stream. Disinfection is a process by which disease-causing organisms are destroyed or rendered inactive. EPA's sampling events found elevated levels of some indicator pathogens in effluents from sedimentation basins and solids storage facilities. Disinfection was evaluated as a way to reduce the discharge levels of these indicator organisms.

Disinfection is most often accomplished using bactericidal agents. Three commonly used bactericidal agents are chlorine, ozone (O_3), and ultraviolet (UV) radiation (disinfection with UV light). Chlorination, the use of chlorine, is the most commonly used method of disinfection in the United States. Chlorine and ozone function by being added at a concentration that effectively disinfects the discharge stream. UV radiation disinfects by penetrating the cell wall of pathogens with UV light and completely destroying the cell or rendering it unable to reproduce.

h. Additional Solids Removal (Solids Polishing). Solids polishing is the use of a secondary wastewater treatment technology to further reduce solids discharged from flow-through and recirculating systems. Several technologies are available, including microscreen filters and polishing ponds. Microscreen filters are fine mesh filters with automatic backwash that collect solids. Polishing ponds are secondary sedimentation basins used to settle solids from the discharge of the primary sedimentation basin.

Vegetated ditches are another effective means removing solids from effluent. A vegetated ditch is an excavated ditch that serves as a discharge conveyance, treatment, and storage system. The walls of the ditch are excavated at an angle that supports the growth of a dense vegetation layer. The vegetation layer aids in treating the discharge and reduces the susceptibility of the ditch banks and bottom to erosion. The length and width of the ditch are designed to allow for the slowing and temporary storage of the discharge as it flows toward the receiving water body. The vegetation layer increases the ability of the ditch to remove both coarse and fine particulate matter and the associated pollutants, such as BOD, settleable solids, and suspended solids.

Constructed wetland treatment systems also promote solids removal from pond system discharges. These systems consist of shallow pools constructed on non-wetland sites with water at depths of usually less than 2 feet. Constructed wetlands provide substrate for specific emergent vegetation types such as cattail, bulrush, and reeds. Constructed wetlands are designed to treat discharges through physical, chemical, and biological processes. The vegetation causes the discharge to slow and flow in a more

serpentine manner, increasing the likelihood of solids settling. The vegetation also aids in the adsorption of potential pollutants through plant and bacterial uptake, and it increases the oxygen level in the discharge flowing through it. Constructed wetland treatment systems can be designed to provide several different benefits, including treatment of the discharge through biological and chemical processes, temporary storage of discharges, recharge of aquifers, and reduction in discharge volume to receiving water bodies.

2. Specific System Treatment Technologies and Practices

In addition to the technologies and practices evaluated for all system types described in the previous section, EPA considered system specific technologies and practices. The technologies and practices that will be discussed in this next section apply to pond and net pen systems only because those practices applying to other systems are covered by the items in the previous section.

a. Pond Systems. 1. In-pond treatment (including aeration). The objective of in-pond treatment is to use the natural carrying capacity of earthen ponds to process the solids, nutrients, and other compounds added to the pond water in the form of feed and chemicals for maintaining water quality or animal health. When operated within the limits of their carrying capacity, ponds can remove over 90% of solids, phosphorous, and BOD, and over 70% nitrogen. Mechanical aeration is used to enhance the natural assimilative processes of the pond by raising dissolved oxygen levels and provides mixing of the pond waters. Improving the quality of the water in the pond improves the quality of any discharge leaving the pond.

2. Water management. Water management practices maintain the pond water quality while minimizing pond overflows and drainage discharges. One water management practices is not completely filling the pond to the top. This allows the pond to store extra water during rainfall events without overflowing. By leaving 3–6 inches in reserve, pond operators can capture some or all rainfall. Another water management practice is the infrequent draining of the ponds. This practice reduces the volume of discharge from the pond and minimizes water use. The use of seine nets (where practicable) to harvest ponds instead of draining the ponds for harvest is another practice that improves water quality in the pond. Pond facilities can also improve water quality by minimizing erosion to reduce the amount of sediment in the water. To minimize erosion, pond operators can use rip rap for pond banks, although this may cause other problems such as interference with feeding and aeration equipment or providing habitat for pests (*e.g.*, snakes). Use of grass and other vegetation also reduces erosion into the pond. Rapid repair of accidental damage to pond banks from emergency aeration equipment or feeding operations will reduce additional erosion. Finally, when possible, pond operators replace deep water overflows, which discharge excess volume from the bottom of the ponds, with surface overflow structures. Waters discharged from the bottom of the pond have higher levels of dissolved nutrients and sediments than waters discharged from the surface.

3. Discharge management. Discharge management practices reduce TSS, in effluents and erosion, that discharges from ponds to surface waters. Several practices can be used to reduce TSS and other pollutants that reach receiving waters during draining and overflow events. Riprap sometimes is placed around discharge points that are prone to erosion to reduce scouring from the flowing water. Drainage ditches can be constructed to convey water efficiently and minimize erosion, as does the addition of vegetation to outside slopes of ponds, drainage ditches, and other bare soil areas. Pond operators also use vegetated ditches, at least 600 feet or longer when possible, to trap TSS, BOD, and reduce nutrient loads that would otherwise discharge off site.

b. Net pen Systems. 1. Active Feed management. In addition to the above practices, particularly the drug and chemical control practices, net pen facilities can also use underwater cameras or other technologies to monitor feeding rates in the net pens by identifying when excess accumulation of solids occur. Excess feed is the primary source of solids accumulation beneath net pens, which can have an adverse effect on the benthic community. Some net pen facilities are already monitoring feeding activities though the underwater and other mechanisms.

B. Water Use and Wastewater Characteristics

1. Water Use

The quantity of water required for aquaculture is dependent on the type of aquaculture system and facility management practices. For aquaculture facilities, water is required to replace evaporative and seepage losses, to replenish oxygen, and to flush waste from the system.

Water supplies for ponds are typically wells, located on-site at a facility. However, some pond-based facilities rely on pumped or free-flowing water from surface water bodies such as lakes, streams, or coastal waters. Pond operators relying on surface waters, however, are careful not to introduce undesirable species or organisms into the culture ponds. Water might need to be screened or filtered as it is pumped into the pond. Rainwater falling directly on the pond is also captured and can be a source for maintaining water levels, but most commercial aquaculture ponds cannot be filled with rainfall alone because rainfall events are sporadic.

Pond systems initially require a large supply of water to fill ponds and then small amounts of water to regulate the water levels and compensate for seepage and evaporation. Generally, ponds are drained infrequently. Therefore, after initially filling the ponds, operators do not use large volumes of additional water. For those systems that rely on well water, water conservation and rainwater capture are important management tools to minimize pumping costs.

Flow-through systems rely on a steady water supply to provide a continuous flow of water for production. The water is used to provide dissolved oxygen and to flush wastes from the system, which produces a high volume of continuous discharge. Most flow-through systems use well, spring, or stream water as a source of production water. These sources are chosen to provide a constant flow with relatively little variation in rate, temperature, or quality.

Flow-through systems require high volumes of water. Facilities with this production system are located where a consistent volume of water is available. They are the primary method used to grow salmonid species such as rainbow trout. These species require high-quality cold water with high levels of dissolved oxygen. Flow though systems are located where water is abundant, enabling producers to efficiently produce these types of fish.

Recirculating systems do not require large volumes of water because water in these systems is filtered and reused prior to discharge. The production water treatment process is designed to minimize fresh water requirements, which leads to small-volume, concentrated waste streams, which tend to be discharged daily. Solids removal from the recirculating production water produces some effluent volume that is high in solids, nutrients, and BOD. Facility operators rely on a supply of

pumped groundwater from on-site wells. Most systems add make-up water (about 5 to 10 percent of the system volume each day) to dilute the production water and to account for evaporation and other losses.

Net pen systems rely on the water quality of the site at which the net pens are located. Open systems, like net pen facilities, can implement fewer practices than closed or semi-closed systems to control water quality parameters like temperature, pH, and dissolved oxygen. Net pens and cages rely on tides and currents to provide a continual supply of high-quality water to the cultured animals and to flush wastes out of the system. The systems may be located along a shore or pier or may be anchored and floating offshore or in an embayment. State or Tribal siting requirements typically restrict the number of units at a given site to ensure sufficient flushing to distribute wastes and prevent degradation of the bottom sediments near the net pens.

2. Wastewater Characteristics

CAAP facilities may discharge a variety of pollutants. For example, pollutants commonly found in CAAP effluents are nitrogen, phosphorus, organic matter, and solids, many of which are derived either directly or indirectly from feeds. Other factors, in addition to feed added, affecting the levels or types of pollutants in CAAP facilities may be from the source waters such as pollutants picked up in runoff from a watershed when surface waters are used as sources. The most significant of these pollutants are nutrients (nitrogen and phosphorus), total suspended solids (TSS), and biochemical oxygen demand (BOD). CAAP facilities also may discharge vitamins and minerals added to feeds for proper nutrition, drugs to maintain animal health, and chemicals to enhance water quality conditions. Some toxic and non-conventional pollutants that may be discharged in small quantities from some types of CAAP facilities include: metals (aluminum, barium, boron, copper, iron, manganese, selenium, and zinc), and organic chemicals (hexanoic acid), and microbiologicals (*Aeromonas*, fecal streptococcus, total coliform).

Solids are the largest loading of pollutants generated in aquaculture. However, most pond systems are managed to capture and hold solids within the pond, where the solids naturally degrade. Additionally, certain management practices in use at flow-through and recirculating systems capture most of the generated solids, which must then be properly disposed. While some solids are applied to land, solids in effluent discharges from ponds have been estimated. Estimates of TSS discharges from catfish farms were 5,170 lbs/acre/year for fry and fingerling ponds and 2,418 lbs/acre/year for food fish production from ponds that are drained frequently. (Boyd, 2000, DCN 30313). Many aquaculture facilities with NPDES permits must control and monitor their discharge levels of solids. In Idaho, NPDES permits for flow-through systems typically specify a maximum average of 0.1 mL/L for settleable solids and 5 mg/L for total suspended solids (TSS).

Nitrogen from CAAP facilities is discharged mainly in the form of nitrate, ammonia, and organic nitrogen. Most of this nitrogen, however, is in the form of ammonia. Some facilities with ponds and recirculating systems also may, at certain times, have high levels of nitrite. Organic nitrogen decomposes in aquatic environments into ammonia and nitrate. This decomposition consumes oxygen, reducing dissolved oxygen levels and can adversely affect aquatic life, particularly when nitrogen levels are high enough for the decomposition to occur. Phosphorus is discharged from CAAP facilities in both the solid and dissolved forms. The dissolved form, however, poses a more immediate risk because it is the form that is available to accelerate the growth of plants. Although the insoluble form of phosphorus is generally unavailable, depending on the environmental conditions, some phosphorus may be released slowly from the insoluble form.

Increased levels of suspended solids and nutrients have very different effects on aquatic plants. High levels of suspended solids may kill off desirable species, while elevated nutrient levels may cause too many plants to grow. In either situation, an ecosystem can be changed by increases in either or both of these pollutants.

Carbon-based organic matter is discharged from CAAP facilities primarily from feces and uneaten feed. Elevated levels of organic compounds contribute to eutrophication and oxygen depletion. This occurs because oxygen is consumed when microorganisms decompose organic matter. Biochemical oxygen demand (BOD) is used to measure the amount of oxygen consumed by microorganisms when they decompose the organic matter in a waterbody. The greater the BOD, the greater the degree of pollution and the less oxygen available.

Some of the other pollutants that may be in CAAP effluents include therapeutic drugs, process water treatment chemicals, escaping non-native animals, and aquatic animal pathogens. There are a few drugs that are FDA approved for use in aquatic animal production including antibiotics, antifungal agents, and parasiticides. Investigational new animal drugs pose an unknown threat to receiving waters because they are often untested for environmental impacts.

A variety of chemicals are used in aquatic animal production facilities for the treatment of process water and to maintain water quality. Chemicals like salt, agricultural lime, and sodium hydroxide are added to maintain system pH and reduce stress. Chemicals such as aquatic herbicides are sometimes added to system water to reduce aquatic vegetation and algae. When used properly, these chemicals pose little risk to the aquatic environment, but improper treatments or accidental spillage of chemicals can lead to negative environmental impacts. Aquatic animals that are not considered to be native organisms may carry exotic diseases, interbreed with other desirable native species, and/or destroy the habitat used by the native species. Aquatic animal pathogens may also be exported in effluent water from a CAAP facility, particularly when outbreaks occur inside the facility. In addition, pathogens can enter the facility by other means, such as contaminated source water, bird droppings or stormwater runoff. The effects and potential risks from pathogens in effluents are not well understood.

C. Pollutants of Concern

EPA reviewed four sources of data to assess the pollutants of concern: (1) Data from sampling events at two flow-through facilities; (2) data from a sampling event at a recirculating facility; (3) discharge monitoring report (DMR) data submitted to EPA from the EPA Regional Offices; and (4) permit compliance system (PCS) data from EPA's NPDES permit database.

EPA used two criteria to identify the list of pollutants of concern. For the sampling data, the identification criteria were: (1) Raw wastewaters with analytes that had three or more reported values with an average concentration greater than ten times the nominal quantitation limit (NQL); in general, the term "nominal quantitation limit" describes the smallest quantity of an analyte that can be measured reliably with a particular analytical method; and (2) treated effluents with analytes that had at least one reported value with an average concentration greater than five times the NQL.

For the PCS and DMR data sets, the original data were first associated with

a system type as defined by NPDES permit information. Measurements for parameters in the DMR and PCS data without a value or with a value of zero were excluded from the data sets and assumed to be non-detectable. All other data were summarized, by system type and analyte, with an analysis for the average sampling value, the maximum sampling value, the minimum sampling value, and the number of samples taken.

The PCS and DMR data, made up of mostly State and federal facilities and large commercial facilities that have NPDES permits, represent the best available information. One limitation of the data is the lack of information on pond systems. Generally, the pollutants identified in the DMR or PCS database are included in the list of pollutants of concern listed below.

The pollutants of concern that are currently indicated for the CAAP industry, based on the available data, include the following: TSS, BOD, ammonia, biochemical oxygen demand, chemical oxygen demand, chlorides, chlorine, dissolved oxygen, nitrate. nitrite, oil and grease, orthophosphate, ozone, pH, settleable solids, sulfate, temperature, total dissolved solids, total kjeldahl nitrogen, total organic carbon, total phosphorus, total suspended solids, turbidity, and volatile residue, metals including aluminum, arsenic, barium, boron, calcium, copper, chromium, iron, lead, magnesium, manganese, molybdenum, nickel, selenium, sodium, titanium, vanadium, and zinc, and microbiologicals including *Aeromonas,* fecal streptococcus, fecal coliform, and total coliform, organic chemicals including bis(2-ethylhexyl) phthalate, hexanoic acid, P-cresol, and phenol, and pesticides including diquat and formalin.

1. Methodology for Proposed Selection of Regulated Pollutants

EPA selects the pollutants for regulation based on the pollutants of concern (POCs) identified for each subcategory.

EPA selected a subset of pollutants for which to establish numerical effluent limitations from the list of POCs for each regulated subcategory. Generally, a pollutant or pollutant parameter is considered a POC if it was detected in the untreated process wastewater at 5 times the NQL as described in the previous section in more than 10 percent of samples.

Monitoring for all POCs is not necessary to ensure that Aquatic Animal Production wastewater pollution is adequately controlled because many of the pollutants originate from similar sources and are treated with the same technologies and similar mechanisms. Therefore, it may be sufficient to monitor for one pollutant as a surrogate or indicator of several others.

Total coliform, fecal coliform, E. coli, fecal streptococci, Enterococcus faecium, Mycobacterium marinum, and *Aeromonas* were sampled at two of the sampling event facilities to determine the presence of these indicator organisms in CAAP effluents. Sampling points included influent water, process water, and treated effluents, and solids storage effluents. Most of the data show non-detectable levels of these organisms, including influent water. However, some of the indicators, including *Aeromonas*, total coliform, and fecal streptococcus, had average measured levels greater than 60,000 bacteria/100 mL in effluents from primary settling treatment units. These levels compare to total coliform levels of up to 1 billion bacterial counts/100mL in untreated domestic waste water. EPA evaluated disinfection and found it to be not economically achievable (see section VII). EPA is soliciting comments on the presence of these indicator organisms and whether they can and should be controlled in effluents from CAAP facilities.

Metals may be present in trace amounts in CAAP wastewaters for a variety of reasons. Metals may be used as feed additives, occur in sanitation products, or they may result from deterioration of CAAP machinery and equipment. Although metals may serve useful purposes in CAAP operations, many metals are toxic to algae, aquatic invertebrates and/or fish. EPA observed that treatment systems used within the CAAP industry provide substantial reductions of most metals. Because most of the metals can be adequately controlled by controlling solids, and EPA is proposing control of TSS, EPA is not proposing to regulate metals directly.

Residuals from federally registered pesticides that may be used for controlling animal parasites and aquatic plants, may be present in wastewaters. Most treatment systems within the CAAP industry are not specifically designed and operated to remove pesticides residuals. Many of the pesticide residuals, however rapidly bind to sediment particles. Pollution control technologies or management practices that control TSS are expected also to control most pesticide residuals as well. EPA encourages CAAP facility operators to always follow pesticide label instructions, minimize the use of any aquatic pesticides by preventing aquatic weed problems when possible, maintaining water quality to keep algal blooms in check, and using other means, when possible, to control aquatic weeds. Therefore, EPA is not proposing to regulate pesticide discharges directly from CAAP facilities in today's action.

2. Selection of Proposed Regulated Pollutants for Existing and New Direct Dischargers

EPA is proposing to establish effluent limitations for CAAP facilities for total suspended solids (TSS) with an alternative to use BMPs to control solids. The specific justifications for the pollutants to be regulated for each subcategory are provided below. In general, EPA selected the pollutant or pollutants based on its representativeness of the characteristics of CAAP wastewaters generated in the industry, and its capacity to measure the performance of treatment processes that serve as the basis for the proposed effluent limitations.

Total suspended solids (TSS) is a measure of the quantity of solids in wastewater. Some CAAP facilities produce wastewaters high in organic solids including uneaten feed and fish feces. These solids can cause a high oxygen demand (both chemical and biochemical) and are high in protein and nitrogen content. Because some nutrients bind to solids, and solids often include oxygen-demanding organic material, limiting the loading of solids will prevent degradation of surface waters. EPA believes that by controlling TSS either through numerical limitations or BMPs, BOD and nutrients will also be effectively controlled. Parameters whose control through treatment processes or BMPs would lead to control of a wide range of pollutants with similar properties are generally good indicators of overall wastewater treatment performance.

EPA is considering including BOD limitations in addition to TSS for recirculating systems although limits for BOD are not included in today's proposal. Control of TSS alone may not provide effective control of BOD in the effluent from recirculating facilities. Recirculating facilities are different from flow-through facilities. While the pollutants present in the wastewater from both systems are largely derived from the solids introduced by the animal feed or feces, at flow-through systems the water is flowing through the facility so rapidly there is little opportunity for the solids to break down. Thus, EPA believes that controlling TSS effectively controls the other pollutants present in the wastewater. Recirculating systems,

however, recirculate 90 to 95 percent of their wastewater and treat the water prior to returning it to the production systems. The recirculating system's internal water treatment is designed to remove solids and ammonia and add oxygen. The water recirculation provides an opportunity for other pollutants to become more concentrated and EPA believes that dissolved BOD may become concentrated in recirculating systems. EPA's sampling data indicate that there are elevated levels of BOD in the raw wastewater. The recirculating facility that EPA sampled is using biological treatment to treat its wastewater prior to discharge and has permit limits to control the BOD in their effluent. EPA has not estimated the cost of installing biological treatment at recirculating facilities and does not currently have sufficient data to determine whether this technology is common at other recirculating facilities. EPA will re-evaluate the need to establish BOD limitations after the detailed surveys have been returned. It is also likely that the Agency will conduct additional sampling at recirculating facilities to obtain additional data on the raw wastewater characteristics and the performance of wastewater treatment. EPA solicits comment on the establishment of BOD limits for the Recirculating Subcategory and data on the raw wastewater characteristics as well as any treated effluent characteristics. The CAAP Development Document includes potential values of such BOD limits.

Based on the methodology described above, EPA proposes to regulate pollutants in each subcategory that will ensure adequate control of a range of pollutants from all types of CAAP production systems. EPA is proposing to regulate TSS for control of other pollutants present in CAAP wastewaters such as metals, nutrients and BOD.

3. Approach to Determining Long Term Averages, Variability Factors, and Effluent Limitations Guidelines and Standards

This subsection describes the statistical methodology used to develop long-term averages, variability factors, and limitations for the BPT, BCT, BAT, and NSPS numerical limitations option. The same basic procedures apply to the calculation of all effluent limitations guidelines and standards for this industry, regardless of whether the technology is BPT, BCT, BAT, or NSPS. For simplicity, the following discussion refers only to effluent limitations; however, the discussion also applies to new source standards.

The proposed limitations for pollutants for each option, as presented in today's notice, are provided as maximum daily discharge limitations and maximum monthly average discharge limitations. Definitions provided in 40 CFR 122.2 state that the "maximum daily discharge limitation" is the "highest allowable 'daily discharge' " and the "average monthly discharge limitation" is the "highest allowable average of 'daily discharges' over a calendar month, calculated as the sum of all 'daily discharges' measured during a calendar month divided by the number of 'daily discharges' measured during that month." Daily discharge is defined as the 'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling."

EPA calculated the proposed limitations based upon percentiles chosen with the intention, on one hand, to accommodate reasonably anticipated variability within the control of the facility and, on the other hand, to reflect a level of performance consistent with the Clean Water Act requirement that these effluent limitations be based on the "best" technologies properly operated and maintained. The daily maximum limitation is an estimate of the 99th percentile of the distribution of the daily measurements. The maximum monthly average limitation is an estimate of the 95th percentile of the distribution of the monthly averages of the daily measurements. The percentiles for both types of limitations are estimated using the products of long-term averages and variability factors.

In the first of two steps in estimating both types of limitations, EPA typically determines an average performance level (the "long-term average" or LTA) that a facility is capable of achieving with well-designed and operated model technologies (which reflect the appropriate level of control). This long-term average is calculated from the data from the facilities using the model technologies for the option. EPA expects that all facilities subject to the limitations will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because facilities with well-designed and operated model technologies have demonstrated that this can be done. In the second step of developing a limitation, EPA determines an allowance for the variation in pollutant concentrations when processed through well-designed and operated treatment systems. This allowance for variance incorporates all components of variability including process and wastewater generation, sample collection, shipping, storage, and analytical variability. This allowance is incorporated into the limitations through the use of the variability factors, which are calculated from the data from the facilities using the model technologies. If a facility operates its treatment system to meet the relevant long-term average, EPA expects the facility to be able to meet the limitations. Variability factors assure that normal fluctuations in a facility's treatment are accounted for in the limitations. By accounting for these reasonable excursions above the long-term average, EPA's use of variability factors results in limitations that are generally well above the actual long-term averages.

While the actual monitoring requirements will be determined by the permitting authority, the Agency has assumed four samples per month (*i.e.*, monthly monitoring) in determining the proposed maximum monthly average limitations.

The long-term averages (LTAs), variability factors, and limitations for today's proposal were based upon pollutant concentrations collected from two data sources: EPA sampling episodes and discharge monitoring reports. The proposed limitations are based upon the modified delta-lognormal distribution. For the final rule, EPA intends to evaluate its appropriateness for these data and possibly consider other distributions such as the censored lognormal distribution.

EPA used a combination of the data from sampling episodes and DMR data to calculate the proposed limits. Two sampling episodes provided information on flow-through systems and one sampling episode provided information on recirculating systems. Additional DMR data from four Virginia flow-through CAAP facilities taken over a period of several years supplemented the EPA sampling data. The combination of sampling data, from locations in Idaho and Michigan, and DMR data from Virginia provided EPA with broad geographic and facility size coverage to account for some variability when establishing the proposed limits. EPA found the limited data to be adequate to establish proposed limits for flow through systems. For option 1, flow-through systems, the proposed limits were developed based on two EPA sampling episodes each with five data points and DMR data from three facilities with the number of data points used being 19, 34, and 37. For option 3 for the flow-through systems, the proposed limits were developed from

DMR data from one facility with 16 data points and a sampling episode with five data points from one of the facilities with data from effluents prior to a polishing pond that also was used for the option 1 limits. EPA solicits comment on the amount of the data for calculation of the proposed limits. While the proposed regulation includes limitations for recirculating systems, EPA did not have enough detailed data to adequately calculate numeric limits for recirculating systems. The preliminary limitations for recirculating systems used the permit limits for the one sampling episode facility. EPA intends to collect additional data and solicits available data to further evaluate numeric limits for both the flow-through systems and recirculating systems.

EPA also solicits comment on whether autocorrelation is likely to be present in weekly measurements of wastewater data from the CAAP industry. EPA also solicits data that demonstrate the presence or absence of such autocorrelation (see Section XV for guidelines on submitting data). When data are said to be positively autocorrelated, it means that measurements taken at specific time intervals (such as 1 week or 2 weeks apart) are related. For example, positive autocorrelation would be present in the data if the final effluent concentration of TSS was relatively high one week and was likely to remain at similar high values the next and possibly succeeding weeks. In some industries, measurements in final effluent are likely to be similar from one day (or week) to the next because of the consistency from day-to-day in the production processes and in final effluent discharges due to the hydraulic retention time of wastewater in basins, holding tanks, and other components of wastewater treatment systems. To determine if autocorrelation exists in the data, a statistical evaluation is necessary and will be considered before the final rule. To estimate autocorrelation in the data, many measurements for each pollutant would be required with values for equally spaced intervals over an extended period of time. If such data are available for the final rule, EPA intends to perform a statistical evaluation of autocorrelation and if necessary, provide any adjustments to the limitations. This adjustment would increase the values of the variance and monthly variability factor used in calculating the maximum monthly limitation. However, the estimate of the long-term average and the daily variability factor (and thus the maximum daily limitation) are generally only slightly affected by autocorrelation.

D. Approach To Estimating Compliance Costs

EPA estimated the costs associated with regulatory compliance for each of the regulatory options under consideration to determine the economic impact of the effluent limitations guidelines and standards on the CAAP industry. The economic burden is a function of the estimated costs of compliance to achieve the proposed requirements, which may include initial fixed and capital costs, as well as annual operating and maintenance (O&M) costs. Estimation of these costs typically begins by identifying the practices and technologies that can be used as a basis to meet particular requirements. EPA estimated compliance costs based on the implementation of the practices or technologies to meet particular requirements.

EPA collected data from published research, meetings with industry organizations, discussions with the Aquaculture Effluents Task Force of the Joint Subcommittee on Aquaculture, a review of USDA's 1998 Census of Aquaculture data, existing concentrated aquatic animal production NPDES permits, site visits and sampling events at AAP facilities, screener surveys, and detailed industry surveys. These data were used to define model CAAP facilities for estimating national compliance costs. The data were also used to determine estimates of pollutant loads, discharge volumes, current best management practices and treatment technologies being used, and the applicability of best management practices and treatment technologies for the model farms.

EPA identified candidate best management practices and appropriate treatment technologies for different industry segments that were incorporated into regulatory options. The regulatory options serve as the basis for compliance cost and pollutant loading calculations.

EPA developed cost equations for estimating capital, one-time fixed, and annual O&M costs for the implementation and use of the different best management practices and treatment technologies targeted under the proposed regulatory options. Cost equations were developed from information collected during the site visits, sampling events, published information, vendor contacts, and engineering judgment.

EPA developed and used computer cost models to estimate compliance costs and nutrient loads for each regulatory option. EPA used output from the cost model to estimate total annualized costs and the economic impact of each regulatory option on the CAAP industry. The AAP industry was segmented into six subcategories, based on system type, which include ponds, flow-through, recirculating, net pens and cages, floating and bottom culture, and other systems.

For each regulatory option, EPA estimated the costs to install, operate, and maintain specific techniques and practices. EPA traditionally develops either facility-specific or model facility costs. Facility-specific compliance costs require detailed process information about many, if not all, facilities in the industry. These data typically include production, capacity, water use, wastewater generation, waste management operations (including design and cost data), monitoring data, geographic location, financial conditions, and any other industry-specific data that may be required for the analyses. EPA then uses each facility's information to estimate the cost of installing new pollution controls.

When facility-specific data are not available, EPA develops "model" facilities to provide a reasonable representation of the industry. Model facilities were developed to characterize the AAP facilities and reflect the different characteristics found in the industry, such as the size or capacity of an operation, type of operation, geographic location, and mode of operation. These models were based on data gathered during site visits, information provided by industry members and their associations, the 1998 Census of Aquaculture and AAP screener survey data. Cost and financial impacts were estimated for each model facility, and then industry-level costs were calculated by multiplying model facility costs by the estimated number of facilities within each model category. For the AAP industry, EPA has chosen a model-facility approach to estimate compliance costs. For the proposal, the model is based on the use of USDA's Census of Aquaculture and EPA's AAP screener survey. More detailed information concerning facilities in the CAAP industry that will enable EPA to further revise the model facility characteristics is not available until after the responses are received from the detailed survey, EPA plans to revise the current dataset as a result of the detailed survey collection efforts and public comments received on this proposal. The development of the model facilities, and the process for determining

estimates of the number of facilities are described in more detail below.

Model facilities were defined for various groupings of CAAP operations based on system type, species, feed conversion ratio, size, system specific factors, and regional location. EPA evaluated the major species produced in the United States, including catfish, trout, salmon, hybrid striped bass, sport or game fish, other food finfish, shrimp, baitfish, molluscan shellfish, crawfish, and alligator. EPA also evaluated the life stage differences among species in the modeling analyses to determine the potential influence of life stage on model output. EPA assigned an estimated feed conversion ratio for each species and system combination in the definition of the model facilities. The feed conversion ratios were the primary factor affecting loadings in the model facilities. While these FCRs were intended to be representative of the facilitiescorresponding to each model, EPA recognizes that there is significant variability in FCRs across facilities even within the same model facility type.

For the economic and cost analyses, the facility size groups were based on the facility gross revenue for aquatic animal production. These ranges represent the facility revenue categories used in the USDA's 1998 Aquaculture Census. Model facilities were analyzed for each of these revenue ranges. Data from the 1998 Aquaculture Census and screener survey were used to estimate the number of facilities, by system type, species, and facility size. (See preamble, Section V, CAAP Development Document and Economic Analysis for more details) EPA developed cost equations to estimate compliance costs for each model facility and regulatory option. Costs were calculated for each technology or practice that make up each regulatory option for each model facility; based on model facility characteristics, including system type, species, feed conversion ratio, size, and system specific characteristics. The cost estimates generated contain the following types of costs: (1) Capital costs—costs for facility upgrades (*e.g.*, construction projects), including land costs and other capital costs (equipment, labor, design, *etc.*); (2) one time non capital costs—one-time costs for items that cannot be amortized (*e.g.*, consulting services or training); (3) Annual operating and maintenance (O&M) costs—annually recurring costs, which may be positive or negative.

These costs provide the basis for evaluating the total annualized costs, cost effectiveness, and economic impact of the regulatory options proposed for the CAAP industry. For each best management practice and treatment technology identified in the options selection process, EPA developed a cost module to provide input to the model facility calculations.

EPA recognizes that some individual facilities have already implemented some treatment technologies or best management practices that were described in the proposed options. As noted above, when estimating costs for the implementation of the proposed options across the entire subcategory nationwide, EPA did not include costs for best management practices or treatment technologies already in place.

EPA estimated the current frequency of existing best management practices and treatment technologies at CAAP facilities based on screener survey responses, site visits, and sampling visits. This occurrence frequency of practices or technologies was used to estimate the portion of the operations that would not incur costs to comply with the new regulation. For example, based on site visits, EPA believes that all catfish operations using levee ponds to practice water level management to capture rainfall and minimize overflows (the frequency factor is 100 percent); therefore, no costs were included for water level management for these operations. Another example is that EPA estimated that 80 percent of trout facilities have quiescent zones (based on site visits); therefore, only 20 percent of trout facilities would incur a cost for installing quiescent zones to comply with the proposed TSS limits.

Applying the frequency factors to the unit component costs reduces the effective cost of that component for the model facility. Essentially, EPA adjusts the component cost to account for those facilities that already have the component in place, and those facilities would not have to install and operate a new component as a result of the proposed regulation.

While this approach should provide a reasonable estimate of national costs, it has the drawback of underestimating facility level costs for facilities that have not already installed a particular technology. This may lead to an underestimate of impacted facilities. EPA requests comment on this approach.

EPA estimated frequency factors based on the sources such as those listed below (each source was considered along with its limitations):

(1) *EPA site visit information*—This information was used to assess general practices of AAP operations and how they vary between regions and size classes.

(2) *Screener Survey*—This information was used to assess general practices of AAP operations and how they vary between regions and size classes.

(3) *Observations by industry experts*—Experts on AAP operations were contacted to provide insight into operations and practices, especially where data were limited or not publicly available.

(4) *USDA National Agricultural Statistical Service (NASS)*—The data currently available from 1998 Aquaculture Census were used to determine the distribution of AAP operations across the regions by size class.

(5) *USDA APHIS National Animal Health Monitoring System (NAHMS)*—This source provides information on catfish production.

(6) *State Compendium: Programs and Regulatory Activities Related to AAP*—This summary of State regulatory programs were used to estimate frequency factors, based on current requirements for treatment technologies and best management practices that already apply to CAAP facilities in various states.

E. Approach To Estimating Pollutant Reductions

A model facility approach was designed to represent the industry. Using this approach, every facility was classified according to its production system. Additionally, pollutant loads, flow characteristics, geographic, and culture species information were linked in the model, creating an array of facilities by system type, pollutant loading, size, location, and species. Technology options and best management practices (BMPs) that were used to prevent the discharge of pollutants into the environment were also linked in a similar way. In this case, variables account for the applicability of the technologies and BMPs, given the characteristics of the model facility (*e.g.* system type, size). The user of the model can manipulate these variables to analyze different management options. The model was capable of calculating an estimated cost of the management option based on capital and land costs, adjusted for geographic differences.

A benefit of the model facility approach was the option of using the same model to represent the whole industry, sectors of the industry, and even single facilities. No changes in the theoretical model were needed to cope with this, only a manipulation of the input data. The following information was used in the modeling approach:

(1) Number of facilities by system type, size, culture species, and location
(2) Technologies and BMPs by system type and facility size
(3) National average capital cost, land requirements of technology options, and best management practices
(4) Average flow (daily) by system type and facility size
(5) Estimates of annual production
(6) Data associated with feeding practices: feeding in pounds per day, pollutant concentrations in feed, percentage of feed not consumed, feces to feed ratio, and pollutant concentrations in feces
(7) Pollutants and flow reductions resulting from of technology options and best management practices

Information obtained from a national survey (*i.e.* the detailed survey) and EPA sampling data about the state of the industry will constitute the primary input for establishing a baseline scenario. This data has not yet been collected and analyzed but will be in the future, followed by publication in the **Federal Register** of a Notice of Data Availability for public comment. Specifically, EPA will use information from the detailed survey to revise pollutant loadings and costs estimated in today's proposal. Because EPA did not have the detailed survey data for the proposed rule, EPA used information from a number of published sources and unpublished sources such as comments received from small entity representatives through the SBREFA process and personal communications with industry representatives.

The model was based on several facts. First, feed offered to the AAP species contributes to pollutant discharges in three ways, (1) unmetabolized feed consumed by the cultured species is contained in the feces, (2) urine contributes to dissolved ammonia, and (3) uneaten feed, both dissolved and in particulate forms, increase the pollutant load in the culture water. Second, technology options and BMPs have typical efficiency rates of removing specific pollutants from water. Third, certain technologies are more applicable to certain system types and flows than others. Combining these three components of the effluent discharge, the predicted pollution reduction can be estimated for every system type and size.

VIII. Options Evaluated and Selected for Proposal

A. Introduction

For the proposed rule, EPA developed regulatory options using the technologies and practices discussed previously (see section VII) based on preliminary evaluations of the USDA Census of Aquaculture, screener survey responses, site visits and sampling episodes. The initial regulatory options included the following technology controls and best management practices specific to each production system: feed management; quiescent zones; settling basins; microscreen filters (solids polishing); a best management practices (BMP) plan (based on a modified Hazard Analysis Critical Control Point (HACCP) approach, described later); water level management; in-pond treatment; active feed monitoring and disinfection.

Initially, EPA evaluated options for the following production systems: ponds, flow-through systems, recirculating systems, and net pens. For ponds, EPA considered feed management, in-pond treatment, water management, discharge management and the BMP plan based on the HACCP approach as Option 1. Option 2 considered removals of conventional and nutrient pollutants through the use of vegetated ditches, in-pond, or settling basins. EPA assumed the following in treating pond volumes: treating the first 5 percent of the volume on all ponds with bottom drains; treating the last 20 percent of volume on all ponds with any drain if harvest requires seining or rapid discharge of pond volume and treating the last 5 percent of the volume on all ponds. Option 3 considered removals of additional BOD and nutrients through the use of constructed wetlands.

For flow-through systems, EPA considered feed management, quiescent zones, sedimentation basins and primary settling of collected solids and the BMP plan based on the HACCP approach as Option 1. Option 2 considered removals of additional solids through the use of mechanical filtration such as microscreen filters, polishing ponds, and chemical addition. Option 3 considered the removals of bacterial levels through the use of disinfection such as chlorine, ozone, and UV.

For recirculating systems, Option 1 considered feed management, sedimentation basins and primary settling of collected solids, and the BMP plan based on the HACCP approach. Options 2 and 3 for recirculating systems are the same as those for flow-through systems.

For net pen systems, Option 1 considered feed management and the BMP plan based on the HACCP approach. Option 2 considered reducing pollutant loads associated with feeding through the use of an active feed monitoring system.

Based on the evaluation of the effluent concentration literature values and research studies, in addition to the estimated costs of compliance, EPA did not pursue or further modify some of the initial regulatory options. However, EPA did develop a refined list of regulatory options and estimated their costs in preparation for analysis required under the Regulatory Flexibility Act (discussed more fully in Section XIII Administrative Requirements). Several of the technologies that were considered in this analysis were also shown to be impractical or too costly. This is described in greater detail in the CAAP Development Document. For example, one regulatory option EPA considered early on in its analysis, but did not pursue was based on disinfection. The estimated costs for this technology to be applied nationally would be cost prohibitive and would have imposed a severe adverse economic impact on this industry. Also several technologies to reduce pollutant discharges when pond systems are drained are no longer being considered. These technologies were estimated to have a high cost in proportion to revenues, and also were determined to provide limited benefit in reducing wastewater pollutant loadings.

Other regulatory options were modified from those initially considered. Option 1 initially estimated costs for solids removal as well as the implementation of a best management plan based on the HACCP approach. The HACCP like BMP approach was a more structured process for identifying control points to minimize discharges of drugs, chemicals, non-native species and pathogens and developing practices to address them. In addition, it would have included a training component. After evaluating these costs, EPA modified Option 1. Subsequently, Option 1 for flow-through includes primary settling (quiescent zones and settling basins) and BMP plan development for solids control either as an alternative or in lieu of numerical limitations for TSS. Option 1 for recirculating systems is a settling basin and BMP plan development for solids control. Option 1 for net pens is feed management and BMP plan development for solids control. For the BMP component for solids control, EPA estimated costs assuming 40 hours to develop such a plan and one hour of manager time and one hour of worker time per month to implement. EPA solicits comment on the time and associated cost required for BMP plan development as well as on the possibility of EPA or the permitting authority developing a model BMP plan which the operator would adopt or

modify, reducing the time and associated cost required.

Option 2 was the BMP plan addressing drugs, chemicals, pathogens, and non-native species which would have been the same for all facilities regardless of production system. Based on recommendations in the SBREFA Panel Report, EPA further modified Option 2 to include reporting requirements for drug and chemical use only. In the BMP component for control of these toxic and non-conventional pollutants, EPA estimated costs assuming 40 hours to develop and one hour of manager time and one hour of worker time per month to implement. EPA solicits comment on the time and associated cost required for BMP plan development as well as on the possibility of EPA or the permitting authority developing a model BMP plan which the operator would adopt or modify, reducing the time and associated cost required. Option 3 technology for flow-through and recirculating systems is solids polishing (*i.e.*, microscreen filters) and for net pens is active feed monitoring. The options are additive in nature, and represent increasing stringency, thus, Option 2 limitations would be based on and incorporate primary settling (Option 1) in addition to the limitations based on BMP considerations under Option 2. Because some existing flow-through facilities that produce between 20,000 and 100,000 pounds per year are currently meeting NPDES requirements to report and implement a BMP plan for the control of solids, EPA solicits comment on the feasibility of requiring other facilities within this production range, and new facilities, to meet the same requirements.

EPA is not proposing to establish phosphorus limits, but will continue to evaluate the need for separate limitations for phosphorus. The proposed TSS limitations should also ensure effective removal of suspended or particulate phosphorus. EPA notes that a number of NPDES permits issued to CAAP facilities do include phosphorus limits presumably to comply with water quality standards. EPA solicits comment on how the use of low phosphorus feeds or wastewater treatment practices (including the actual practices used) meet current phosphorus limits set by the permitting authority. EPA may consider establishing separate phosphorus limits based on treatment of the wastewater to precipitate dissolved phosphorus to achieve effective reduction of phosphorus in the wastewater discharge from CAAP facilities and solicits comment on the need to establish separate limits for phosphorus and the costs associated with phosphorus treatment. EPA is particularly interested in data documenting the costs of achieving such limits, any increased sludge production as a result of treating to remove phosphorus from wastewater and monitoring data including the method used to analyze the phosphorus in the collected samples. The Development Document includes potential values of such phosphorus limits.

Discussion of the regulatory options by type of operation (*i.e.*, subcategory) is contained below.

B. Flow-Through Systems

1. BPT

After considering the technology options described in Section VII, and in light of the factors specified in section 304(b)(1)(B) of the CWA, EPA is proposing: (1) No nationally-applicable effluent limitations guidelines for facilities producing less than 100,000 pounds per year, (2) effluent limitations based on Option 1 for facilities producing 100,000 pounds per year up to 475,000 pounds per year, and (3) effluent limitations based on Option 3 for facilities producing 475,000 pounds per year or more.

For small flow-through facilities (facilities that produce between 20,000 and 100,000 pounds of cold water species annually), the proposed rule would not establish any national requirements for existing flow-through facilities for the reasons described in Section V.B.

As described in Section IX, EPA's economic analysis is based on the best existing data available to EPA, but the Agency will be collecting financial data through the detailed survey, which should provide a better basis for determining economic achievability. In addition, EPA is soliciting information concerning the costs for developing and implementing the BMP plan described in today's proposed regulation. EPA will reconsider both the BMP costs and the economic achievability.

For facilities producing 100,000 pounds per year to 475,000 pounds per year, the proposed rule would establish BPT limits based on primary settling including quiescent zones and settling basins and/or BMP development and implementation (Option 1) for existing flow-through facilities. EPA considered the revenue classifications in the Census of Aquaculture (National 1–6) to estimate economic impacts. EPA then converted the revenue classifications into production categories using prices for several different species. As EPA continued its impact analysis, EPA determined that the 100,000 pounds per year threshold, mainly driven by trout production (because of the number of small facilities producing trout) would be an appropriate threshold because the costs of compliance for the facilities producing above the threshold would be affordable while facilities producing below this threshold would experience disproportionate economic impacts.

For facilities producing 475,000 pounds per year or more, the proposed rule would establish limits based on solids polishing and/or a requirement to develop and implement a BMP plan (Option 3). EPA considered the impacts of such proposal requirements on these larger facilities and, based on the results, determined that the 475,000 pounds per year would be an appropriate threshold for which the costs of compliance would remain economically achievable.

EPA is also proposing to establish limits for TSS at large flow-through facilities discharged from separate off-line treatment systems (*i.e.* physically separate and discharging from an outfall distinct from the main flow of the system) based on Option 3 technology performance. EPA would apply the percent reduction achieved by a microscreen filter used as a solids polishing treatment at the recirculating system that EPA sampled. The microscreen performance measured by EPA's sampling data indicates that 20 percent reduction in the TSS concentration was achieved with this technology by this facility. EPA has applied that percent reduction to the long-term average representing treatment through a separate off-line settling basin and applied the variability factors developed from the off-line settling basin data to obtain the monthly average and daily maximum values. EPA believes this transfer of performance from recirculating system technology to flow-through system discharges would be appropriate because the long term average concentrations measured by EPA at both the separate off-line treatment at a flow-through system and the influent to microscreen filtration at a recirculating system are nearly identical (58.1 mg/L from the flow-through system compared to 58.3 mg/L from the recirculating system).

Based on preliminary analysis, these options appear to be technically available, economically achievable and cost-reasonable for the existing flow-through facilities at these size thresholds. The BPT cost comparison test demonstrates, as described in Section IX, that the cost per pound

removed is $0.23/lb using only the removal loadings of the pollutant BOD. (Also, see discussion of cost as a percent of revenues in section IX.) EPA did not select more stringent options (Options 2 or 3) for facilities between 100,000 and 475,000 pounds production per year because, EPA determined that the cost impacts would not be reasonable and affordable based on the number of facilities (9 out of 31 commercial facilities) estimated to experience compliance costs greater than 10% of revenues from aquaculture sales. As discussed in more detail in Section XI, the proposed option has acceptable non-water quality environmental impacts. As described earlier in Section VII.C.3, the specific effluent limitations guidelines proposed in this rule were derived based on a statistical analysis of the performance of primary settling and solids polishing at flow-through facilities that are sufficiently similar to all of the flow-through facilities that would be subject to the effluent limitations guidelines. Based on the screener survey data, EPA estimates that primary settling and solids polishing are currently used at 91 out of 102 (89%) and 5 out of 102 (5%), of all flow-through CAAP facilities, respectively.

EPA estimates that the proposed effluent limitations guidelines would cause 8 out of 181 regulated flow-through facilities (4%) to experience compliance costs greater than or equal to 5% of their revenues.

As noted previously, the options selected for flow-through systems include requirements to develop and implement a best management practices (BMP) plan, as well as some reporting requirements. Option 1 includes a requirement for a BMP plan for solids control. As noted previously, control of total suspended solids also controls non-conventional and toxic pollutants that EPA believes bind with such solids. Option 2 includes a requirement for a BMP plan addressing non-conventional and toxic pollutants, specifically, discharges of certain drugs, chemicals, and solids or aquatic animals that carry pathogens, as well as escapes of non-native aquatic animals. Option 2 also includes some reporting requirements on the use of certain drugs and chemicals. For flow-through facilities producing between 100,000 pounds per year and 475,000 pounds per year, EPA is proposing the Option 1 BMP plan requirements (solids control). For flow-through facilities producing more than 475,000 pounds per year, EPA proposes limitations based on Option 3, which includes the Option 2 BMP plan requirements for non-conventional and toxic pollutants. EPA proposes and solicits comment on the use of the BMP plan, either in lieu of or as an alternative to the numerical limitations in today's proposal. EPA also solicits comments on whether the BMP plan for solids control only would be sufficient to assure the pollutant reductions that EPA demonstrates to be economically achievable. Many facilities already have developed and implemented a BMP plan to control solids through feed management, by removing solids regularly, and by treating solids from waste handling operations. Identification and proper implementation of such a BMP plan may be sufficient in and of itself to achieve the numeric limitations EPA proposes today.

For the most part, the proposed BMP plan requirements would prevent or minimize the discharge of pollutants, but also represent economically sound aquatic animal production practices. For flow-through facilities producing 100,000 pounds per year to 475,000 pounds per year, the proposed BMP plan requirements would ensure supplemental controls to prevent or minimize the discharge of solids. Proposed section 451.15(a) would impose a requirement related to management of removed solids and excess feed. Specifically, operators would need to minimize the re-introduction of solids removed through the treatment of the water supply and prevent excess feed from entering the aquatic animal production system. Solids are removed from the water supply to ensure high quality water supply for aquatic animal production. Given the effort to remove solids from that water, re-introduction of those solids would increase the amount of solids discharges. Similarly, operators should prevent the introduction of excessive feed into the production system; uneaten feed increases the total amount of solids discharged. Operators have an economic incentive to optimize feed rates (*e.g.*, to ensure maximum animal growth at minimum costs), but in some cases optimal feed rates from the operator's perspective may not be optimal for water quality. To optimize water quality (though not necessarily production), operators and laborers should observe feeding when food is applied to the system and stop adding feed when the animals are no longer eating. In cases where water quality and production goals are in conflict, operators must find a reasonable balance between the two. The proposed requirements in section 451.15(a)(1) for management of removed solids and excess feed and 451.15 (b)(1) & (3) for structural maintenance and disposal of biological wastes, respectively, also prevent or reduce unnecessary and avoidable solids discharges. Section 451.15(d) would assure that personnel who implement the BMP, in fact, understand it.

For flow-through facilities producing more than 475,000 pounds per year, the proposal would require additional BMP implementation to avoid inadvertent spillage or release of drugs and chemicals stored at the facility. Similar to the storage management practices required for solids, proposed section 451.15(b)(2) would require sound management of drugs and chemicals stored on-site in order to avoid accidental spillage or release into the system. EPA proposes this requirement only for the largest flow-through facilities because the Agency anticipates that only the largest facilities have a need to maintain significant volumes of drugs and chemicals on-site. The more important aspect of drugs and chemicals storage would be that personnel working at the site also would need to be familiar with proper storage practices.

EPA also proposes reporting requirements related to uses of certain drugs and chemicals. Proposed section 451.3 (a) through (c) would only apply to facilities producing more than 475,000 pounds per year because drug and chemical discharges from such large facilities are more likely to cause an adverse impact on receiving waters. EPA currently lacks data on the total amount of unapproved drugs and chemicals released to the environment from aquatic animal production facilities. For this reason, EPA proposes reporting to ensure that permitting authorities have the necessary information to impose any controls that may be necessary to reduce or avoid adverse impacts to receiving waters on a case-by-case basis using best professional judgment.

EPA proposes to define "chemical" and "drug" at section 451.2 (c) and (e), respectively, to include only those chemicals and drugs that would be discharged and that have not been "approved" as safe and effective. The proposed definition of drug, for example, would not include injected drugs. As such, the proposal would only apply to residual drugs and chemicals, *e.g.*, after a drug or chemical no longer serves its intended purpose. EPA likewise proposes reporting only for drugs and chemicals about which little is known. Reporting would not be required for EPA registered pesticides and drugs approved by the Food and Drug Administration for aquatic animal

uses or water quality maintenance/restoration chemicals used according to label instructions. Reporting would only be required for unapproved drugs and/or drugs prescribed by a veterinarian for extra-label uses. Reporting would also be required for extra-label uses of chemicals. Because drugs that have not been evaluated by FDA may be discharged in facility effluents, reporting information should enable informed regulatory responses when environmental problems do occur. Under the proposal, reports would be both oral and written, according to the use that EPA anticipates for regulatory monitoring of those reports. Given the intermittent and variable use of drugs and chemicals and given the relative absence of data on such uses, EPA does not propose numeric effluent limits, but rather only reporting requirements, for the drugs and chemicals that would be regulated under today's proposal.

EPA anticipates that the BMP requirements would be implemented through permits and, in many cases, standardized BMP provisions may be applicable to all similarly sized flow-through facilities. EPA does not anticipate that development or implementation of the proposed BMP requirements would significantly interfere with a well-managed operation. The proposed requirements, however, would establish a base level of sound management practices that are not only economically reasonable, but also environmentally protective.

2. BAT

EPA proposes to establish BAT at a level equal to BPT (*i.e.*, Option 1 for existing facilities that produce between 100,000 and 475,000 pounds per year and Option 3 for existing facilities that produce more than 475,000 pounds per year). For this subcategory, there are no available technologies economically achievable that would achieve more stringent effluent limitations than those considered for BPT. Because of the nature of the wastewater and wastes generated from CAAP facilities, advanced treatment technologies or practices to remove additional solids (*e.g.*, smaller particle sizes) in TSS that would be affordable do not exist beyond those already considered.

3. BCT

Since the BCT cost test did not support a more stringent technology basis that was economically achievable for BCT, EPA proposes to regulate total suspended solids (TSS) using the same technology basis as BPT. For more details about the BCT cost test, see Section IX.G.

4. NSPS

After considering all of the technology options described in Section VII, and in light of the factors specified in sections 306 of the CWA, EPA proposes standards of performance for new sources equal to BPT, BCT, and BAT because no more stringent technologies are available for NSPS without causing a barrier to entry for new facilities. Because of the nature of the wastewater and wastes generated from CAAP facilities, advanced treatment technologies or practices to remove additional solids (*e.g.*, smaller particle sizes) in TSS that would be affordable do not exist beyond those already considered.

EPA believes that the proposed NSPS equal to BAT would not present a significant barrier to entry. EPA believes that overall impacts from the proposed effluent limitations guidelines on new sources would not be any more severe than those on existing sources because the costs faced by new sources generally should be the same as or lower than those faced by existing sources. It is generally less expensive to incorporate pollution control equipment into the design at a new plant than it would be to retrofit the same pollution control equipment in an existing plant. At a new plant, no demolition is required and space constraints (which can add to retrofitting costs if specifically designed equipment must be ordered) may be less of an issue.

Although EPA is not proposing performance for new sources for smaller cold water facilities (*i.e.*, those producing between 20,000 and 100,000 pounds per year), EPA invites comment on whether downward adjustments to the proposed thresholds would create a barrier to entry for new sources. As described in the BPT discussion, EPA intends to reevaluate the costs and potential barrier to entry for small new sources and solicits comments on the basis for costs estimated for new sources.

EPA solicits comments on its proposed finding that the proposed thresholds would be appropriate and applicable to this subcategory.

5. No Regulation for Flow-Through Systems

EPA is also considering whether it should establish national requirements for flow-through systems at all. If EPA were to decide not to promulgate national effluent guidelines for flow-through systems, it would likely be based on a combination of several factors. First, EPA may conclude that the baseline pollutant discharges from flow-through systems are not large enough to warrant national regulations. In addition, EPA may conclude that due to significant regional and facility-specific variations, it is more effective to continue to rely on the BPJ of permit writers to establish appropriate limitations. Finally, EPA may conclude that available technologies are either not affordable or provide little reduction in pollutant discharges relative to existing practice. EPA solicits comments on not regulating flow-through systems and encourages commenters to support such arguments with information and data, particularly data on the loadings, efficiency of existing practices including best management practices and treatment technologies and the costs associated with pollutant removals.

In addition, EPA is soliciting comment specifically on an alternative approach to the reporting and BMP requirements for the control of drugs and chemicals. Under this alternative, EPA would issue BMP guidance and recommendations in lieu of establishing the reporting requirements and BMP requirements for these pollutants (*i.e.*, Option 2). Both permit writers and CAAP facilities could use this guidance as a reference source when evaluating various control practices to minimize the discharge of pollutants. The Agency solicits comments on the effectiveness of BMPs related to the use of drugs and chemicals or practices that would minimize the need to use drugs and chemicals such as health management plans (*i.e.*, routine observations of fish behavior, maintaining water quality) and the extent to which facilities are already implementing BMPs. This approach could also be used to address concerns related to pathogens and non-native species. The Agency also solicits comments on practices used including record keeping and contingency plans (*i.e.*, preventive measures) to minimize escapes and discharges of pathogenic bacteria (*e.g.*, through proper management of aquatic animal mortalities).

C. Recirculating Systems

1. BPT

After considering all of the technology options described above, and in light of the factors specified in section 304(b)(1)(B) of the CWA, EPA is proposing to establish BPT limits on the basis of solids polishing (*i.e.*, additional solids removal) including a settling basin and the development of a BMP plan, and general reporting requirements for drugs and chemical use (Option 3) for existing recirculating facilities that produce more than

100,000 pounds per year. This option is technically available for recirculating systems at this size threshold. Based on analysis to date, the BPT cost comparison test indicates, as described in Section IX, that the cost per pound removed is $0.07/lb using the removal loadings of the pollutant TSS. Therefore, based on the analysis to date EPA believes this option is economically achievable and cost reasonable. This option, the most stringent of the options considered, was chosen because no facilities experienced compliance costs greater than 5 percent of revenues. Further, this option has acceptable non-water quality environmental impacts.

As described earlier in Section VII.C.3, the specific effluent limitations guidelines proposed in this rule were derived based on a statistical analysis of the performance of solids polishing at existing recirculating facilities that are sufficiently similar to all of the recirculating facilities that would be subject to the effluent limitations guidelines. Solids polishing is currently used at 33 percent of recirculating system production facilities, and these technologies are widely used in other industries such as feedlots, food processing, and POTWs. BPT does not mean that the technology needs to be in routine use, but rather that the technology must be available at a cost and at a time that the Administrator determines to be reasonable, and that the technology has been adequately demonstrated if not routinely applied.

EPA is not proposing to establish effluent limitations guidelines for existing recirculating facilities that produce less than 100,000 pounds of aquatic animals per year because most recirculating systems produce warm water species which would not meet the CAAPF point source definition of 100,000 pounds per year and although EPA identified one facility producing a cold water species between 20,000 pounds per year and 100,000 pounds per year, the facility would experience significant cost impacts even from Option 1. EPA also evaluated an option that would apply to small recirculating facilities based on the development and implementation of a BMP plan to control solids as described in today's proposed regulation. EPA assumed 40 hours would be necessary to develop this plan with an additional requirement to implement the plan of two hours per month split evenly between labor and management time. The cold-water facility described above would experience compliance costs greater than 3% of its revenue for this BMP only option. Small facilities that meet the definition of a CAAPF are subject to existing NPDES regulations, and would be subject to permit limits based on the permit writer's "best professional judgment" if the facility is a "concentrated aquatic animal production facility" under the regulations. EPA invites comment on application of the proposed applicability threshold and its estimations of cost reasonableness for recirculating systems.

As described in Section IX, EPA's economic analysis is based on the best existing data available to EPA, but we will be collecting financial data through our detailed survey which should provide a better basis for determining economic achievability. In addition, EPA is soliciting information concerning the costs for developing and implementing the BMP plan described in today's proposed regulation. EPA will reconsider both the BMP costs and the economic achievability. Therefore, EPA solicits comment on a requirement for small recirculating facilities to develop and implement a BMP plan based on the solids control practices included in today's proposal.

As noted previously, the options selected for recirculating systems include requirements to develop and implement a best management practices (BMP) plan, as well as some reporting requirements, for solids control (including control of associated non-conventional and toxic pollutants that EPA believes bind with such solids) and for other non-conventional and toxic pollutants, specifically, discharges of certain drugs and chemicals. For recirculating system facilities above the applicability threshold, EPA is proposing BMPs under both Options 1 and 2. For discussion of EPA's rationale for BMPs and reporting, see the discussion of BMPs in the BPT section regarding flow-through systems. Recirculating systems are expected to have much better opportunities to control such discharges. Likewise, recirculating systems have better opportunities to control the discharge of excess feeds.

2. BAT

EPA proposes to establish BAT equal to BPT for this subcategory. For this subcategory, there are no available technologies economically achievable that can achieve more stringent effluent limitations than those considered for BPT. Because of the nature of the wastewater and wastes generated from CAAP facilities, advanced treatment technologies or practices to remove additional solids (*e.g.*, smaller particle sizes) in TSS that would be affordable do not exist beyond those already considered.

EPA believes that the selected option for the recirculating system subcategory is cost reasonable and "economically achievable" because EPA estimates that the proposed effluent limitations guidelines would cause no facilities to experience compliance costs greater than or equal to 5% of their annual revenues. Finally, EPA has determined that the selected option has acceptable non-water quality environmental impacts.

3. BCT

EPA proposes to regulate BCT equal to BPT because EPA did not identify any more stringent technologies beyond those considered. For more details about the BCT cost test, see Section IX.G.

4. NSPS

After considering all of the technology options described above, and in light of the factors specified in sections 306 of the CWA, EPA proposes standards of performance for new sources equal to BAT (Option 3). For this subcategory, there are no current technologies that are more stringent than those considered for BPT or BAT other than adding disinfection. Because of the nature of the wastewater and wastes generated from CAAP facilities, advanced treatment technologies or practices to remove additional solids (*e.g.*, smaller particle sizes) in TSS that would be affordable do not exist beyond those already considered.

EPA believes that the proposed NSPS would not present a barrier to entry. EPA believes that overall impacts from the proposed effluent limitations guidelines on new sources would not be any more severe than those on existing sources because the costs faced by new sources generally should be the same as or lower than those faced by existing sources. It is generally less expensive to incorporate pollution control equipment into the design at a new plant than it is to retrofit the same pollution control equipment in an existing plant. At a new source, no demolition is required and space constraints (which can add to retrofitting costs if specifically designed equipment must be ordered) may be less of an issue.

Although EPA is not proposing new source performance standards for smaller facilities (*i.e.*, that produce between 20,000 and 100,000 pounds per year), EPA invites comment on whether downward adjustments to the proposed production thresholds would create a barrier to entry for new sources. As described in the BPT discussion, EPA intends to evaluate the costs and

potential barrier to entry for small new sources and solicits comments on the basis for the costs estimated for new sources.

EPA solicits comments on its proposed finding that the proposed threshold is appropriate and applicable to this subcategory.

5. No Regulation for Recirculating Systems

EPA is also considering whether it should establish national requirements for recirculating systems at all. If EPA were to decide not to promulgate national effluent guidelines for recirculating systems, it would likely be based on several factors. EPA may conclude that due to significant regional and facility-specific variations, it is more effective to continue to rely on the BPJ of permit writers to establish appropriate limitations. In addition, EPA may conclude that available technologies are either not affordable or provide little reduction in pollutant discharges relative to existing practice. EPA solicits comments on not regulating recirculating systems and encourages commenters to support such arguments with information and data, particularly data on the loadings, efficiency of existing practices including best management practices and treatment technologies and the costs associated with pollutant removals.

In addition, EPA is soliciting comment specifically on an alternative approach to the reporting and BMP requirements for the control of drugs and chemicals. Under this alternative, EPA would issue BMP guidance and recommendations in lieu of establishing the reporting requirements and BMP requirements for these pollutants (*i.e.*, Option 2). Both permit writers and CAAP facilities could use this guidance as a reference source when evaluating various control practices to minimize the discharge of pollutants. The Agency solicits comments on the effectiveness of BMPs related to the use of drugs and chemicals or practices that would minimize the need to use drugs and chemicals such as health management plans (*i.e.*, routine observations of fish behavior, maintaining water quality) and the extent to which facilities are already implementing BMPs. This approach could also be used to address concerns related to pathogens and non-native species. The Agency also solicits comments on practices used including record keeping and contingency plans (*i.e.*, preventive measures) to minimize escapes and discharges of pathogenic bacteria (*e.g.*, through proper management of aquatic animal mortalities).

D. Net Pen Systems

1. BPT

After considering all of the technology options described above, and in light of the factors specified in section 304(b)(1)(B) of the CWA, EPA is proposing to establish BPT limits on the basis of active feed monitoring (*i.e.*, additional solids removal) and the development of a BMP plan, and general reporting requirements for use of certain drugs and chemicals (Option 3) for facilities that produce more than 100,000 pounds per year as the technology basis for the effluent limitations guidelines for existing sources in the proposed rule. This option is technically available for net pen systems at this size threshold. The BPT cost comparison test indicates, as described in section IX, that the cost per pound removed is $0.04/lb using the removal loadings of the pollutant, BOD. Based on currently available data, EPA believes this option is cost reasonable and economically achievable. EPA selected this option, the most stringent of the options considered, because no facilities are estimated to experience compliance costs greater than or equal to 5% of annual revenues.

As discussed in more detail below, EPA believes that this option is cost reasonable and "economically achievable" and represents the best performance that is economically achievable for facilities producing above the 100,000 pound threshold.

As discussed in more detail below, EPA is not proposing to establish effluent limitations guidelines for existing facilities that produce less than 100,000 pounds of aquatic animals per year because EPA has not identified any facilities below the 100,000 pounds per year threshold. If any facilities exist between the 20,000 and 100,000 pounds per year threshold, the facilities would be subject to existing NPDES regulations, and would be subject to permit limits based on the permit writer's "best professional judgment" if the facility is a "concentrated aquatic animal production facility" under the regulations. EPA invites comment on the application of the proposed production threshold and its estimation of cost reasonableness for net pen systems.

Further, this option (including not applying nationally applicable active feed monitoring requirements to smaller facilities) has acceptable non-water quality environmental impacts. Active feed monitoring, may also be a good business practice and it is already used by some facilities to reduce feed costs.

As noted previously, the options selected for net pen systems include requirements to develop and implement a best management practices (BMP) plan for solids control (focused primarily on feed management) and for other non-conventional and toxic pollutants, specifically, discharges of certain drugs and chemicals. For net pen facilities above the applicability threshold, EPA is proposing BMPs under both Options 1 and 2. For discussion of EPA's rationale for BMPs and reporting, see the discussion of BMPs in the BPT section regarding flow-through systems. Net pen systems do not present the same opportunities for solids control as do flow-through systems or recirculating systems. Therefore, EPA proposes active feed monitoring as the most effective and cost reasonable technology for solids control.

2. BAT

EPA proposes to establish BAT equal to BPT. EPA has determined that there are no more stringent options representing BAT that are available.

3. BCT

EPA proposes to regulate BCT equal to BPT because EPA did not identify any more stringent technologies beyond those considered. For more details about the BCT cost test, see Section IX.G.

4. NSPS

After considering all of the technology options described above, and in light of the factors specified in sections 306 of the CWA, EPA proposes standards of performance for new sources equal to BAT.

EPA believes that the proposed NSPS would not present a barrier to entry. EPA believes that overall impacts from the proposed effluent limitations guidelines on new source net pens would not be any more severe than those on existing net pens. The costs faced by new sources generally should be the same as or lower than those faced by existing sources. It would generally be less expensive to incorporate pollution control equipment into the design at a new plant than it would be to retrofit the same pollution control equipment in an existing plant. At a new source, no demolition would be required and space constraints (which can add to retrofitting costs if specifically designed equipment must be ordered) may be less of an issue.

Although EPA is not proposing performance for new sources for smaller cold water facilities (*i.e.*, those producing between 20,000 and 100,000 pounds per year), EPA invites comment on whether downward adjustments to

the proposed thresholds would create a barrier to entry for new sources.

EPA solicits comments on its proposed finding that the proposed threshold is appropriate and applicable to this subcategory.

5. No Regulation for Net Pen Systems

EPA is also considering whether it should establish national requirements for net pen systems at all. If EPA were to decide not to promulgate national effluent guidelines for net pen systems, it would likely be based on a combination of several factors. First, EPA may conclude that the baseline pollutant discharges from net pen systems are not large enough to warrant national regulations. In addition, EPA may conclude that due to significant regional and facility-specific variations, it is more effective to continue to rely on the BPJ of permit writers to establish appropriate limitations. Finally, EPA may conclude that available technologies are either not affordable or provide little reduction in pollutant discharges relative to existing practice. EPA solicits comments on not regulating net pen systems and encourages commenters to support such arguments with information and data, particularly data on the loadings, efficiency of existing practices including best management practices and treatment technologies and the costs associated with pollutant removals.

In addition, EPA is soliciting comment specifically on an alternative approach to the reporting and BMP requirements for the control of drugs and chemicals. Under this alternative, EPA would issue BMP guidance and recommendations in lieu of establishing the reporting requirements and BMP requirements for these pollutants (*i.e.*, Option 2). Both permit writers and CAAP facilities could use this guidance as a reference source when evaluating various control practices to minimize the discharge of pollutants. The Agency solicits comments on the effectiveness of BMPs related to the use of drugs and chemicals or practices that would minimize the need to use drugs and chemicals such as health management plans (*i.e.*, routine observations of fish behavior, maintaining water quality) and the extent to which facilities are already implementing BMPs. This approach could also be used to address concerns related to pathogens and non-native species. The Agency also solicits comments on practices used including record keeping and contingency plans (*i.e.*, preventive measures) to minimize escapes and discharges of pathogenic bacteria (*e.g.*, through proper management of aquatic animal mortalities).

E. Ponds

As described above, EPA initially developed three technology options for pond facilities to control the discharge of pollutants. Initial Option 1 included practices to minimize the discharge of solids when ponds are drained and to minimize the frequency of overflows due to storm events. Initial Option 1 also included the BMP practices to minimize feed, reduce the need to use drugs and chemicals and prevent the escape of non-native species. Initial Option 2 required more extensive solids control with the establishment of a TSS limit that would be achieved either with the application of a vegetated ditch or a sedimentation pond to capture a portion of the pond drainage. Initial Option 3 would have required more treatment to control BOD and nutrients and was based on the application of constructed wetlands through which the pond drainage would be treated. EPA estimated the costs and pollutant reductions that could be expected to occur with each of these options and presented them to the Small Business Advocacy Review (SBAR) Panel, which is discussed in greater detail in Section XIII. The SBAR Panel sought feedback on these options, their costs and pollutant loading reductions from several Small Entity Representatives (SERs) who were asked to provide comments from their perspective as small businesses engaged in aquatic animal production in ponds.

EPA's preliminary estimates of costs for even Initial Option 1, indicated that it would impose significant financial hardship on many of the facilities. As noted previously, EPA estimated costs, for example, of BMP plans assuming 40 hours for development and 2 hours per month for implementation. The SERs noted that many of the structural best management practices that EPA was considering as part of Inital Option 1 were either inappropriate for their facilities or would be even more costly than EPA estimated. SERs also noted that depending on the configuration of the facility, it might not be possible to route all discharges through a single settling basin as considered under Initial Option 2. If several basins were needed, costs and land requirements could become cost prohibitive. Finally, the industry representatives argued that EPA's estimated baseline pollutant loadings discharged from pond systems grossly overstated the pollutant loads from ponds.

As a result of the feedback received from all of these sources, EPA reconsidered technologies appropriate for pond systems and the minimal impact these technologies would have in reducing pollutant discharges. Most important, however, EPA anticipates that only a small number of ponds have discharges that meet the NPDES definitions for CAAP facilities. Therefore, EPA revised the options, accounting for the comments received on the preliminary analysis. The revised options assume that all existing pond facilities currently practice good management and therefore minimize the discharge of solids when draining ponds. This assumption regarding the water quality impacts of not regulating ponds is based on information provided from the industry and from representatives in EPA regional offices. Ponds are capable of assimilating the pollutants that are added to the system, thus settling basins generally would not be necessary for pond-based facilities where the pond itself can provide adequate solids settling. EPA estimated that 108 pond facilities met the CAAP facility definition and that these facilities represented 27% of the total regulated CAAP facilities and produce 73% of the production for the regulated CAAP facilities. The pollutant discharges from the pond facilities represent about 4% of the BOD, 12% of the total nitrogen, <1% of the total phosphorus, and 27% of TSS.

Nonetheless, EPA was concerned about potential pollutant discharges from some pond facilities due to the rapid drainage when harvesting the animals, in particular shrimp ponds. Shrimp are harvested through rapid pond drainage and capture of the animals in harvest structures which are external to the pond, to prevent the shrimp from burrowing into the pond bottoms. This drainage practice has the potential to discharge more solids because the pond bottom is disturbed during harvest. EPA has obtained information on shrimp production in Texas where there are many large producers. The State of Texas has issued discharge permits to all shrimp producers, which incorporate requirements on the discharge of wastewater from these facilities. Texas shrimp facilities must comply with numeric limitations for inorganic TSS and typically install sedimentation basins to capture the water that is removed from a pond prior to its discharge to surface waters. In addition, the Texas Department of Parks and Wildlife has concerns over the release of non-native shrimp, thus facilities have a series of structural barriers to prevent shrimp from escaping. There is also

shrimp production in South Carolina. Most of the shrimp in South Carolina are produced at small facilities, but there is one producer that is large enough to be considered a CAAP facility subject to NPDES requirements. This facility does have an NPDES permit and its permit includes a BMP directing it to treat its pond drainage to remove solids prior to discharge. EPA's revised analysis of the regulatory options took these practices into account in the baseline analysis.

Based on the information provided by the industry and permits issued to pond facilities, EPA is not proposing to establish any effluent guidelines requirements for discharges from pond facilities. EPA believes there are very few pond facilities that meet the definition of a CAAP facility and most of the pond discharges that do occur add only than trivial pollutant loads because (1) the pond system itself already must have high quality water to produce aquatic animals and (2) surface drainage (due to excess precipitation) also will be of high quality. EPA supports the efforts of the various State agricultural extension services that have developed BMP recommendations for discharges from pond facilities. EPA believes that BMPs are very effective for controlling pollutant discharge from ponds and is also developing BMP guidance for pond producers. EPA's guidance would focus on practices to minimize solids in the discharges and to reduce the need to use drugs and chemicals. EPA will consider comments on the proposed BMP guidance manual that accompanies today's rule.

F. No Regulation Option

EPA solicits comments on the "no regulation" option for discharges from all production facility types and encourages commenters to support such arguments with information and data, particularly data on the loadings, efficiency of existing practices including best management practices and treatment technologies and the costs associated with pollutant removals.

EPA considered an option which would be to establish no national requirements for the entire point source category on a subcategory-by-subcategory basis. EPA is proposing this option for four sectors: pond operations, molluscan shellfish, alligators and aquariums, as described in Section V. EPA is also seeking comment, however, on this option for the other subcategories that today's proposed rulemaking would regulate.

G. CAAP Pretreatment Standards

EPA is proposing to not regulate indirect dischargers under today's effluent guidelines and standards. The indirect dischargers would be discharging mainly TSS and BOD, which the POTWs are designed to treat. In addition, the nutrients discharged from CAAP facilities that are in concentrations similar to nutrient concentrations in human wastes discharged to POTWs. The options EPA considered do not directly treat for nutrients, but nutrients are incidentally removed through the control of TSS. EPA believes that the POTW removals of TSS would get the equivalent nutrient removals obtained by the options considered for this proposed rulemaking and therefore concludes there would be no pass through of pollutant amounts necessitating regulation.

IX. Economic Analysis

A. Introduction

This section describes the capital investment and annualized costs of compliance with the proposed effluent limitations guidelines and standards for the concentrated aquatic animal production industry and the potential magnitude of those costs for the regulated community. EPA's economic assessment is presented in detail in the report titled "Economic and Environmental Impact Analysis of the Proposed Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Industry" (hereafter "EA") and in the rulemaking record. EPA conducted cost-reasonableness and nutrient cost effectiveness analyses on all options evaluated and performed an analysis of the economic impacts on small entities for the proposed options.

B. Economic Data Collection Activities

EPA relied on four major sets of data for today's proposal. The first set are the data collected in the screener survey titled "Screener Questionnaire for the Aquatic Animal Production Industry" OMB Control Number 2040–0237 (hereafter "screener survey") which EPA distributed to nearly 6,000 potential aquatic animal production facilities. The screener survey is described in more detail in Section IV.B of this preamble. The screener survey collected facility production data information, but no financial information (such as the facility's annual revenue or operating costs). EPA used the production data, combined with available price data, to estimate revenues for the model facilities for which the Agency estimated costs. EPA also used the screener survey data to estimate the frequency with which the treatment practices that served as the technology basis for costing the various options occurred in the CAAP industry.

The second and third sets of data are from the United States Department of Agriculture, National Agricultural Statistics Service (USDA/NASS). The second data source is USDA's *Census of Aquaculture (1998)*, (60605), which is the primary source of publicly available data on the Nation's aquaculture industry (hereafter referred to as "the Census"). Specifically, the Census provides information on aquatic animal production, revenues (sales), method of production, species produced, sources of water, point of first sale outlets, cooperative agreements and contracts, and aquaculture distributed for restoration or conservation purposes. The third data source is a special tabulation of the Census data generated by USDA/NASS for EPA. The special tabulation did not collect new information on the industry, nor did it provide information at a level of detail that would disclose confidential information. The special tabulation rather provided data already collected for the Census in a classification scheme more useful for EPA's purposes. Specifically, the data provides facility counts and statistical information (mean, median, standard deviation and coefficient of variation) on a species basis for the six existing Census revenue categories (<$24,999; $25,000 to $49,000; $50,000 to $99,999; $100,000 to $499,999; $500,000 to $999,999, and $1 million or more). The special tabulation also provides this information for a new revenue category that corresponds to the Small Business Administration's size standard for a small aquatic animal production business (*i.e.*, less than $750,000 annually). EPA used the special tabulation data to examine the distribution of aquatic animal operations by revenue and species and to estimate the number of "small" entities affected by the proposed rule.

The fourth set of data are enterprise budgets developed by experts in aquacultural economics to depict financial conditions for representative aquaculture facilities. Enterprise budgets are useful tools for examining the potential profitability of an enterprise prior to actually making an investment. To create an enterprise budget, an analyst gathers information on capital investments, variable costs (such as labor and feed), fixed costs (*e.g.*, interest and insurance), and typical yields and combines it with

price information to estimate annual revenues, costs and return for a project. By varying different input parameters, enterprise budgets can be used to examine the relative importance of individual parameters to the financial return of the project or to identify breakeven prices required to provide a positive return. The Economics Subgroup of the JSA/AETF provided EPA with enterprise budgets for trout, shrimp, hard clam, prawns, and alligators. In addition, EPA identified and collected other budgets through literature searches of publications, reports and analyses by regional aquaculture centers, universities and cooperative extensions, the aquatic animal production industry and its associated organizations.

EPA is currently in the process of collecting detailed facilty-level technical and economic data on aquatic animal producers. This data collection effort is the "Detailed Questionnaire for the Aquatic Animal Production Industry" OMB Control Number 2040–0240 (hereafter "detailed survey") which EPA distributed in June 2002. The detailed survey is described in Section IV of this preamble. EPA intends to publish a Notice of Data Availability of its findings based on the detailed survey.

C. Economic Impact Methodologies

1. Economic Description of the Aquatic Animal Production Industry

The aquatic animal production industry includes sites that fall within the North American Industry Classification System (NAICS) codes 112511 (finfish farming and fish hatcheries), 112512 (shellfish farming), 112519 (other animal aquaculture), and part of 712130 (aquariums, part of zoos and botanical gardens). The first three groups have Small Business Administration size standards of $0.75 million in annual revenue while the size standard for NAICS 712130 is $6.0 million in annual revenue.

USDA reports that there were approximately 4,200 commercial aquaculture facilities in 1998 (DCN 60605). Based on revenues from aquaculture sales alone (not including other farm-related revenues from other agricultural crops at the facility), more than 90 percent of the facilities have revenues less than $0.75 million annually and thus may be considered small businesses. The Small Business Administration's size standard is based on annual revenue at the company level for all products, so using facility revenue from aquaculture sales is likely to over-estimate the proportion of small businesses in the industry. EPA intends to use company level revenue from the detailed survey data to identify the number of small businesses impacted by the final rule. Although aquaculture facilities exist in every State, there tends to be regional specialization by species as a result of local climate and the quality/quantity of water available for aquaculture (for example, catfish in the southeast, salmon on the northern coasts, and trout in Idaho).

In 1999, commercial farm-level aquatic animal sales totaled nearly $1 billion (842 million pounds). The range of products includes: finfish raised for food and recreation (including food fish, sport or game fish, baitfish, or ornamental fish); crustaceans and molluscs raised for food; and other aquatic animals such as alligators, frogs, and turtles. Catfish and trout sales account for nearly fifty percent of the commercial market (>$400 million annually and $64 million annually in production, respectively).

The industry includes several types of ownership structures: (1) Commercial; (2) Federal and State; (3) Tribal; (4) academic and research; and (5) nonprofit. Within the private or commercial sector, ownership structures range from small family farms to large multinational firms. The non-commercial sector is also diverse. The U.S. Fish and Wildlife Service (FWS) operates 66 Federal hatcheries, six Fish Technology Centers, and nine Fish Health Centers. Its goals are to conserve, restore, enhance, and manage the Nation's fishery resources and ecosystems for the benefit of future generations. FWS distributes more than 50 species primarily to Federal, Tribal, State, and local governments. Many States operate fish hatcheries for stocking recreational fisheries, and EPA identified approximately 500 State hatchery facilities. In addition, USDA–ARS and DOC–NOAA operate aquaculture research facilities.

As an approximate measure of the size of the governmental aquatic animal production, fish distributions from the FWS in 1999 totaled 5.5 million pounds. *Fisheries* magazine published an overview of state coldwater fishery programs that listed 23.7 million pounds of trout and salmon distributed from State hatcheries in 1996 (DCN 20014). EPA estimates that production from 17 Tribal programs is more than 1.3 million fish annually.

EPA identified approximately 30 academic and research institutions that maintain facilities ranging from small research projects to full-scale systems for training the next generation of aquatic animal producers. Information on the magnitude of these operations nationwide is currently being sought by EPA through the detailed survey.

Nonprofit organizations in the CAAP industry include 30 Alaskan hatcheries and non-taxable aquariums. Alaskan hatcheries are different from other State hatcheries. The farming of salmon, per se, was outlawed in 1990 (Alaska, 2001a; DCN 20002). Instead, Alaska permits nonprofit "ocean ranching" where salmon are reared from egg to smolt stage and then released into public waters to be available for harvest by fishermen upon their return to Alaskan waters as adults. EPA has identified two types of nonprofit organizations that exist in Alaska—four regional aquaculture associations and eight private nonprofit corporations—with a total annual permitted production of approximately 2 billion smolts for ocean release. EPA identified approximately 50 aquariums in the U.S., some of which are non-taxable establishments.

2. Methodological Overview

This section discusses potential impacts from the estimated compliance costs. The analysis consists of several components: (1) Assessing the number of facilities that could be affected by this rule; (2) estimating the annualized incremental compliance costs for model facilities to comply with the different requirements identified in the rule; (3) calculating model facility impacts using the test measure of the ratio of the estimated annual compliance costs to revenue from aquaculture sales (hereafter referred to as a revenue test); and (4) extrapolating from the individual model facility results to estimate facility impacts at the national level (*i.e.*, in the regulated universe) using the revenue test. EPA also calculated industry-wide costs and pollutant removals and performed cost-reasonableness and nutrient cost-effectiveness tests.

EPA used the screener survey data to characterize the industry by production system, species, ownership structure (commercial and non-commercial, with the latter including Federal, State, Tribal, academic/research, and other operators), and annual production at the facilities. EPA used the information to construct its model facilities. EPA converted the six revenue categories presented in the Census (<$24,999; $25,000 to $49,000; $50,000 to $99,999; $100,000 to $499,999; $500,000 to $999,999, and $1 million or more) to six production categories (ranges in pounds) for each species using the Census prices and assigned each screener survey facility to the

appropriate category. This conversion allows EPA to use information from both data sources as appropriate. As discussed in Section VII, EPA developed costs for 96 different combinations of production system/species/ownership structure/production category. All costs are reported in 2000 dollars, unless otherwise noted.

Neither the Census nor EPA's screener survey collected data on farm-level operating costs. This absence of matched pairs of operating cost and revenue data limited EPA's efforts in developing the economic analysis for proposal. EPA considered alternative approaches to the revenue test presented in today's preamble to examine economic impacts to the industry, including developing representative model facilities based on enterprise budget data. EPA determined these alternative approaches to be infeasible given the lack of information on the distribution of profits among aquatic animal producers. EPA intends to perform a detailed financial analysis on actual farm-level data collected in the detailed survey prior to final action on today's proposal. In today's proposal, EPA is using the existing technical and economic data to make preliminary evaluations of economic achievability in advance of the detailed survey data. Prior to final action of the rule, EPA plans to provide the public with an opportunity to review and comment on the data received in response to the detailed survey.

EPA used information from the screener survey to calculate "frequency factors," that is, the portion of facilities represented by a model that already have a particular pollutant control practice in place. For example, if three of every ten facilities already have a particular pollutant control practice in place prior to the regulation, the frequency factor for that practice would be 0.30. EPA estimated costs for each pollutant control practice for each facility.

EPA used the frequency factors and pollutant control practice costs in two ways. First, the Agency calculated national estimates by calculating the weighted average of each pollutant control practice, *i.e.*, the product of the cost and (1 minus the frequency factor). The weighted average cost for each control practice within an option were summed to calculate the weighted average model facility cost for that option. EPA multiplied the weighted average model facility cost times the number of facilities represented by the model facility configuration. EPA performed these calculations for each model facility configuration and summed the results to estimate the national industry compliance costs attributed to an option.

For the revenue tests, EPA assumed that a facility would incur the full pre-tax annualized compliance cost of any pollution control practices that it needed to implement to meet the proposed rule. For example, suppose an option has three components: control practice A with a cost of $10 and a frequency factor of 0.9; control practice B with a cost of $100 and a frequency factor of 0.5; and control practice C with a cost of $1000 and a frequency factor of 0.1. In this case, a facility could incur any cost from $0 (all control practices are already in place) to $1110 (none of the control practices are already in place).

EPA used the frequency factors to calculate the probability of a facility incurring a particular control practice cost combination. Table IX.C.1 summarizes the probabilities of a facility incurring the example costs. The example model facility has a 90 percent probability of incurring a cost of $1,000 or more (the sum of all probabilities for costs of $1,000 or more). If the example model facility represents 50 facilities and the $1,000 cost shows impacts at the 1 percent revenue threshold, EPA estimates that 45 facilities (or 50 x 0.9) would show impacts at the 1 percent revenue threshold.

TABLE IX.C.1—EXAMPLE OF APPLYING FREQUENCY FACTORS FOR REVENUE TESTS

Cost combination	Frequency factor (or inverse)			Facility cost	Probability of facility cost
	A	B	C		
ABC	0.1	0.5	0.9	$1,110	0.045
AB	0.1	0.5	0.1	110	0.005
AC	0.1	0.5	0.9	1,010	0.045
A	0.1	0.5	0.1	10	0.005
BC	0.9	0.5	0.9	1,100	0.405
B	0.9	0.5	0.1	100	0.045
C	0.9	0.5	0.9	1,000	0.405
No cost	0.9	0.5	0.1	0	0.045
Sum of probabilities					1.000

While some non-commercial facilities—Federal and state hatcheries, academic and research facilities, and tribal facilities—might sell some of their production, most fish and egg distribution from these facilities have no market transaction (that is, the fish are not sold). The industry profile (Section III.C) indicates some of the differences between commercial and non-commercial facilities, but the economic analysis is constrained by the absence of cost and/or funding data for non-commercial facilities until detailed survey data are available. Given the data available at this time—production level from the screener survey and market value from the Census—the only measure by which to evaluate impacts is to impute a value to their production based on annual harvest and commercial prices.

EPA considers the use of a revenue test for commercial and non-commercial facilities appropriate for this stage of the rulemaking. Government facilities might have the options of increasing user fees and budgets or re-directing budget allocations. Academic and research facilities might have the option of re-directing budget allocations. In other words, the economic analysis for non-commercial facilities should differ from that performed for commercial facilities. While this is not possible with the information available at this time, EPA designed different versions of the economic and financial portion of the detailed questionnaire for government and academic/research facilities with the intent of collecting the data necessary for the different analyses.

D. Annualized Compliance Cost Estimates

As discussed in Secion III, a concentrated aquatic animal production

facility (CAAP) is defined in 40 CFR 122.24 and appendix C. EPA has identified approximately 136 direct discharging CAAPs that would be regulated by this proposal. EPA calculated the economic impact on each model facility based on the cost of compliance using the technology basis for each of the options considered for the proposal. For existing direct dischargers, EPA calculated impacts for compliance with BPT, BCT, and BAT requirements; EPA is not proposing pretreatment standards for indirect dischargers. As detailed in Section VIII, EPA based the proposed standards for direct discharges on Option 3 for all net pen systems and recirculating systems, as well as for flow-through systems with annual production of 475,000 pounds and greater. EPA based the proposed standards for direct dischargers for flow-through systems with annual production between 100,000 and 475,000 pounds on Option 1. EPA is not proposing standards for any production system with annual aquatic animal production less than 100,000 pounds although EPA calculated costs and impacts for these smaller facilities.

EPA estimates that the total pre-tax annualized compliance costs attributed to the proposed rule are $1.10 million (see Table IX.D.1) for facilities identified in the screener survey. More than half of the estimated cost is projected to be borne by non-commercial facilities. Among the commercial facilities, those with flow-through systems will incur the greatest share of the cost ($0.16 million annually).

TABLE IX.D.1—ESTIMATED PRE-TAX ANNUALIZED COMPLIANCE COSTS BASED ON SCREENER DATA

Production system	Owner	Number of regulated CAAP facilities	Pre-tax annualized cost (Millions, 2000 dollars)
100,000–475,000 Pounds Production			
Flow-Through	Commercial	31	$0.16
Flow-Through	Non-Commercial	57	0.30
Flow-Through	Alaska Non-Profit	15	0.32
Recirculating	Commercial	5	0.03
Net Pen	Commercial	0	NA
475,000 Pounds Production and Above			
Flow-Through	Commercial	9	0.04
Flow-Through	Non-Commercial	6	0.09
Flow-Through	Alaska Non-Profit	2	0.11
Recirculating	Commercial	3	0.02
Net Pen	Commercial	8	0.03
Total		136	1.10

In order to estimate the national pre-tax annualized compliance costs attributed to the proposed rule, EPA multiplied the commercial facilities by a factor of 2.5. EPA believes it was able to identify all public facilities in its screener survey mailing list, so these compliance costs already represent national estimates and do not need to be sealed. The results of scaling up to the national estimates are presented in Table IX.D.2. This factor was estimated by calculating the ratio of the number of potentially regulated facilities identified in the Census to the number of potentially regulated facilities identified in the screener survey results. EPA evaluated this comparison by system type and found, for those potentially regulated facilities, that the ratio was fairly consistent (approximately 2.5). A more detailed explanation of this analysis can be found in the EA and rulemaking record (DCN 61793). For the final rule, EPA intends to evaluate other methods of estimating the number of potentially regulated facilities either using the screener or detailed survey data (see approach in TDD Appendix).

TABLE IX.D.2—ESTIMATED NATIONAL PRE-TAX ANNUALIZED COMPLIANCE COSTS

Production system	Owner	Number of regulated CAAP facilities	Pre-tax annualized cost (Millions, 2000 dollars)
100,000–475,000 Pounds Production			
Flow-Through	Commercial	78	$0.40
Flow-Through	Non-Commercial	57	0.30
Flow-Through	Alaska Non-Profit	15	0.32
Recirculating	Commercial	13	0.06
Net Pen*	Commercial	NA	NA
475,000 Pounds Production and Above			
Flow-Through	Commercial	23	0.09
Flow-Through	Non-Commercial	6	0.09
Flow-Through	Alaska Non-Profit	2	0.11

TABLE IX.D.2—ESTIMATED NATIONAL PRE-TAX ANNUALIZED COMPLIANCE COSTS—Continued

Production system	Owner	Number of regulated CAAP facilities	Pre-tax annualized cost (Millions, 2000 dollars)
Recirculating	Commercial	8	0.05
Net Pen	Commercial	20	0.09
Total		222	$1.51

* EPA did not identify any commercial net pens of this size category in the screener survey.

E. Model Facility Impacts

As mentioned in Section IX.C.2, EPA used the revenue test to make preliminary determinations about economic achievability in advance of the detailed survey data. EPA is not associating any particular threshold of the revenue test with facility failure; such a determination will be made on the basis of facility-specific information collected in the detailed survey. For purposes of today's proposal, EPA believes that a large percentage of facilities experiencing impacts greater than 5% and/or a small percentage experiencing impacts greater than 10% indicate disproportionate economic burden.

1. Flow-Through Systems

a. BPT. Table IX.E.1 summarizes the results of the revenue test for the three regulatory options at the 3, 5, and 10 percent thresholds. The results are divided into two size categories based on annual production of aquatic animals: facilities with annual production between 100,000 and 475,000 pounds and facilities with annual production greater than 475,000 pounds. The results are presented in terms of the number of facilities whose test ratio is projected to exceed the threshold level (*i.e.*, the number of facilities that would incur incremental annualized compliance costs that are greater than 3, 5, and 10 percent of their annual revenue from aquaculture sales). EPA is proposing Option 1 for the smaller size category and Option 3 for the larger size category. EPA estimates that under these options, no facilities will incur compliance costs greater than 10 percent of revenues and only a small number of facilities will incur compliance costs greater than 5 percent.

TABLE IX.E.1—REVENUE TESTS FOR FLOW-THROUGH FACILITIES

Size	Facilities regulated	Option 1			Option 2			Option 3			Option selected
		>3%	>5%	>10%	>3%	>5%	>10%	>3%	>5%	>10%	
100,000–475,000 lbs:											
Commercial	78	25	8	0	25	15	0	35	23	23	1
Non-Commercial	57	0	0	0	0	0	0	4	0	0	1
Alaska Non-Profit	15	0	0	0	0	0	0	0	0	0	1
>475,000 lbs:											
Commercial	23	0	0	0	0	0	0	0	0	0	3
Non-Commercial	6	0	0	0	0	0	0	0	0	0	3
Alaska Non-Profit	2	0	0	0	0	0	0	1	0	0	3

* Numbers in the table represent the number of facilities projected to exceed the threshold level.

b. BCT. In July 1986, EPA developed its methodology for setting effluent limitations based on BCT (51 FR 24974). EPA evaluates the reasonableness of BCT candidate technologies—those that remove more conventional pollutants than BPT—by applying a two-part cost test: a POTW test and an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology, and then compares this cost to the POTW benchmark. The POTW benchmark is the cost per pound for a POTW to upgrade from secondary to advanced secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars) or $0.65 per pound (in 2000 dollars). In the industry cost-effectiveness test, the ratio of the cost per pound to go from BPT to BCT divided by the cost per pound to go from raw wastewater to BPT for the industry must be less than 1.29 (that is, the cost increase must be less than 29 percent).

EPA is establishing BPT limitations for flow-through facilities with an annual production of 100,000 pounds and greater. A BCT test can be performed for the category with 100,000 to 475,000 in annual production. (EPA is proposing the most stringent option for facilities with 475,000 and greater in annual production. Hence, there is no more stringent option to be considered for BCT for this group.) For purposes of this analysis, EPA is assuming that the proposed BPT limits are baseline. Thus, EPA is considering only Options 2 and 3 as BCT candidate options.

Table IX.E–2 presents the calculations for the BCT cost test. The cost per pound to upgrade from secondary to advanced secondary treatment is less than $0.65 for Option 3, so Option 3 passes the first part of the test. However, the cost per pound to go from raw wastewater to BPT is $0.20, therefore the ratio of the cost per pound to go from BPT to BCT divided by the cost per pound to go from raw wastewater to BPT for the industry is 2.08 and Option 3 fails the second part of the test. Based on these results, EPA is proposing that BCT be set equal to BPT.

TABLE IX.E.2—POTW COST TEST CALCULATIONS FOR FLOW-THROUGH SYSTEMS (100,000–475,000 POUNDS IN ANNUAL PRODUCTION)

Option	Incremental conventional pollutants removed (lbs.)	Incremental pre-tax total annualized costs (Millions, 2000 $)	Ratio of costs to removals (POTW test)	Pass POTW test?	BPT-BCT Raw-BPT ratio (Industry test)	Pass industry test?
2	0	$0.03	Undefined	No	NA	NA
3	874,136	0.37	0.42	Yes	2.08	No

c. BAT. The technology options EPA considered for BAT are identical to those it considered for BPT for existing dischargers. Because EPA projects limited economic impacts associated with the BPT requirements, EPA does not expect significant economic impacts for BAT. EPA did not select the more stringent Option 2 for facilities between 100,000 and 475,000 pounds production per year because EPA was concerned about the number of commercial facilities (15 out of 78) estimated to experience compliance costs greater than 5% of revenues from aquaculture sales. EPA also determined that Option 3 would not be economically achievable for these facilities based on the high number of facilities (23 out of 78) estimated to experience compliance costs greater than the 10% revenue threshold. EPA selected Option 3 for facilities with greater than 475,000 pounds production because no facilities are estimated to experience compliance costs that exceed the 5% revenue threshold.

2. Recirculating Systems

a. BPT. EPA is proposing Option 3 for recirculating systems with annual production greater than 100,000 pounds. EPA estimates that under this option, none of the 21 recirculating facilities will incur compliance costs greater than 3 percent of revenues (which by definition also implies that no facilities will incur compliance costs greater than 5 percent or 10 percent).

b. BCT / BAT. EPA is proposing the most stringent option for facilities with recirculating systems. Hence, there is no more stringent option to be considered for BCT, so BCT is set equal to BPT. The technology options EPA considered for BAT are identical to those it considered for BPT. Because EPA projects limited economic impacts associated with the BPT requirements, EPA expects only limited economic impacts for BCT and BAT.

3. Net Pen Systems

a. BPT. None of the model facilities for net pen systems incur compliance costs greater than 3 percent of revenues for any of the regulatory options. EPA is proposing the most stringent option, Option 3, as BPT for net pen systems.

b. BCT / BAT. EPA is proposing the most stringent option for facilities with net pen systems. Hence, there is no more stringent option to be considered for BCT, so BCT is set equal to BPT. The technology options EPA considered for BAT are identical to those it considered for BPT for existing dischargers. Because EPA projects limited economic impacts associated with the BPT requirements, EPA expects only limited economic impacts for BAT.

5. New Source Performance Standards for All Production Systems

EPA is proposing new source performance standards that are identical to those proposed for existing dischargers that meet the 100,000 pound production threshold. Engineering analysis indicates that the cost of installing pollution control systems during new construction is no more expensive than the cost of retrofitting existing facilities and is frequently less expensive than the retrofit cost. Because EPA projects the costs for new sources to be equal to or less than those for existing sources and because limited impacts are projected for these existing sources, EPA does not expect significant economic impacts (or barrier to entry) for new sources that meet the 100,000 pound production threshold.

EPA is considering establishing new source performance standards for smaller coldwater CAAP facilities that produce between 20,000 and 100,000 pounds per year. Based on the screener data, EPA initially identified 110 facilities in this group. EPA intends to conduct further analysis pertaining to this issue using detailed survey data. EPA invites comment on whether compliance costs would represent a barrier to entry to these facilities.

F. Other Economic Impacts

1. Firm-Level Impacts

For the final rule, EPA intends to conduct an analysis of firm-level impacts with the detailed survey data. No firm-level analysis is possible at this time due to data constraints that arise from the predominance of privately-held (*i.e.* firm not required to file financial information with the Securities and Exchange Commission) and foreign-held firms. The salmon industry, for example, is predominantly foreign-held. Due to differences in accounting standards, EPA does not routinely consider foreign firms in its financial analysis. EPA also intends to examine the potential cumulative impacts on non-commercial concentrated aquatic animal production facilities, such as State and Federal hatcheries, using information collected in the detailed survey.

2. Community-Level Impacts

EPA did not identify any data source with detailed employment information for the aquatic animal production industry. Given that the scope of the proposed regulation is focused on a limited number of larger facilities, EPA believes that is not likely to cause severe community impacts. EPA intends to examine community-level impacts based on detailed survey data.

3. Foreign Trade Impacts

EPA believes that proposed regulations will have little, if any, impact on foreign trade. Several species, including striped bass, tilapia, trout, and salmon, face significant foreign competition. However, no facilities in the striped bass sector are expected to incur compliance costs that exceed the 1 percent revenue threshold, and no tilapia or salmon facilities are expected to incur compliance costs that exceed the 3 percent revenue threshold. EPA used its regulatory flexibility and proposed different options for different levels of production for the system most commonly used to raise trout (*i.e.*, flow-through) to mitigate potential adverse impacts. EPA solicits comments on the potential impacts of the proposed rule on foreign trade.

G. BPT Cost Comparison Test and Cost-Effectiveness Analysis

EPA is evaluating technology options for the control of only conventional pollutants at BPT. CWA Section 304(b)(1)(B) requires a cost-reasonableness assessment for BPT limitations. In determining BPT limitations, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits gained by such technology. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology unless the required additional reductions are wholly out of proportion to the costs of achieving such marginal reduction.

The BPT cost comparison test is based on the average cost per pound of pollutants removed by a BPT regulatory option. The cost component is measured as total pre-tax annualized costs in 2000 dollars. In this case, the pollutants removed are conventional pollutants although, in some cases, removals may include priority and nonconventional pollutants. Historically, the cost comparison values have ranged from $0.21 to $33.72 (2000 dollars).

For the CAAP industry, EPA has chosen to evaluate cost reasonableness on the basis of the higher of TSS or BOD removals (not the sum of these removals) to avoid possible double-counting of removals. The costs and removals for the proposed options for the flow-through, recirculating, and net pen subcategories are summarized in Table IX.G.1. The cost comparison values range from $0.04/lb to $0.23/lb, values that EPA considers to be acceptable.

TABLE IX.G.1.—BPT COST COMPARISON TEST

Production system	Total pre-tax annualized cost (2000$)	Conventional pollutant removals (lbs)	Average cost per pound ($/lb)
Flow-Through	$1,004,363	4,450,465	$0.23
Recirculating	45,071	638,365	0.07
Net Pens	34,345	868,899	0.04

a. Nutrient Cost-Effectiveness. EPA also has calculated the cost-effectiveness of the removal of nutrients for the options considered in today's proposal. As a benchmark for comparison, EPA has estimated that the average cost-effectiveness of nutrient removal by POTWs with biological nutrient removal is $4/lb for nitrogen and $10/lb for phosphorus. Table IX.G.2 summarizes the nutrient cost-effectiveness by production system for all the options considered. The removals are given for total nitrogen (TN) and total phosphorus (TP) individually and on a combined basis. Option 2 always has a higher nutrient cost-effectiveness value than Option 1 because the additional requirement for a health management plan adds costs but results in no nutrient removals. For recirculating systems and net pen systems, all options are more cost-effective than these benchmarks. For flow-through systems, nutrient cost-effectiveness significantly exceeds these benchmarks suggesting that the requirements are not very cost effective for removing nutrients at flow-through systems. However, as noted previously all options for all systems were within the BPT cost comparison range that EPA considers to be acceptable.

TABLE IX.G.2—COSTS, NUTRIENT REMOVALS, AND COST-EFFECTIVENESS FOR OPTIONS CONSIDERED

Option	Total annualized cost (2000$)	Average nutrient cost effectiveness (TN +TP, $/lb)		Average nutrient cost-effectiveness (TN, $/lb)		Average nutrient cost-effectiveness (TP, $/lb)	
		Removals	$/lb	Removals	$/lb	Removals	$/lb
Flow-Through:							
1	$946,796	5,121	$184.89	2,110	$448.72	3,011	$314.45
2	998,269	5,121	194.94	2,110	473.11	3,011	331.54
3	1,438,226	110,666	13.00	85,469	16.83	25,197	57.08
Recirculating:							
1	30,469	0	NA	0	NA	0	NA
2	33,587	0	NA	0	NA	0	NA
3	45,071	32,453	3.12	25,090	1.80	7,363	6.12
Net Pens:							
1	6,205	66,170	0.09	56,717	0.11	9,453	6.13
2	9,322	66,170	0.14	56,717	0.16	9,453	31.04
3	34,345	86,890	0.40	74,477	2.61	12,413	2.77

EPA is proposing a tiered approach for flow-through systems with Option 1 for systems with production levels between 100,000 and 475,000 pounds, and Option 3 for systems with production levels 475,000 pounds and higher. Due to the absence of economies of scale, smaller facilities bear a relatively higher cost per pound of pollutant removal. EPA is proposing Option 3 for all recirculating and net pen systems. Table IX.G.3 summarizes the nutrient cost-effectiveness for the proposed options.

TABLE IX.G.3.—COSTS, NUTRIENT REMOVALS, AND COST-EFFECTIVENESS FOR PROPOSED OPTIONS

Production system	Total annualized cost (2000)	Average nutrient cost-effectiveness (TN +TP, /lb)		Average nutrient cost-effectiveness (TN, /lb)		Average nutrient cost-effectiveness (TP, /lb)	
		Removals	/lb	Removals	/lb	Removals	/lb
Flow-Through	$1,004,363	66,103	$15.19	50,273	$19.98	15,830	$63.45
Recirculating	45,071	32,453	3.12	25,090	1.80	7,363	6.12
Net Pens	34,345	86,890	0.40	74,477	2.61	12,413	2.77
Total	1,083,779	185,446	5.84	149,840	7.23	35,606	30.44

H. Small Business Analysis

Based on the special tabulation from the Census discussed in Section IX.B, EPA identified approximately 4,200 small commercial aquatic animal producers, which represents over 90 percent of the total AAP producers. Based on screener survey data, EPA identified: a total of 999 small entities (including 26 small Alaskan flow-through facilities that are non-profits); a total of 344 small entities that met the definition of a CAAP facility; and 48 small entities that are within the scope of the proposed rule (31 flow-through, 12 Alaskan, and 5 recirculating). That is, about 35 percent of facilities within the scope of the proposed rule are small. Of the 36 regulated small CAAP facilities that are commercially owned, approximately 17 (which represents 5 percent of the total small CAAP facilities or 47 percent of the regulated small CAAP facilities) incur compliance costs greater than 1 percent of aquaculture revenue and 10 small commercial entities (which represents less than 3 percent of the total small CAAP facilities or 28 percent of the regulated CAAP facilities) incur compliance costs greater than 3 percent.

For commercial facilities, EPA assumed that the facility is equivalent to the business, an assumption that will be re-examined when detailed survey data is available. However, because sufficient data is available to determine the parent nonprofit association (and its revenues) for the small Alaskan nonprofit facilities, EPA analyzed small entity impacts at the level of the parent association. EPA determined that 12 small Alaskan nonprofit facilities within scope of the proposed rule are owned by 8 small nonprofit associations. Of the 6 small Alaskan nonprofit associations for which EPA had data, 3 associations incur compliance costs greater than 1 percent of revenues and 1 association incurs compliance costs greater than 3 percent.

EPA intends to make its final determination of the impact of the aquatic animal production rulemaking on small businesses based on analyses of the detailed survey data. EPA did convene a Small Business Advocacy Review Panel pursuant to section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). For a discussion of the Panel's outreach and findings see Section XIII.B.

I. Cost-Benefit Analysis

Table IX.I.1 summarizes the total social costs and benefits of the proposed rule. The estimated pre-tax annualized compliance cost is $1.51 million in 2000 dollars for the proposed rule (see Table 6–5). All CAAP facilities within the proposed scope are currently permitted, so incremental administrative costs of the regulation are negligible. However, Federal and State permitting authorities will incur a burden for reviewing the BMP plan and reports on the use of drugs and chemicals. EPA estimates these costs to be approximately $3,337 per year (EPA ICR No. 2087.01). That is, the recordkeeping and reporting burden to the permitting authorities is less than two-tenths of one percent of the pre-tax compliance cost for the proposed rule. The social costs are shown using both a 7 percent and 3 percent discount rates.

The monetized benefits presented are based on the Mitchell and Carson contingent valuation estimates of annual willingness to pay, so the total willingness to pay derived from these values is an annual amount. The model facility approach did not provide any intuition about the timing of compliance or the dynamics of when benefits would accrue so the benefit analysis is based on the environmental effects achieved when the proposed regulation is fully implemented. There is no variation through time. The annualized value of a level annual flow is equal to the annual flow itself, when the rate for discounting and annualization are the same. Thus, the annualized benefits are the same as the annual benefits no matter what discount rate is applied. The estimated monetized benefits of the rule range from $0.022 million to $0.113 million. This is likely to be an underestimate because EPA can fully characterize only a limited set of benefits to the point of monetization. Section 10.6 describes several types of benefits—those that can be both quantified and monetized; those that can be quantified but not monetized; and those that cannot be quantified or monetized.

TABLE IX.I.1.—ESTIMATED SOCIAL COSTS AND MONETIZED BENEFITS

Production system	Number of regulated CAAPFs	Pre-tax annualized cost (Millions, 2000 dollars)		Annualized monetized benefits * (Millions, 2000 dollars)	
		7%	3%	Min	Max
Flow-Through	181	$1.31	$1.20	$0.019	$0.091
Recirculating	21	0.11	0.11	0.003	0.022
Net Pen	20	0.09	0.08	.....	.....
Industry Total	222	1.51	1.39	0.022	0.113
State and Federal Permitting Authorities	.....	0.003	0.003	.....	.....

TABLE IX.I.1.—ESTIMATED SOCIAL COSTS AND MONETIZED BENEFITS—Continued

Production system	Number of regulated CAAPFs	Pre-tax annualized cost (Millions, 2000 dollars)		Annualized monetized benefits * (Millions, 2000 dollars)	
		7%	3%	Min	Max
Estimated cost of the proposed rule		1.513	1.393	0.022	$0.113

* Monetized benefits are not scaled to the national level.

The monetized benefits are based on the 128 flow-through and recirculating systems from the screener data (*i.e.*, are not scaled to the national level) because EPA was not able to estimate a representative national scaling factor. Hence, Table IX.I.1 compares annualized compliance costs associated with 222 facilities to annualized benefits from 128 facilities.

X. Water Quality Analysis and Environmental Benefits

A. CAAP Environmental Impacts

1. Nutrients, Solids, and Water Quality

As described earlier, some CAAP facilities may contribute significant amounts of nutrient (nitrogen and phosphorus) and solids to receiving waters. These discharges have the potential to contribute to a number of water quality impacts related to eutrophication, defined as an increase in the rate of supply of organic matter in an ecosystem (Nixon, 1995, as cited in NSTC, 2000 (DCN 61562). The increase in organic matter can be caused either by increased inputs from sources outside of the ecosystem (*e.g.*, agricultural runoff or industrial effluents) or by enhanced organic matter production within the ecosystem caused by increased nutrient inputs to the system. Adverse environmental consequences of eutrophication include harmful algal blooms, increased water column turbidity, low dissolved oxygen and associated stresses to stream biota, increased water treatment requirements, changes in benthic fauna, and stimulation of harmful microbial activity with possible adverse consequences for human health. These consequences have long been a concern in the protection and development of water resources (*e.g.*, Dunne and Leopold, 1978; DCN 61563).

As noted earlier in the Preamble, actual water quality impacts from CAAP facilities vary greatly and depend on type and size of facility, treatment processes and technologies, and physical, biological, and chemical characteristics of the receiving water body. However, EPA estimates of untreated ("raw") model facility loadings shown in Table X.A.1 suggest that large CAAP facilities can, in the absence of treatment, contribute significant total annual pollutant loads. Estimated loadings from large net pen facilities, not shown in Table X.A.1, range from about 132,000 pounds to over four million pounds annually. When multiple CAAP facilities are located on a single receiving water, which occurs in such states as Idaho and Maine, cumulative pollutant loadings to the receiving water may be correspondingly higher and may be of concern from a stream ecology perspective. EPA's Region 10 identified discharges from CAAP facilities as contributors to phosphorus problems in the middle Snake River, where over 70 CAAP facilities, several municipal treatment plants, and several food processors were identified. The region adopted strict numeric limits on phosphorus from the CAAP facilities that led to an overall reduction in phosphorus over the past five years (Fromm and Hill, 2002; DCN 31005).

TABLE X.A.1.—TYPICAL RAW POLLUTANT LOADINGS FOR INDIVIDUAL FLOW-THROUGH AND RECIRCULATING MODEL FACILITIES

[FT = flow through; SB = striped bass; M = medium; L = large. (For definition of model facility size categories, see Chapter 9 of the CAAP Development Document (DCN 61552))]

	BOD5 (lb/yr)	Total nitrogen (lb/yr)	Total phosphorus (lb/yr)	Total suspended solids (lb/yr)
Salmon FT L	2,019,852	8,678	19,707	1,731,301
SB FT M	62,149	267	606	53,271
Tilapia FT M	155,373	668	1,516	133,177
Tilapia FT L	388,433	1,669	3,790	332,943
Trout FT M	77,687	334	758	66,589
Trout FT L	1,009,926	4,339	9,853	865,651
Trout Stockers FT M	77,687	334	758	66,589
Trout Stockers FT L	466,120	2,003	4,548	399,531
SB Recirc L	383,564	1,650	4,181	328,770
Tilapia Recirc L	127,855	550	1,394	109,590

Source: CAAP Economic Analysis (DCN 20141).

Seven States, reporting recently under CWA section 303(d), identify CAAP facilities as a potential source of impairment for one or more water bodies. These States include Illinois, Louisiana, North Carolina, New Hampshire, New Mexico, Ohio, and Virginia. None of these states, excluding North Carolina and New Mexico, submitted a 2000 report of impaired waters and their listings from 1998 are considered current. North Carolina and New Mexico did submit a 2000 report, which updates the impaired waters listed in the 1998 report. Nationwide, CAAP is listed as one of numerous potential sources of impairment for 191 miles of rivers and streams (less than 1% of all rivers and streams nationwide that were reported to be impaired), and for 2,788 acres of lakes, reservoirs, and

ponds (less than 1% of all lake, reservoir and pond acreage nationwide reported to be impaired; EPA, 2002; DCN 40319). It should be noted that other sources frequently also contribute to impairment of water bodies where CAAP is cited as a potential source of impairment.

Several researchers in the United States have measured biological variables downstream of aquaculture facilities. In some cases, researchers observed impacts such as the presence of pollution-tolerant benthic invertebrates and changes in biomass and species richness (*e.g.*, Kendra, 1991 (DCN 60366); Selong and Helfrich, 1998 (DCN 60542)). In other cases (*e.g.*, Huggett *et al.*, 2001 (DCN 61564)), pollutants evaluated in this study were not found to negatively impact the receiving stream. Although limited studies on biological impacts of CAAP effluents have been published, States and other authorities have taken regulatory action to address concerns with water quality impacts from CAAP facilities (*e.g.*, EPA, 2002 (DCN 61728)).

EPA solicits public comment and data regarding potential impacts of nutrient and solids loadings from CAAP facilities on water quality, biological, and other characteristics of the receiving waters.

2. CAAP Drugs and Chemicals and Water Quality

As noted earlier in this Preamble, some CAAP facilities utilize animal drugs that are discharged directly into the receiving waters. The U.S. Food and Drug Administration (FDA)/Center for Veterinarian Medicine (CVM) regulates animal drugs under the Federal Food, Drug, and Cosmetic Act (FFDCA). While extensive toxicity studies are generally required prior to drug approval from FDA, limited data on potential environmental effects may be available for some medications that are currently authorized for investigational use by FDA according to FFDCA section 512(j), 21 U.S.C. section 360b(j). In addition, pesticides such as a variety of copper compounds (used to kill unwanted algae or to prevent the growth of fouling organisms) can impair aquatic organisms in receiving waters depending on the rates being applied and other factors such as the breakdown rate of the product or active ingredient. EPA is not aware of research documenting or characterizing the ecological significance of releases of drugs and chemicals at aquaculture facilities in the United States. However, the presence of, for example, residual antibiotics in the environment and in wild organisms near salmon net pens in the United States has been documented (Capone *et al.*, 1996, as cited in Boxall *et al.*, 2001 (DCN 61789)). EPA furthermore recognizes that general concerns with residual antibiotics and pesticides in the environment have been raised. Residual antibiotics and pesticides may pollute the water and immunize the organisms they are designed to control. The effects of these actions can be distributed well outside the original area of use (NOAA, 1999 (DCN 31006)).

3. Pathogens

CAAP facilities are not considered to be a significant source of pathogens that adversely affect human health (MacMillan *et al.*, 2002 (DCN 61608)). CAAP facilities culture cold-blooded animals (fish, crustaceans, molluscs, *etc.*) that are unlikely to harbor or foster pathogens that would adversely affect warm-blooded animals (*e.g.* humans) by causing disease (MacMillan *et al.*, 2002 (DCN 61608)). CAAP facilities could become contaminated with such pathogens, *e.g.*, wastes from warm-blooded animals contaminating CAAP facility waters or the source waters used by CAAP facilities, but this is not considered a substantial risk in the United States (MacMillan *et al.*, 2002 (DCN 61608)).

It has been suggested that CAAP facilities may serve as sources of infectious disease transmission to wild populations of aquatic organisms. Such infectious diseases may include those from pathogens that are exotic to native ecosystems, as well as the much larger group from pathogenic microbes that already exist in wild fish populations. For example, wastes and escapement of infected shrimp from CAAP facilities is considered a potential pathway for wild shrimp exposure to viral diseases (JSA Shrimp Virus Work Group, 1997 (DCN 61561)). Blazer and LaPatra (2002; DCN 40361) cite several studies suggesting that CAAP facilities may have been sources of disease transmission to wild populations. An example they describe is that of the Asian tapeworm (*Bothriocephaus acheilognathi*) which was identified in North America in 1975 and became established in fish farms where golden shiners *Notemigonus crysoleucas*, fathead minnows *Pimephales promelas*, and grass carp were raised. They suggest that the more recent use of poeciliids such as mosquitofish *Gambusia affinis* for mosquito control, and possible releases of exotic fishes from aquaria, may have served as mechanisms for the introduction of this parasite into native fish in areas such as Hawaii. As described in Blazer and LaPatra (2002; DCN 40361), Font and Tate (1994) found that native Hawaiian fish from streams where no exotic species were found were completely free of adult helminthes, including the Asian tapeworm. Conversely, in two rivers with exotic species, nematodes and Asian tapeworms were found in both the exotic species and the native fish (Blazer and LaPatra, 2002 (DCN 40361)).

Blazer and LaPatra's (2002; DCN 40361) discussion on the potential pathogen risks to wild fish populations from cultured fish also provided a summary of risks from viruses, such as infectious hematopietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), and infectious salmon anemia virus (ISAV), and bacteria, such as *Edwardsiella ictaluri* and *Renibacterium salmoninarum*. Although these viruses and bacteria are hazardous to wild fish populations, a causative association between CAAP facilities and disease outbreaks in wild populations was not clearly identified.

4. Non-Native (Exotic) Species

Introductions of non-native, or exotic, aquatic organisms from CAAP facilities into the environment via intentional or accidental releases is another area of concern. The health of wild populations of aquatic animals can be affected by the release of cultured individuals or spawning products into the surrounding environment (NOAA, 1999 (DCN 31006); Goldburg *et al.*, 2001 (DCN 30788); Naylor *et al.*, 2001 (DCN 61335); Carlton, 2001 (DCN 61434); Volpe *et al.*, 1999 (DCN 60611)). Concerns relate to potential impacts on native ecosystems and aquatic biota from disease, parasitism, interbreeding, and competition that may arise from the escaped organisms. Interbreeding among cultured and wild individuals, as well as competitive interactions between released populations and local wild populations can lead to declines in the wild populations (NOAA, 1999 (DCN 31006)).

Escapement of Atlantic salmon from net pens in the Pacific Ocean has been documented. Since a reporting regulation was imposed in 1996, nearly 600,000 Atlantic salmon escaped in the state of Washington between 1996 and 1999 (Nash, 2001 (DCN 40149)). In 1997, 300,000 Atlantic salmon escaped into Puget Sound when net pens were accidentally breached (Weber, 1997 (DCN 40151)). Atlantic salmon have also escaped from net pens in the Atlantic Ocean. In 2000, Atlantic salmon escaped from a net pen off the coast of Maine, when a boat slammed into the pen, causing a breach. Approximately 13,000 farmed salmon were released near one of the rivers where wild

Atlantic salmon are listed as endangered (Clancy, 2000 (DCN 40139)).

Cultured aquatic animals have been released in the United States with adverse ecological impacts. Carp, introduced from Asia for food production and biological control, subsequently became established in rivers in the Mississippi River basin and compete with native fish. Non-native Atlantic salmon (*Salmo salar*) now outnumber wild salmon in some spawning rivers; and non-native salmon that become established in the wild may increase pressure on endangered native salmon populations (Naylor *et al.*, 2001 (DCN 61335)). Adverse impacts to native species may be of particular concern when the native species are endangered (NOAA, 1999 (DCN 31006)). Recently, authorities in New England have prohibited at one facility the use of non-North American strains of Atlantic salmon and genetically modified salmonids to protect a distinct population segment of federally-listed endangered species (EPA, 2002a; DCN 61728)). Thus, while EPA is not aware of studies that quantitatively characterize the overall significance of aquaculture's contribution to non-native species issues, the Agency believes, based upon the literature reviewed, that this is a potential area of concern for this sector.

5. Other Impacts

Maintenance of the physical plant of aquaculture facilities can generate organic materials "which may be retained in the surrounding waterbody. These materials can cause biological and physical alteration of the surrounding environment. This type of waste is not widely recognized, but can be quite severe" (NOAA, 1999 (DCN 31006)). For example, cleaning organisms that foul nets from net pens can contribute solids, BOD, and nutrients although such inputs are generally produced over a short period of time. Cleaning algae from flow-through raceway walls and bottoms similarly generates pollutants in effluent. EPA solicits comments or data relating to these, or other potential areas of environmental impact.

B. Environmental Benefits Analysis

1. Environmental Endpoints Evaluated

EPA anticipates that improvements in water quality will result from today's proposed action, and as a consequence, increases in both the recreational as well as the non-use value of affected water bodies will also result. This may include improvements in ecological and biological endpoints in receiving waters as a result of the expected water quality benefits of today's proposed action. Finally, today's proposed action provides better information on the use of drugs and other chemicals.

EPA has quantified and monetized a subset of the anticipated benefits of today's proposed action due to lack of assessment modeling tools for some benefits categories. The central basis for the quantitative benefits analysis is a water quality modeling assessment that estimates water quality responses to the pollutant loading reductions under technology options described earlier in this Preamble. Specifically, the benefits that EPA has been able to quantify are (a) water quality improvements in stream reaches downstream of flow-through and recirculating systems, and (b) improvements in the recreational use value of these same reaches. Benefits that were not quantified include water quality and ecological responses to pollutant loading reductions at marine net-pen systems and at other coastal facilities such as Alaskan salmon hatcheries. Ecological and other water resource benefits from reductions in releases of non-native species, aquatic animal pathogens, and drugs and chemicals used at CAAP facilities may be only partially captured in the monetized benefits analysis. Thus, the estimated monetized benefits of today's proposed action may understate the potential benefits of the proposed regulation.

As discussed at the end of the previous economic section, EPA estimates the monetized benefits of today's proposed rule for flow-through and recirculating systems to range from $22,000 to $113,000 based on an estimated 128 facilities. The range reflects uncertainty in assumed background water quality and stream flow conditions in receiving streams. Again, this estimated range does not include other potential benefits such as those from net pen systems and other coastal facilities. The following sections briefly describe the benefits analysis.

2. Water Quality Modeling Approach

One approach to estimating water quality benefits of the proposed rule involves simulation of water quality responses at potentially regulated facilities and requires data on facility locations, baseline effluent quality for regulated facilities, and data characterizing the hydrologic and water quality conditions of the specific receiving waters at these facilities. At proposal, data inputs required for a detailed analysis were not available. Alternatively, EPA has developed a representative case study approach to estimate water quality-related benefits for model flow-through and recirculating facilities on a "prototype" stream reach. Under this approach, ranges of hydrologic and water quality characteristics for a "prototype" stream reach associated with flow-through and recirculating systems were developed. These ranges were developed by (a) identifying a region where a relatively large number of CAAP facilities are located, and where streamflow, water quality, and facility location data are available, and (b) using these data to develop generalized background streamflow and water quality characteristics associated with the streams on which CAAP facilities in this region are located. EPA was able to identify sufficient data for facilities mainly in western North Carolina (Central/Eastern Forested Uplands ecoregion). The development of the "prototype" stream reach characteristics is described in greater detail in the CAAP Economic Analysis (DCN 20141). The results of this case study may be of limited applicability to other ecoregions.

EPA then modeled water quality responses under regulatory Option1/ Option 2 (for the purposes of this analysis, no additional pollutant reductions were assumed for Option 2) and Option 3 for flow-through and recirculating model facilities. The pollutant load reductions associated with these Options were described in Sections VII and VIII of this Preamble. The pollutant concentrations scenarios (Baseline, Option 1/Option 2, and Option 3) were each modeled for different species types and facility production sizes (medium and large). Finally, information from USDA's 1998 Census of Aquaculture (USDA, 2000; DCN 60605) on the total number of facilities for each facility type was used to extrapolate the water quality results for the prototype case study to all flow-through and recirculating systems nationwide that fall under the scope of the proposed regulation.

EPA used the QUAL2E (Enhanced Stream Water Quality) model to quantify water quality responses for 30 km downstream of modeled facilities. QUAL2E is a one-dimensional water quality model that assumes steady state flow but allows simulation of diurnal variations in temperature, algal photosynthesis, and respiration. The basic equation solves the advective-dispersive mass transport equation. Water quality constituents simulated include conservative substances, temperature, bacteria, BOD5, DO, ammonia, nitrate and organic nitrogen, phosphate and organic phosphorus, and

algae. Simulated changes in DO, BOD5, and TSS calculated for the 30 km downstream reach for pre- and post-regulatory scenarios were subsequently used to estimate monetary benefits from water quality improvements, as described below. Further details on the water quality modeling are provided in the CAAP Economic Analysis (DCN 60605).

3. Monetized Benefits

Economic benefits associated with the CAAP regulatory options are based on incremental changes in water quality use-support (*i.e.*, boatable, fishable, swimmable) and the population benefitting from the changes. A national contingent valuation survey relates changes in water quality uses supported to households' willingness to pay for water quality improvements (Carson and Mitchell, 1991). EPA used a single consolidated water quality index (WQI) to represent water quality. WQI is calculated from the water quality criteria estimated in the case studies discussed above (BOD, DO, TSS) and fecal coliforms which are not affected by today's regulation. Increases in WQI indicate improvements in water quality and the ability of the river to support more demanding uses. The Carson and Mitchell survey requested an overall value so the total willingness to pay based on their survey results encompasses aesthetic and non-use values, as well as recreational and other use values.

The Carson and Mitchell survey found that people value changes in waters closer to home more than more distant waters. Because of data limitations, this evaluation could not distinguish between a local population directly affected by water quality improvements and the national population. Therefore, the analysis treated all of the changes in water quality as if they were occurring far from the households' locality. This simplification will reduce the monetized benefits attributable to today's rule. EPA solicits comment on additional methods for estimating and monetizing benefits.

Different flow regimes in the model CAAP facilities resulted in a range of benefit estimates. As discussed above, data was only available at this time to estimate benefits of flow-through and recirculating systems. For this comparison, the monetized benefits are estimated to range from $22,000 to $113,000 (2000 dollars). Regulation of the relatively large number of trout flow-through systems generated the largest benefits by this method.

XI. Non-Water Quality Environmental Impacts

Sections 304(b) and 306(b) of the Clean Water Act require EPA to consider non-water quality environmental impacts (including energy requirements) associated with effluent limitations guidelines and standards. To comply with these requirements, EPA considered the potential impact of the proposed CAAP rule on energy consumption, air emissions, and solid waste generation. Considering energy use and environmental impacts across all media, the Agency has determined that the impacts identified in this section are justified by the benefits associated with compliance with the proposed limitations and standards. In reference to today's proposal, Section XI.A discusses energy requirements, section XI.B discusses air emissions, and section XI.C discusses sludge generation.

A. Energy Requirements

EPA estimates that implementation of today's proposal would result in a net increase in energy consumption for aquaculture facilities. The incremental increase would be based on electricity used to operate wastewater treatment equipment at facilities that are not currently operating wastewater treatment equipment (microscreen filters for flow-through and recirculating systems and video cameras for net pens) comparable to the regulatory options. To calculate incremental energy consumption increases for the aquaculture industry, EPA examined the wastewater treatment in place at the aquaculture facilities that would be covered by this regulation. EPA used the aquaculture industry cost models (described in section VII) to calculate the energy that would be required to operate wastewater treatment equipment that would be installed to comply with regulatory options. EPA used the information obtained in the screener survey to determine if a facility would have to install new equipment.

EPA determined that the incremental increase in energy consumption for flow-through and recirculating systems is estimated at 232,000 kWh and 64,500 kWh for net pen systems.

B. Air Emissions Impacts

Potential sources of air emissions from CAAP facilities include primary settling operations (*e.g.*, settling basins and lagoons) and the land application of manure. EPA assumed that the additional air emissions from primary settling operations would be minimal because only about 10% of in-scope flow-through and recirculating CAAP facilities (estimated from the AAP screener survey data and the 1998 Census of Aquaculture) would require the addition of primary settling to meet Option 1 requirements. Primary settling treatment technologies collect solids below the surface of the water, reducing their exposure to the atmosphere. Although the proposed options do not require land application of manure, the options do increase the amount of solid waste collected from CAAP facilities. Land application is a common solid waste disposal method in the CAAP industry; therefore, the amount of ammonia released as air emissions would be expected to increase as the quantity of waste applied to cropland increases. EPA estimated the increase in ammonia emissions resulting from the implementation of each proposed regulatory option to be 42,470 lbs of ammonia per year. This is an increase of about 9.4% over the ammonia emissions presently estimated for the industry. For additional details about air emissions from CAAP facilities, see Chapter 11 of the CAAP Development Document (DCN 61552).

C. Solid Waste Generation

EPA considered regulatory options based on primary settling followed by solids polishing (*e.g.*, microscreen filtration, vegetated ditches). EPA estimated the incremental sludge generation from the treatment options in a manner similar to estimating the energy consumption incremental amounts. EPA estimated that sludge generation would not increase at facilities that are currently operating treatment systems comparable to the regulatory options. EPA used the cost models to estimate the incremental sludge generation rates for facilities not currently operating wastewater treatment and for facilities operating wastewater treatment not comparable to the regulatory operations.

EPA calculated the volume of sludge that would be generated by the 183 in-scope flow-through and recirculating facilities after implementation of the regulatory options. The sludge volume estimated, on a wet basis (assuming 5% solids), would be an additional 856,576 pounds at Option 1 and an additional1,788,194 pounds at Option 3.

XII. Implementation

A. Regulatory Implementation of Part 451 Through the NPDES Permit Program and the National Pretreatment Program

Under sections 301, 304, 306 and 307 of the CWA, EPA promulgates national effluent limitations guidelines and standards of performance for major industrial categories for three classes of pollutants: (1) Conventional pollutants (*i.e.*, total suspended solids, oil and grease, biochemical oxygen demand, fecal coliform, and pH); (2) toxic pollutants (*e.g.*, toxic metals such as chromium, lead, nickel, and zinc; toxic organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene); and (3) non-conventional pollutants (*e.g.*, ammonia-N, formaldehyde, and phosphorus).

As discussed in Section II, EPA considers development of six types of effluent limitations guidelines and standards for each major industrial category, as appropriate:

Abbreviation	Effluent limitation guideline or standard
BPT	Best Practicable Control Technology Currently Available.
BAT	Best Available Technology Economically Achievable.
BCT	Best Control Technology for Conventional Pollutants.
NSPS	New Source Performance Standards.
PSES	Pretreatment Standards for Existing Sources.
PSNS	Pretreatment Standards for New Sources.

Pretreatment standards apply to industrial facilities with wastewater discharges to POTWs. The effluent limitations guidelines and new source performance standards apply to industrial facilities with direct discharges to navigable waters.

1. NPDES Permit Program

Section 402 of the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit program. The NPDES permit program is designed to limit the discharge of pollutants into navigable waters of the United States through a combination of various requirements including technology-based and water quality-based effluent limitations. This proposed regulation contains the technology-based effluent limitations guidelines and standards applicable to the concentrated aquatic animal production industry to be used by permit writers to derive NPDES permit technology-based effluent limitations. Water quality-based effluent limitations (WQBELs) are based on receiving water characteristics and ambient water quality standards, including designated water uses. They are derived independently from the technology-based effluent limitations set out in this proposed regulation. The CWA requires that NPDES permits must contain for a given discharge, the more stringent of the applicable technology-based and water quality-based effluent limitations.

Section 402(a)(1) of the CWA provides that in the absence of promulgated effluent limitations guidelines or standards, the Administrator, or her designee, may establish technology-based effluent limitations for specific dischargers on a case-by-case basis. Federal NPDES permit regulations provide that these limits may be established using "best professional judgment" (BPJ) taking into account any proposed effluent limitations guidelines and standards and other relevant scientific, technical and economic information.

Section 301 of the CWA, as amended by the Water Quality Act of 1987, requires that BAT effluent limitations for toxic pollutants are to have been achieved as expeditiously as possible, but not later than three years from date of promulgation of such limitations and in no case later than March 31, 1989. See 301(b)(2). Because the proposed revisions to 40 CFR Part 451 will be promulgated after March 31, 1989, NPDES permit effluent limitations based on the revised effluent limitations guidelines must be included in the next NPDES permit issued after promulgation of the regulation and the permit must require immediate compliance.

2. New Source Performance Standards

New sources must comply with the new source performance standards and limitations of the CAAP rule (once it is finalized) at the time they commence discharging CAAP process wastewater. Because the final rule is not expected within 120 days of the proposed rule, the Agency considers a discharger a new source if construction of the source begins after promulgation of the final rule. EPA expects to take final action on this proposal in June 2004.

3. Pollutants in Intake Water (Net limitations)

The TSS limitations being proposed today are based on the implementation of production management controls and wastewater treatment. Depending upon the quality of the intake water and the specific needs and tolerance of the species being raised, some facilities may or may not currently employ pre-treatment of intake waters prior to their use in the production systems. EPA does not intend that the limits being established today would force facilities that otherwise would not be pre-treating their intake waters to do so. EPA is proposing to apply the TSS limitations on a net basis, such that the TSS content of the intake waters is subtracted from the TSS content of the effluent in determining compliance with the limitation. This credit for intake water pollutant content is consistent with the provisions of 40 CFR 122.45(g) and more closely reflects the ability of controls and treatment to minimize the addition of TSS by the production systems. EPA solicits comment on whether facilities that pre-treat intake waters in order to sustain growth of the aquatic organisms should base the net calculations upon the content of the intake waters subsequent to that pre-treatment, but prior to use in the production system.

4. National Pretreatment Standards

40 CFR part 403 sets out national pretreatment standards which have three principal objectives: (1) To prevent the introduction of pollutants into publicly owned treatment works (POTWs) that will interfere with POTW operations including use or disposal of municipal sludge; (2) to prevent the introduction of pollutants into POTWs which will pass through the treatment works or will otherwise be incompatible with the treatment works; and (3) to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

The national pretreatment and categorical standards comprise a series of prohibited discharges to prevent the discharge of "any pollutant(s) which cause Pass Through or Interference." [*see* 40 CFR 403.5(a)(1)] Local control authorities are required to implement the national pretreatment program including application of the federal categorical pretreatment standards to their industrial users that are subject to such categorical pretreatment standards, as well as any pretreatment standards derived locally (*i.e.*, local limits) that are more restrictive than the federal standards. This proposed regulation does not set federal categorical pretreatment standards (PSES and PSNS) applicable to concentrated aquatic animal production facilities regulated by 40 CFR part 451.

The federal categorical pretreatment standards for existing sources must be achieved not later than three years

following the date of publication of the final standards. If EPA were to promulgate PSNS in the final rule, CAAP new sources would be required to comply with the new source performance standards of the CAAP rule (once it is finalized) at the time they commence discharging CAAP process wastewater. Because the final rule is not expected within 120 days of the proposed rule, the Agency considers an indirect discharger a new source if its construction commences following promulgation of the final rule (40 CFR 122.2; 40 CFR 403.3). EPA expects to take final action on this proposal in June 2004.

In addition, Section 403.7 of the Clean Water Act provides the criteria and procedures to be used by a Control Authority to grant a categorical industrial user (CIU) variance from a pollutant limit specified in a categorical pretreatment standard to reflect removal by the POTW treatment plant of the pollutant. Procedures for granting removal credits are specified in 40 CFR 403.11.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of the streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n) and for indirect dischargers at 40 CFR 403.16 and 403.17.

C. Variances and Modifications

The CWA requires application of effluent limitations established pursuant to Section 301 or pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of the national effluent limitations guidelines and pretreatment standards for categories of existing sources for toxic, conventional, and nonconventional pollutants.

1. Fundamentally Different Factors Variances

EPA, with the concurrence of the State, may develop effluent limitations or standards different from the otherwise applicable requirements if an individual discharging facility is fundamentally different with respect to factors considered in establishing the limitation of standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance. Early on, EPA, by regulation provided for the FDF modifications from the BCT effluent limitations, BAT limitations for toxic and nonconventional pollutants and BPT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Assn* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new section 301(n) of the Act explicitly to authorize modifications of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of a FDF variance must be based solely on (1) information submitted during rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (*e.g.*, volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (*e.g.*, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b) (3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. The criteria for applying for and evaluating applications for variances from categorical pretreatment standards are included in the pretreatment regulations at 40 CFR 403.13(h)(9). In practice, very few FDF variances have been granted for past ELGs. An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Economic Variances

Section 301(c) of the CWA authorizes a variance from the otherwise applicable BAT effluent guidelines for nonconventional pollutants due to economic factors. The request for a variance from effluent limitations developed from BAT guidelines must normally be filed by the discharger during the public notice period for the draft permit. Other filing time periods may apply, as specified in 40 CFR 122.21(1)(2). Specific guidance for this type of variance is available from EPA's Office of Wastewater Management. For the proposed rule, this variance is not applicable since BAT equals BPT.

3. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain nonconventional pollutants

due to localized environmental factors. These pollutants include ammonia, chlorine, color, iron, and total phenols. For the proposed rule, this variance is not applicable since BAT equals BPT and none of the above authorized pollutants are being proposed for regulation for this industry.

D. Best Management Practices

Sections 304(e), 308(a), 402(a), and 501(a) of the CWA authorize the Administrator to prescribe BMPs as part of effluent limitations guidelines and standards or as part of a permit. EPA's BMP regulations are found at 40 CFR 122.44(k). Section 304(e) of the CWA authorizes EPA to include BMPs in effluent limitations guidelines for certain toxic or hazardous pollutants for the purpose of controlling "plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage." Section 402(a)(1) and NPDES regulations [40 CFR 122.44(k)] also provide for best management practices to control or abate the discharge of pollutants when numeric limitations and standards are infeasible. In addition, Section 402(a)(2), read in concert with Section 501(a), authorizes EPA to prescribe as wide a range of permit conditions as the Administrator deems appropriate in order to ensure compliance with applicable effluent limitations and standards and such other requirements as the Administrator deems appropriate.

The solids control best management plan includes components that are designed to minimize the discharge of solids from the facility. The goal of this plan is to control conventional and nutrient pollutants in the discharge. The CAAP facility is expected to provide written documentation of a best management plan and keep necessary records to establish and implement the plan. This type of regulatory structure will enable the individual facility operator to develop a plan tailored to the unique conditions at the CAAP facility, which reduces the discharge of pollutants consistent with the goals of the Clean Water Act. See CAAP Development Document for this proposed rule for a detailed discussion of pollution prevention and best management practices used in the CAAP industry.

E. Potential Tools To Assist With the Remediation of Aquaculture Effluents

A potential option to assist land owners with aquaculture effluent quality is the Environmental Quality Incentives Program (EQIP). This is a voluntary USDA conservation program. EQIP was reauthorized in the Farm Security and Rural Investment Act of 2002 (Farm Bill 2002). The Natural Resources Conservation Service (NRCS) administers EQIP funds.

EQIP applications are accepted throughout the year. NRCS evaluates each application using a state and locally developed evaluation process. Incentive payments may be made to encourage a producer to adopt land management, manure management, integrated pest management, irrigation water management and wildlife habitat management practices or to develop a Comprehensive Nutrient Management Plan (CNMP). These practices would provide beneficial effects on reducing sediment and nutrient loads to those aquaculture operations dependent on surface water flows. In addition, opportunities exist to provide EQIP funds to foster the adoption of innovative cost effective approaches to address a broad base of conservation needs, including aquaculture effluent remediation.

XIII. Administrative Requirements

A. Executive Order 12866: "Regulatory Planning and Review"

Under Executive Order 12866 [58 FR 51735, October 4, 1993], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "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 proposed 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 are documented in the public record.

B. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of 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 that has no more than $0.75 million in annual revenues; (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.

After considering the economic impact of today's proposed rule on small entities, including consideration of alternative regulatory approaches being proposed, I certify that this action will not have significant economic impact on a substantial number of small entities. We have determined that 17small commercial facilities (which represents 5 percent of the total small CAAPs or 47% of small CAAPs within the scope of the rule), would incur compliance costs greater than 1 percent of aquaculture revenue and 10 small commerical facilities (which represents less than 3 percent of the total small CAAPs or 28% of small CAAPs within the scope of the rule) would incur compliance costs greater than 3 percent of aquaculture revenue. Of the 10 small regulated CAAPs incurring costs in excess of 3 percent of revenues, the highest impact is at 7 percent of revenues. EPA estimates that small businesses own 36 facilities out of the 56 commercial facilities identified from the screener survey data as being within the proposed scope EPA based this estimate on information from the screener survey and the 1998 Census of Aquaculture as described in Section IV. EPA assumed that there were no multi-facility small businesses and that aquatic animal production was the only source of revenues for a facility. For this proposal, EPA is using the ratio of pre-tax annualized compliance costs to revenues (hereafter referred to as a revenue test) as its preliminary

determination of economic achievability in advance of detailed survey data (see Section IX for discussion). (More detail on these estimates is provided in the EA).

We have also determined that three of the six non-profit associations for which EPA had reported revenue data would incur compliance costs greater than 1 percent of revenue and one association would incur compliance costs greater than 3 percent of revenue. Non-profit organizations produce salmon for the State of Alaska and are considered to be small non-profit organizations for the purpose of this rulemaking. These non-profit facilities have assumed what is usually a State function, which is to raise fish (in this case salmon) in hatcheries to be released into the wild to supplement wild populations and sustain the Alaska commercial and recreational fishing industries. EPA identified 12 small Alaskan nonprofit facilities, owned by 8 nonprofit associations, within the proposed scope. These facilities raise salmon in flow-through hatcheries and as discussed above we propose to establish requirements for flow-through facilities with annual production greater than 100,000.

Despite the determination that this rule will not have a significant economic impact on a substantial number of small entities, EPA prepared a small business flexibility analysis that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. This small business flexibility analysis would meet the requirements for an initial regulatory flexibility analysis (IRFA) and is available for review in the docket and is summarized below.

The Agency is considering this action because the operation of CAAP facilities may introduce a variety of pollutants into receiving waters. Under some conditions, these pollutants can be harmful to the environment. According to the 1998 USDA Census of Aquaculture (USDA, 2000), there are approximately 4,200 commercial aquatic animal production (AAP) facilities in the United States that qualify as small businesses. Aquaculture has been among the fastest-growing sectors of agriculture until a recent slowdown that began several years ago caused by declining or level growth among producers of several major species. EPA analysis indicates that many CAAP facilities have treatment technologies in place that greatly reduce pollutant loads. However, in the absence of treatment, pollutant loads from individual CAAP facilities such as those covered by today's proposed rule, can contribute up to several thousand pounds of nitrogen and phosphorus per year, and tens to hundreds of thousands of pounds of TSS per year (see CAAP Economic Analysis). These pollutants, can contribute to eutrophication and other aquatic ecosystem responses to excess nutrient loads and BOD effects. In recent years, Illinois, Louisiana, North Carolina, New Hampshire, New Mexico, Ohio and Virginia have cited the AAP industry as a potential or contributing source of impairment to water bodies (EPA, 2000). Several state authorities have set water quality based permit requirements for CAAP facilities in addition to technology based limits based on BPJ (EPA, 2002b).

Another area of potential concern relates to non-native species introductions from CAAP facilities, which may pose risks to native fishery resources and wild native aquatic species from the establishment of escaped individuals (Hallerman and Kapuscinski, 1992; Carlton, 2001; Volpe *et al.*, 2000). CAAP facilities also employ a range of drugs and chemicals used both therapeutically that may be released into receiving waters. For some investigational drugs, as well as for certain applications of approved drugs, there is a concern that further information is needed to fully evaluate risks to ecosystems and human health associated with their use in some situations (EPA, 2002). Finally, CAAP facilities also may inadvertently introduce pathogens into receiving waters, with potential impacts on native biota. Today's proposed rule attempts to address a number of these environmental concerns. These regulations are proposed under the authority of sections 301, 304, 306, 308, 402, and 501 of the Clean Water Act, 33 U.S.C.1311, 1314, 1316, 1318, 1342, and 1361.

The small entities that would be directly regulated by this proposed rule are small commercial CAAP facilities and non-profit organizations that produce salmon for the State of Alaska. EPA estimates that small businesses own 36 facilities out ofthe 56 commercial facilities identified from the screener survey data as within the proposed scope. We have determined that 17 small commercial facilities (which represents 5 percent of the total small CAAPFs) would incur compliance costs greater than 1 percent of aquaculture revenue and 10 small commercial facilities (which represents less than 3 percent of the total small CAAPFs) would incur compliance costs greater than 3 percent of aquaculture revenue. EPA identified 12 small Alaskan nonprofit facilities, owned by 8 nonprofit associations, within the proposed scope. We have determined that three of the six associations for which EPA had reported revenue data would incur compliance costs greater than 1 percent of revenue and one association would incur compliance costs greater than 3 percent of revenue.

The proposed regulation includes reporting and recordkeeping requirements as discussed in this section under Paperwork Reduction Act.

EPA identified Federal rules that have an impact on the CAAP industry and believe that there are no such rules that would duplicate, overlap or conflict with the proposed rule. EPA has identified two sets of Federal rules, however, the implementation of which would be supplemented by the proposed requirements in today's notice—specifically, the reporting requirements proposed for certain drugs and chemicals. Today's rule would require reporting of investigational new animal drugs and any drug that is not used according to label requirements. Regulations administered by the Food and Drug Administration published at 21 CFR part 511 impose restrictions on such usage, but typically do not require reporting of the usage after discharge to waters of the United States. Similarly, today's rule would require reporting of the usage (and discharge) of chemicals when such usage does not comply with label requirements. Some such chemicals would be pesticides subject to regulatory requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by EPA. EPA has not published FIFRA requirements to require the reporting proposed today for CAAP facilities.

EPA invites comment on whether there are other Federal rules that may duplicate, overlap or conflict with the proposed rule.

EPA has tried to reduce the impact of this rule on small entities. EPA is proposing production thresholds that would minimize disproportionate economic impacts on small entities. EPA is not proposing any new requirements for 95 percent of the small entities producing aquatic animals (including facilities that are not defined as CAAP facilities) or 86 percent of the small CAAPFs identified in the screener data. Most of these are owned by small businesses and would likely experience serious economic impacts if requirements were imposed. EPA considered regulating all facilities that met the definition of a CAAP facility but concluded that the potential for impacts was great enough that CAAP facilities

which produce cold-water species with an annual production less than 100,000 pounds should not be subject to the proposed effluent guidelines. EPA determined that even proposing the least stringent option (Option 1) standards for these direct dischargers would have had a significant impact on a substantial number of small entities, see Section VIII and IX.

Additionally, we conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain the advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. The Agency convened the Small Business Advocacy Review Panel on January 22, 2002. Members of the Panel represented the Office of Management and Budget, the Small Business Administration and EPA. The Panel met with small entity representatives (SERs) to discuss the potential effluent guidelines and, in addition to the oral comments from SERs, the Panel solicited written input. In the months preceding the Panel process, EPA conducted outreach with small entities that would potentially be affected by this regulation. On January 25, 2002, the SBAR Panel sent some initial information for the SERs to review and provide comment. On February 6, 2002 the SBAR Panel distributed additional information to the SERs for their review. On February 12 and 13, the Panel met with SERs to hear their comments on the information distributed in these mailings. The Panel also received written comments from the SERs in response to the discussions at this meeting and the outreach materials. The Panel asked SERs to evaluate how they would be affected and to provide advice and recommendations regarding early ideas to provide flexibility. See Section 8 of the Panel Report for a complete discussion of SER comments.

The Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. A copy of the Panel report is included in the docket for this proposed rule [DCN 31019]. The Panel's most significant findings and discussion with respect to each of these issues are summarized below. For a full discussion of the Panel findings and recommendations, see Section 9 of the Panel report.

Scope: Based on the data provided by EPA, the Panel was concerned that small facilities could not afford technology-based discharge limitations. For those facilities that do not meet the NPDES permit applicability thresholds, the Panel strongly recommended that EPA not lower these thresholds or otherwise change the definition of a point source for this industry. For those that do meet the threshold but are still considered small entities, the Panel recommended that EPA exclude them from the scope of the proposed guidelines.

EPA Response: EPA is not proposing effluent guidelines for facilities that do not meet the definition of a CAAP facility under the NPDES permit program or modifying the definition of a point source. Furthermore, EPA is not proposing effluent guidelines requirements for any small CAAP facilities which produce cold water species between less than 100,000 pounds annually or any CAAP facilities which use pond systems. As described above EPA certifies that this proposal will not impose a significant impact on a substantial number of small entities. EPA is regulating small business above the threshold because further analysis reveals best available technologies that are affordable.

Pond Systems: The Panel agreed that pond systems producing any species as foodfish, stockers, sportfish, or baitfish did not pose any significant risk to water quality or have technologies available that were economically achievable to control their minimal discharges, and thus recommended excluding them from the scope of the proposed guidelines. For large pond systems, except for perhaps those which rapidly drain for harvest, the Panel recommended that EPA not adopt any requirements related to sediment discharge, erosion, nutrients, or feed management, as the measures considered are either impractical, not economically achievable, or would result in minimal pollutant reductions. EPA is still exploring requirements for drugs, chemicals, aquatic pathogens and exotic species, but based on information developed to date, the Panel believed it unlikely that the measures that have been identified so far would be effective in addressing these concerns. The Panel thus recommended that EPA continue its research, but that it carefully evaluate any potential measures to ensure that they are both effective and economically achievable before including them in proposed guidelines. Unless EPA identified such measures, the Panel recommended that EPA exclude all ponds from coverage under the proposed guidelines.

EPA Response: EPA followed this Panel recommendation.

Flow-through and Recirculating Systems: Because of their diversity and/or the preliminary cost information, the Panel recommended that EPA carefully consider economic achievability and technical feasibility before proposing any regulation for these types of systems. If no feasible and economically achievable technologies are identified, EPA should exclude them from the scope of the proposed guidelines. In particular, the Panel was concerned about Alaska Salmon facilities and recommended that EPA carefully consider not proposing requirements for them.

EPA Response: EPA's analysis of flow-through systems including the salmon non-profit facilities in Alaska support the decision to propose technology based requirements for the medium and large flow-through systems. EPA is proposing to exclude from this regulation salmon net pen production in the State of Alaska for the reasons stated previously in Section V.B. EPA's analysis indicates that the medium sized facilities cannot afford to achieve the same effluent limitations as larger flow-through facilities and therefore, EPA proposes to establish tiered requirements for the flow-through subcategory based on production thresholds. EPA believes that the proposed requirements for recirculating systems are also technically feasible and economically achievable.

Net Pen Systems: SERs identified practical limitations and raised concerns about the cost effectiveness of the measures under consideration, and so the Panel recommended that EPA consider these concerns before including them in proposed national effluent guidelines.

EPA Response: EPA considers the proposed net pen system requirements (BMPs, reporting, and active feed monitoring) to be cost effective and economically achievable.

Other Systems: The Panel recommended that EPA exclude aquaria, baitfish, and molluscan shellfish production from the scope of proposed guidelines, unless new information prompted EPA to reconsider. For ornamentals, the Panel recommended against inclusion unless drug or chemical use or the release of non-native species is found to pose a significant environmental risk and EPA identifies effective economically achievable technologies to address them. As for alligator systems, the Panel was concerned about the survival of the species and thus recommended that EPA analyze the impacts on wild species and consider such effects in its selection of options.

EPA Response: EPA is not proposing to establish effluent guidelines requirements for any pond systems, which are the most common systems

used to produce baitfish and ornamentals. EPA does not believe alligator producers are CAAP facilities and therefore would not be subject to these proposed requirements. EPA is also proposing to exclude aquaria from this regulation as described in Section V.B.

Health Management and Feed Management: The Panel was persuaded by the SER comments and recommended that the proposed guidelines not include any requirements related to animal health maintenance or feed management. The only exception was for net pens, for which EPA is proposing feed management requirements as described previously. The Panel also agreed that EPA should consider providing guidance on appropriate health and feed management practices.

EPA Response: EPA is not proposing to impose any requirement related to health management for any facilities. EPA does not propose feed management for flow-through and recirculating systems, except to identify and implement practices that minimize the addition of excess feed should facilities choose to comply with the alternative compliance provision (40 CFR 451.4). Also for flow-through facilities that have bulk flow discharged separately from the off-line settling, the bulk flow is subject to BMPs to minimize solids including excess feed. Active feed monitoring would be required for net pen systems.

Settling Basins: The Panel recommended, based on SER comments, that limitations based on the use of settling basins not be included in the proposed guidelines at pond-based systems that utilize slow, controlled drainage techniques. For other systems, the Panel recommended that any requirements related to solids removal be flexible enough to accommodate facilities where settling basins are not a viable option. Similarly, the Panel was persuaded that numeric sediment limits were not appropriate for pond systems. For other systems, the Panel recommended that EPA provide alternative requirements, such as BMPs, in lieu of numeric limitations. Finally, the Panel recommended that any monitoring requirements included in the effluent guidelines be kept to a minimum and limited only to where useful to the operator.

EPA Response: EPA is not proposing to establish any requirements for pond systems. EPA is proposing to establish limits for TSS based on sediment control such as settling basins for medium and large flow-through and recirculating systems, however, facilities are not constrained to construct and use settling basins in order to comply with the requirements. The Agency also proposes to provide an alternative compliance provision which would allow producers to comply with this regulation through the development and implementation of a BMP plan instead of numerical limitations.

Groundwater Protection, Disinfection and Manure Application: The Panel was persuaded by SER comments on groundwater protection, disinfection, and land application of manure and recommended that EPA not include any requirements for these topics.

EPA Response: EPA followed this Panel recommendation.

Microfiltration: The Panel was also concerned about the economic achievability of limitations based either on microfiltration or chemical precipitation and thus recommended that EPA reconsider any such requirement. The Panel also recommended that any requirements related to solids removal be flexible enough to accommodate facilities where these technologies are not economically achievable.

EPA Response: EPA is proposing to establish effluent limits for TSS based on the performance of microfiltration, but only for large flow-through systems and recirculating systems. But these limitations do not preclude the use of other technologies or practices to comply with these limitations. EPA has estimated the cost of applying microfiltration and found limitations to be economically achievable for large flow-through and recirculating systems. EPA is proposing to provide a compliance alternative that would allow facilities to develop and implement a BMP plan in lieu of complying with the numeric limitations.

Quiescent Zones: SERs raised compelling concerns about implementing quiescent zones in existing earthen raceways and thus the Panel recommended that EPA re-evaluate the need for and practicability of such a requirement. The Panel also recommended that any requirements related to solids removal be flexible enough to accommodate facilities where quiescent zones are not a viable option.

EPA Response: EPA is not proposing any requirements for the smallest flow-through facilities which are the facilities most likely to be earthen. The proposed limitations for TSS for the medium and large flow-through facilities are based on the application of quiescent zones and off-line settling, but facilities may use other technologies to achieve the limitations and may comply through the development and implementation of a BMP plan in lieu of complying with the numeric limitations.

Pathogens: The Panel questioned whether national effluent guidelines would provide any additional environmental protection relative to existing practice. The Panel thus recommended that EPA address pathogen concerns through guidance rather than through effluent guidelines requirements, unless subsequent analysis identifies control strategies that can be effectively implemented through national effluent guidelines that would be economically achievable for affected facilities.

EPA Response: EPA is not proposing any specific requirements for the control of pathogens. Control of diseases is managed by the U.S. Department of Agriculture's, Animal Plant Health Inspection Service. This proposal would require large flow-through and other facilities to establish practices as part of their BMP plan that address removing mortalities from the system and properly disposing of them. This provision should minimize the potential for discharging pathogens.

Drugs and Chemicals: The Panel found that drug and chemical use is in most cases already adequately regulated, and was unable to identify any particular technology or BMP that would be broadly applicable or effective in addressing concerns related to discharge of drugs or chemicals. Thus, unless subsequent analysis identifies control strategies that can be effectively implemented through national effluent guidelines that would be economically achievable for the affected facilities, the Panel recommended that EPA address concerns regarding the discharge of drugs and chemicals through guidance rather than through effluent guidelines requirements.

EPA Response: EPA proposes to require regulated facilities to report to the permitting authority the use of a drug or chemical that is an investigational new animal drug, and any drug or chemical that is not used in accordance with the label requirements. This would include investigational new animal drugs or drugs that are being used under the supervision and at the direction of a licensed veterinarian. EPA believes these reporting requirements are necessary to provide the permitting authority with sufficient information to determine whether additional action is warranted, and to enable action to be taken to control the discharge of these pollutants if so warranted.

Non-Native Species: The Panel found that national effluent guidelines are not the best way to deal with non-native species, and recommended that EPA

defer to the States or to other Federal agencies that have the authority to prohibit or control the importation of exotic species. For those species not prohibited that still have a potential to either become a nuisance or non-native species or that may carry diseases that pose a threat to native aquatic species, the Panel recommended that EPA work with these agencies to develop and implement appropriate protection and controls and provide guidance to States.

EPA Response: EPA proposes to require recirculatory, net pen and large flow-through facilities to develop and implement practices which minimize the potential escape of non-native species. EPA will consider working with these agencies to develop and implement appropriate protection and controls.

New Facilities: The Panel found that it unlikely that compliance costs would be significantly lower for new facilities than for existing facilities. Therefore, the Panel recommended that the New Source Performance Standards not be any more stringent than existing source requirements.

EPA Response: EPA followed this panel recommendation.

Through consultation with the Small Business Advocacy Review Panel and the JSA/AETF, EPA has tried to reduce the impact of this proposed rule on small businesses. For example, as described under Section XI, EPA had considered technology options for pond systems. Based on comments provided by the Small Entity Representatives (SERs), and members of the JSA AETF, EPA has concluded that pond systems do not pose a significant threat to the environment and is not proposing to establish requirements for these facilities.

We invite comments on all aspects of the proposal and its impacts on small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal 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, local, and tribal 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 the regulatory requirements.

EPA has determined that this rule would not contain 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. The total annual cost of this rule is estimated to be $1.5 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. The facilities which are affected by today's proposal are direct dischargers engaged in concentrated aquatic animal production. These facilities would be subject to today's proposed requirements through the issuance or renewal of an NPDES permit either from the Federal EPA or authorized State governments. These facilities should already have NPDES permits as the Clean Water Act requires a permit be held by any point source discharger before that facility may discharge wastewater pollutants into surface waters. Therefore, today's proposal could require these permits to be revised to comply with revised Federal standards, but should not require a new permit program be implemented.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA is not proposing to establish pretreatment standards for this point source category which are applied to indirect dischargers and overseen by Control Authorities. Local governments are frequently the pretreatment Control Authority but since this regulation proposes no pretreatment standards, there would be no impact imposed on local governments. EPA proposed requirements are not expected to impact any tribal governments, either as producers or because facilities are located on tribal lands. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

D. 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 and 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 proposed rule is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866, nor does it concern an environmental health or safety risk that may have a disproportionate effect on children.

E. 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 the Indian tribes, or on this distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed 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.

EPA does not believe any CAAP facility that would be subject to these proposed requirements are located on tribal lands. Nor is EPA aware of any tribes engaged in the production of aquatic animals subject to these proposed requirements. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.2087.01, OMB No. 2040–NEW) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*. In today's proposed regulation flow-through and recurculating facilities that would be subject to compliance with numeric limitations, however, EPA proposes to provide an alternative compliance provision that would allow facilities to develop and implement a BMP plan to control solids provided the permitting authority determines the plan will achieve the numeric limitations. Also flow-through facilities that segregate the bulk discharge from off-line settling discharge would develop and implement the solids control BMP plan. Larger flow-through facilities and all recirculating and net pen facilities within the scope of this proposed rule would also develop a BMP plan to address mortalities, non-native species, drugs and chemicals storage. These facilities would also be required to report to the permitting authority whenever an investigational new animal drug is used or drug or chemical is used for a purpose that is not in accordance with its label requirements.

EPA estimates that each plan will require 40 hours per facility to develop the plan. The plan will be effective for the term of the permit (5 years). An additional two hours per month (comprised of 1 hour of a manager's time and 1 hour of a laborer's time) or 24 hours per year are assumed to be required for implementation. EPS does not believe that the development and implementation of these BMPs will require any special skills.

EPA estimates that half of the flow-through and recirculating facilities (92 facilities) would choose to comply with the compliance alternative provision and incur the estimated 40 hours for plan development plus 24 hours per year for implementation. An estimated 10 percent of the flow-through facilities (10 facilities) may have segregated discharges of bulk flow and off-line settling. These facilities would also be required to develop the BMP plan for solids control and incur the estimated 40 hours for plan development and an additional 24 hours per year for implementation. All recirculating, net pen and large flow-through facilities would be required to develop and implement the BMP plan addressing non-native species releases, drug and chemical storage and mortality removal. This BMP plan is estimated to require 40 hours for development and 24 hours per year for implementation.

Facilities that develop a BMP plan would be required to certify that they have developed and are implementing the BMP plan. The burden for CAAP facilities associated with this certification is included in the 40 hours required to develop this plan. The estimated burden for Federal and State permitting authorities to review, approve and file these certifications is estimated to be 20 minutes per certification. The Compliance Alternative Provision requires the permitting authority to determine that the plan will achieve the numeric limits. EPA estimates that permitting authorities will expend 16 hours per permit to make this determination.

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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number (No. 2087.01) in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after September 12, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by October 15, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

G. Executive Order 13132: "Federalism"

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 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 proposed 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 estimates that, when promulgated, these revised effluent guidelines and standards will be incorporated into NPDES permits without any additional costs to authorized States.

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, if any,

on the relationship between, or the distribution of power and responsibilities among, the Federal, State and local governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local governments.

H. Executive Order 12898: "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations"

The requirements of the Environmental Justice Executive Order are that EPA will review the environmental effects of major Federal actions significantly affecting the quality of the human environment. For such actions, EPA reviewers will focus on the spatial distribution of human health, social and economic effects to ensure that agency decision makers are aware of the extent to which those impacts fall disproportionately on covered communities." This is not a major action. Further, EPA does not believe this rulemaking will have a disproportionate effect on minority or low income communities because the technology-based effluent limitations guidelines are uniformly applied nationally irrespective of geographic location. The proposed regulation will reduce the negative effects of concentrated aquatic animal production industry waste in our nation's waters to benefit all of society, including minority and low-income communities. The cost impacts of the rule should likewise not disproportionately affect low-income communities given the relatively low economic impacts of the rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub L. 104–113 Sec. 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 standard bodies. The NTTAA directs EPA to provide Congress, through OMB explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's proposed rule does not establish any technical standards, thus NTTAA does not apply to this rule. It should be noted, however, that the proposed rule would require certain facilities that produce aquatic animal products to monitor for TSS. Consensus standards for TSS were previously approved and are specified in the tables at 40 CFR 136.3.

J. Executive Order 13211: "Energy Effects"

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As part of the Agency's consideration of Non-Water Quality Impacts, EPA has estimated the energy consumption associated with today's proposed requirements. EPA estimates that concentrated aquatic animal production facilities would incrementally increase energy consumption for flow-through and recirculating systems at 232,000 kWh and 64,500 kWh for net pen systems. EPA estimated the annual electric energy use at an average individual flow-through system facility to be about 30,000 to 136,000 kWh per year and at average individual recirculating system facilities to be about 1.6 million kWh per year. The per facility annual increase in electricity use ranges from 4.3 to 18.9 % in average flow-though facilities and about 0.4% for average recirculating facilities. (See Chapter 11 of the CAAP Development Document for more details). Comparing the estimated annual increase in electric use associated with these proposed requirements to national annual energy use, EPA estimates the increase in electricity resulting from the proposed regulation to be 6.4×10^{-8} % of national energy use. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

K. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example, have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that is not clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? Would more (but shorter) sections be better? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

XIV. Solicitation of Data and Comments

A. General and Specific Comment Solicitation

EPA solicits comments on various issues specifically identified in the preamble as well as any other issues that are not specifically addressed in today's notice. Specifically, EPA solicits information, data, and comment on the following topics:

- Additional information and data on the performance and associated costs of all wastewater treatment practices currently or potentially capable of treating CAAP wastewaters;
- The potential of CAAP facilities to reduce water consumption and new technologies or practices that can effectively reuse water;
- Additional methods for estimating and monetizing benefits associated with the proposed rule;
- The economic analysis in this proposal and the methods EPA is considering for subsequent analyses using detailed survey data, particularly the use of cash flow as a measure of resources available to finance environmental compliance and suggestions for alternative methodologies;
- Whether controls for TSS are necessary and which industry subcategories (if any) should be subject to these potential limitations and standards;
- Additional data and information related to instances of CAAP indirect dischargers causing POTW interference or pass through especially of either drugs or chemicals used by the facility;
- Whether it would be appropriate and efficacious to ban the intentional release of non-native species, the appropriate entity to define non-native species, and the practicality of reporting requirements for escaped non-native species.
- How to control non-native species releases, pathogens, antibiotics and other chemicals with technologies or practices that are available and affordable.
- How to characterize and quantify incidental benefits from controlling non-native species, pathogens, antibiotic, chemical releases.
- How to characterize economic and environmental impacts associated with antibiotic releases.
- Feed back on the proposed BMP plan, particularly on how record

keeping should be used and what it should entail.

- The establishment of a phosphorus limit for existing and new concentrated aquatic animal production facilities; how the use of low phosphorus feeds or wastewater treatment practices (including the actual practices used) meet current phosphorus limits set by the permitting authority. EPA is interested in data documenting the costs of achieving such limits, any increased sludge production as a result of treating to remove phosphorus from wastewater and monitoring data including the method used to analyze the phosphorus in the collected samples.

- The establishment of a BOD limit for existing and new recirculating facilities, and how wastewater treatment practices (including the actual practices used) meet current BOD limits set by the permitting authority. EPA is interested in data documenting the costs of achieving such limits, any increased sludge production as a result of treating to remove BOD from wastewater and monitoring data including the method used to analyze the BOD in the collected samples.

- The appropriateness of the scope of the effluent limitations guidelines and standards and the parameters being considered for regulation (TSS, BOD, and phosphorus only) and whether autocorrelation is likely to be present in the wastewater data.

- A decision not establish effluent guidelines for the CAAP point source category. This decision may be made based on the baseline pollutant discharges not being large enough to warrant national regulations. In addition, EPA may conclude that due to significant regional and facility-specific variations, it is more effective to continue to rely on the BPJ of permit writers to establish appropriate limitations. Finally, EPA may conclude that available technologies are either not affordable, or provide little reduction in pollutant discharges relative to existing practice.

XV. Guidelines for Submission of Analytical Data

EPA requests that commenters to today's proposed rule submit analytical, flow, and production data to supplement data collected by the Agency during the regulatory development process. To ensure that commenter data may be effectively evaluated by the Agency, EPA has developed the following guidelines for submission of data.

A. Types of Data Requested

EPA requests paired influent and effluent treatment data for each of the treatment practices identified in the technology options (*see* Section VII.A) as well as any additional technologies applicable to the treatment of CAAP wastewater. EPA prefers paired influent and effluent treatment data, but also solicits unpaired data as well.

For the systems treating CAAP process wastewater, EPA requests paired influent and effluent treatment data from 24-hour composite samples of flowing wastewater streams (except for analyses requiring grab samples, such as oil and grease). This includes end-of-pipe treatment practices and in-process treatment, recycling, or water reuse. Submission of effluent data alone is acceptable, but the commenters should provide evidence that the influent concentrations contain treatable levels of the pollutants. If commenters sample their wastewaters to respond to this proposal, EPA encourages them to sample both the influent and effluent wastestreams.

EPA prefers that the data be submitted in an electronic format. In addition to providing the measurement of the pollutant in each sample, EPA requests that sites provide the detection limit (rather than specifying zero or "ND") if the pollutant is non-detected in the wastestream. Each measurement should be identified with a sample collection date, the sampling point location, and the flow rate at that location. For each sample or pollutant, EPA requests that the chemical analytical method be identified.

In support of the treatment data, commenters should submit the following items if they are available: A process diagram of the treatment system that includes the sampling point locations; treatment chemical addition rates; laboratory reports; influent and effluent flow rates for each treatment unit during the sampling period; production in each subcategory (daily values are preferred, but either production or estimated production during the sampling period are also acceptable); sludge or waste oil generation rates; a brief discussion of the treatment practice sampled; and a list of CAAP operations contributing to the sampled wastestream. If available, information on capital cost, annual (operation and maintenance) cost, and treatment capacity should be included for each treatment unit within the system.

B. Analytes Requested

EPA considered metals, conventional, and other nonconventional pollutant parameters for regulation based on analytical data collected. EPA initially identified 30 pollutants of concern for the industry (*see* Section VII.C and CAAP Development Document). The Agency requests analytical data for any of the pollutants of concern and for any other pollutant parameters that commentors believe are of concern in the CAAP industry. Of particular interest are BOD_5, TSS, total phosphorus, and pH data. Commentors should use the methods listed in Table XV.C–1 or equivalent methods (generally, those approved at 40 CFR 136 for compliance monitoring), and should document the method used for all data submissions. The methods are described in more detail in the CAAP Development Document.

C. Quality Assurance/Quality Control (QA/QC) Requirements

EPA based today's proposed regulations on analytical data collected by EPA using rigorous QA/QC checks specified in the analytical methods listed in Table XV.C–1. These QA/QC checks include procedures specified in each of the analytical methods, as well as procedures used for the CAAP sampling program in accordance with EPA sampling and analysis protocols. These QA/QC procedures include sample preservation and the use of method blanks, matrix spikes, matrix spike duplicates, laboratory duplicate samples, and QC standard checks (*e.g.*, continuing calibration blanks). Because of these rigorous checks, EPA has high confidence in its data. Thus, EPA requests that submissions of analytical data include any available documentation of QA/QC procedures. However, EPA will still consider data submitted without detailed QA/QC information. If commenters sample their wastewaters to respond to this proposal, EPA encourages them to provide detailed documentation of the QA/QC checks for each sample. EPA also requests that sites collect and analyze 10 percent field duplicate samples to assess sampling variability, and sites provide data for equipment blanks for volatile organic pollutants when automatic compositors are used to collect samples.

TABLE XV.C–1.—ANALYTICAL METHODS FOR USE WITH CAAP WASTEWATERS

Parameter	Method used in EPA sampling (alternative methods)
Aeromonas	9260L, EPA draft method 1605
Ammonia as Nitrogen	350.1, 350.2, 350.3
BOD 5-Day	405.1
Chemical Oxygen Demand (COD).	410.1 410.2 410.4 5220B
Chloride	325.2, 325.3
E. coli	9221F
Enteroccocus frecium	9230 B or C
Fecal Coliforms	SM 9221 B
Fecal Streptoccocus	SM 9230 B
Metals	1620 (200.7, 245.1)
Mycobacterium marinum.	SM 9260
Volatile Organics	1624 Rev. C (624)
Semivolatile Organics	1625 Rev. C (625)
Nitrate/Nitrite	350.1, 350.2, 350.3
Nitrogen, Total Kjeldahl.	351.1, 351.2, 351.3, 351.4
Oil and Grease	413.2
Oil and Grease (as HEM).	1664 A
Oxytetracycline	NA
pH	150.1 (SM 4500 H+ B)
Phosphorus, Total	365.2, 365.3
Salmonella	FDA–BAM
Settleable Solids	160.5, SM 2540 F ??
Sulfate	375.1, 375.3, 375.4
Total Coliforms	SM 9221 B
Total Dissolved Phosphorus.	365.2, 365.3
Total Dissolved Solids (TDS).	160.1
Total Organic Carbon (TOC).	Lloyd Kahn (solids only), 415.1
Total Orthophosphate	365.1, 365.2, 365.3
Total Suspended Solids (TSS).	160.2
Total Volatile Solids	160.4

Note: Standard Method (SM).

Appendix A: Definitions, Acronyms, and Abbreviations Used in This Document

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, applicable to effluent limitations for industrial discharges to surface waters, as defined by Section 304(b)(2)(B) of the CWA.

BCT—The best control technology for conventional pollutants, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by Section 304(b)(4) of the CWA.

BOD_5—Biochemical Oxygen Demand measured over a five day period.

BPJ—Best Professional Judgment.

BPT—The best practicable control technology currently available, applicable to effluent limitations, for industrial discharges to surface waters, as defined by Section 304(b)(1) of the CWA.

CAAP—Concentrated Aquatic Animal Production.

CFR—Code of Federal Regulations.

Clean Water Act (CWA)—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1251 *et seq.*), as amended.

Conventional Pollutants—Constituents of wastewater as determined by Section 304(a)(4) of the CWA (and EPA regulations), *i.e.*, pollutants classified as biochemical oxygen demand, total suspended solids, oil and grease, fecal coliform, and pH.

Daily Discharge—The discharge of a pollutant measured during any calendar day or any 24-hour period that reasonably represents a calendar day.

Direct Discharger—A facility that discharges or may discharge treated or untreated wastewaters into waters of the United States.

DMR—Discharge Monitoring Report.

Existing Source—For this rule, any facility from which there is or may be a discharge of pollutants, the construction of which is commenced before the publication of the final regulations prescribing a standard of performance under Section 306 of the CWA.

Facility—All contiguous property and equipment owned, operated, leased, or under the control of the same person or entity.

FDF—Fundamentally Different Factor.

FTE—Full Time Equivalent Employee.

HEM—A measure of oil and grease in wastewater by mixing the wastewater with hexane and measuring the oils and greases that are removed from the wastewater with n-hexane. Specifically EPA Method 1664, see 40 CFR 136.3, Table IB.

Indirect Discharger—A facility that discharges or may discharge wastewaters into a publicly-owned treatment works.

JSA/AETF—Joint Subcommittee on Aquaculture, Aquaculture Effluents Task Force.

LTA (Long-Term Average)—For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the effluent limitations guidelines and standards in today's proposed regulation.

Maximum Monthly Discharge Limitation—The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during the calendar month divided by the number of "daily discharges" measured during the month.

Minimum Level—The level at which an analytical system gives recognizable signals and an acceptable calibration point.

NAICS—North American Industry Classification System. NAICS was developed jointly by the U.S., Canada, and Mexico to provide new comparability in statistics about business activity across North America.

National Pollutant Discharge Elimination System (NPDES) Permit—A permit to discharge wastewater into waters of the United States issued under the National Pollutant Discharge Elimination System, authorized by section 402 of the CWA.

Non-Conventional Pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR 401.15 and part 423 appendix A.

Non-Water Quality Environmental Impact—Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to air pollution, noise, radiation, sludge and solid waste generation, and energy used.

NRDC—Natural Resources Defense Council.

NSPS—New Sources Performance Standards, applicable to industrial facilities whose construction is begun after the effective date of the final regulations (if those regulations are promulgated after January 10, 2003. EPA is scheduled to take final action on this proposal in June 2004. *See* 40 CFR 122.2.

NTTA—National Technology Transfer and Advancement Act.

NWPCAM—The National Water Pollution Control Assessment Model (version 1.1) is a computer model to model the instream dissolved oxygen concentration, as influenced by pollutant reductions of BOD_5, Total Kjeldahl Nitrogen, Total Suspended Solids, and Fecal Coliform.

Outfall—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters.

Pass Through—The term "Pass Through" means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Point Source—Any discernable, confined, and discrete conveyance from which pollutants are or may be discharged. See CWA Section 502(14).

Pollutants of Concern (POCs)—Pollutants commonly found in aquatic animal production wastewaters. Generally, a chemical is considered as a POC if it was detected in untreated process wastewater at 5 times a baseline value in more than 10% of the samples.

Priority Pollutant—One hundred twenty-six compounds that are a subset of the 65 toxic pollutants and classes of pollutants outlined pursuant to Section 307 of the CWA.

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the CWA, applicable (for this rule) to indirect dischargers that commenced construction prior to promulgation of the final rule.

PSNS—Pretreatment standards for new sources under Section 307(c) of the CWA.

Publicly Owned Treatment Works (POTW)—A treatment works as defined by Section 212 of the Clean Water Act, which is owned by a State or municipality (as defined by Section 502(4) of the Clean Water Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey

wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

RFA—Regulatory Flexibility Act.

SAP—Sampling and Analysis Plan.

SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996.

SCC—Sample Control Center.

SER—Small Entity Representative.

SIC—Standard Industrial Classification (SIC)—A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

Total Nitrogen—Sum of nitrate/nitrite and TKN.

TKN—Total Kjeldahl Nitrogen.

TSS—Total Suspended Solids.

List of Subjects in 40 CFR Part 451

Environmental protection, Concentrated aquatic animal production, Wasste treatment and disposal, Water pollution control.

Dated: August 14, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 451 is proposed to be added as follows:

PART 451—CONCENTRATED AQUATIC ANIMAL PRODUCTION POINT SOURCE CATEGORY

Sec.

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

§ 451.1 General applicability.

As defined more specifically in each subpart, this Part applies to discharges from concentrated aquatic animal production facilities as that term is defined at 40 CFR 122.24 and Appendix C. This Part applies to the discharges of pollutants from production activities that occur in the following systems: flow-through, recirculating and net pens.

§ 451.2 General definitions.

As used in this part:

(a) The general definitions and abbreviations in 40 CFR part 401 apply.

(b) *Bulk discharge* means wastewater from the areas of animal confinement in a flow-through system that does not flow to off-line settling. The bulk discharge is either treated effluent from full-flow settling or the flow from the areas of animal confinement other than the flows routed to offline settling, but does not include the flows removed from the areas of animal confinement for offline settling.

(c) *Chemical* means any substance that is added to the concentrated aquatic animal production facility to maintain or restore water quality for aquatic animal production and that may be discharged to waters of the United States.

(d) *Concentrated aquatic animal production facility* is defined at 40 CFR 122.24 and Appendix C.

(e) *Drug* means any substance that is added to the concentrated aquatic animal production facility to maintain or restore aquatic animal health or to affect the structure or any function of an aquatic animal, and that may be discharged to waters of the United States. For the purposes of this Part, the term does not include substances injected directly into aquatic animals or used in immersion baths that are not discharged to waters of the United States.

(f) *Excess feed* means feed that is added to a production system and that is not consumed or is not expected to be consumed by the aquatic animals.

(g) *Flow-through system* means a system designed for a continuous water flow to waters of the United States through chambers used to produce aquatic animals. Flow-through systems typically use either raceways or tank systems. Water is supplied to raceways by nearby rivers or springs and are typically long, rectangular chambers at or below grade, constructed of earth, concrete, plastic, or metal. Tank systems are similarly supplied with water and concentrate aquatic animals in circular or rectangular tanks above grade. The term does not include net pens.

(h) *Full-flow settling* means the treatment practice in which all of the flow from a flow-through system is treated using solids settling techniques prior to discharge.

(i) *FWS* means United States Fish and Wildlife Service, an agency within the United States Department of the Interior.

(j) *Net pen system* means a stationary, suspended or floating system of nets or screens in open marine or estuarine waters of the United States. Net pen systems typically are located along a shore or pier or may be anchored and floating offshore. Net pens and cages rely on tides and currents to provide continual supply of high-quality water to the animals in production.

(k) *Non-native aquatic animal species* mean an individual, group, or population of a species:

(1) That is introduced into an area or ecosystem outside its historic or native geographic range; and

(2) That has been determined and identified by the appropriate State or Federal authority to threaten native aquatic biota. The term excludes species raised for stocking by public agencies.

(l) *Off-line settling* means the treatment practice in which a small, concentrated portion of the flow is diverted and treated before being discharged; specifically, the portion of flow that is vacuumed or removed from the bottom of a tank or raceway, which contributes high levels of settled solids.

(m) *Permitting authority* means the agency authorized to administer the

National Pollutant Discharge Elimination System permitting program for the receiving waters into which a facility subject to this Part discharges.

(n) *Recirculating system* means a system that filters and reuses water in which the aquatic animals are produced prior to discharge. Recirculating systems typically use tanks, biological or mechanical filtration, and mechanical support equipment to maintain high quality water to produce aquatic animals.

(o) *TSS* means total suspended solids that may be discharged to waters of the United States.

§ 451.3 Reporting requirements specific to facility discharges under the scope of this part.

(a) *Drugs and chemicals.* In accordance with the following procedures, the permittee must notify the permitting authority of the addition directly to an aquatic animal production facility subject to this Part of any investigational new animal drug (*i.e.*, a drug for which there is a valid exemption in effect under 512(j) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360b(j)) and any drug that is not used according to label requirements, as well as any chemical that is not used according to label requirements:

(1) For drugs and chemicals that are not used according to label requirements:

(i) The permittee must provide an oral report to the permitting authority within 7 days after initiating application of the drug or chemical. The oral report must identify the drug and/or chemical added and the reason for adding the drug and/or chemical.

(ii) The permittee must provide a written report to the permitting authority within 30 days after conclusion of the addition of the drug or chemical. The written report must identify the drug and/or chemical added and include: the reason for treatment, date(s) and time(s) of the addition (including duration); the total amount of active ingredient added; the total amount of medicated feed added (only for drugs applied through medicated feed), and the estimated number of aquatic animals medicated by the addition.

(2) For investigational new animal drugs: The permittee must provide a written report to the permitting authority within 30 days after conclusion of the addition of any investigational new drug. The written report must identify the drug added including: the reason for treatment, date(s) and time(s) of the addition (including duration); the total amount of active ingredient added; the total amount of medicated feed added (only for drugs applied through medicated feed), and the estimated number of aquatic animals medicated by the addition.

(b) *Best Management Practices (BMP) plan certification.* The owner or operator of any facility subject to this Part must certify that a BMP plan has been developed and meets the objectives as defined in the §§ 451.15, 451.25, or 451.35 (as applicable). The plan will be made available to the permitting authority upon request.

§ 451.4 Alternative compliance provision.

Facilities subject to the total suspended solids (TSS) numerical limitations in this section may comply with these requirements through the development and implementation of a BMP plan if the permitting authority determines that the plan will achieve the numeric limitations. For facilities subject to this section, the BMP plan also must satisfy the provisions of § 451.15(a) for flow-through systems and § 451.25(a) for recirculating systems.

Subpart A—Flow-Through Systems

§ 451.10 Applicability.

This subpart applies to the discharge of pollutants from a concentrated aquatic animal production facility that produces aquatic animals in a flow-through system according to the production level thresholds in this subpart.

§ 451.11 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) Facilities that produce 475,000 pounds or more per year.

(1) For discharges from a full-flow facility, including a facility that has flow from separate offline settling but that recombines such separate flows prior to discharge; The permittee must meet the TSS maximum daily and monthly average numeric limits:

Regulated parameter	Maximum daily	Maximum monthly average
TSS (mg/l)	10	6
Non-conventional and toxic pollutants	[1]	[1]

[1] Develop and implement a BMP plan as specified in §§ 451.15(b)–(d) and 451.3(b).

(2) For discharges from a facility that discharges from separate offline settling.

(i) The permittee must meet the TSS maximum daily and monthly average numeric limits for discharges from the separate offline settling:

Regulated parameter	Maximum daily	Maximum monthly average
TSS (mg/l)	69	55
Non-conventional and toxic pollutants	[1]	[1]

[1] Develop and implement a BMP plan as specified in §§ 451.15(b)–(d) and 451.3(b).

(ii) For the remaining bulk discharge, the permittee must develop and implement a BMP plan as described in § 451.15 (a) through (d).

(b) Facilities that produce 100,000 pounds per year up to 475,000 pounds per year.

(1) For discharges from a full-flow facility including a facility that has flow from separate offline settling but that recombines such separate flow prior to discharge; The permittee must meet the TSS maximum daily and monthly average numeric limits:

Regulated parameter	Maximum daily	Maximum monthly average
TSS (mg/l)	11	6
Non-conventional and toxic pollutants	[1]	[1]

[1] Develop and implement a BMP plan as specified in §§ 451.15 (b) and (d) and 451.3 (b).

(2) For discharges from a facility that discharges from separate offline settling.

(i) The permittee must meet the TSS maximum daily and monthly average numeric limits for discharges from the separate offline settling:

Regulated parameter	Maximum daily	Maximum monthly average
TSS (mg/l)	87	67

Regulated parameter	Maximum daily	Maximum monthly average
Non-conventional and toxic pollutants	(1)	(1)

[1] Develop and implement a BMP plan as specified in §§ 451.15 (b) and (d) and 451.3 (b).

(ii) For the remaining bulk discharge, the permittee must develop and implement a BMP plan as described in § 451.15 (a), (b) and (d).

(c) Compliance with paragraphs (a)(1) or (a)(2)(i) or (b)(1) or (b)(2)(i) of this section should be determined based on the net TSS concentration (measuring the TSS added by the production system.)

(d) The reporting requirements in § 451.3 (a) do not apply to facilities that produce between 100,000 pounds per year up to 475,000 pounds per year.

§ 451.12 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, discharges from a flow-through system subject to this subpart must achieve the following effluent limitations representing the application of BAT: The limitations for Total Suspended Solids (TSS) and non-conventional and toxic pollutants are the same as the corresponding limitation specified in § 451.11.

§ 451.13 Effluent limitations attainable by the application of the best conventional technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, discharges from a flow-through system subject to this subpart must achieve the following effluent limitations representing the application of BCT: The limitation for Total Suspended Solids (TSS) is the same as the corresponding limitation specified in § 451.11.

§ 451.14 New source performance standards (NSPS).

Any new source flow-through system subject to this subpart must achieve the following performance standards: The standards for Total Suspended Solids (TSS) and non-conventional and toxic pollutants are the same as the corresponding limitations specified in § 451.11.

§ 451.15 Best management practices (BMPs).

Any flow-through system subject to this subpart must develop and implement a Best Management Practices (BMP) Plan to achieve the objectives and the following specific requirements:

(a) Management of removed solids and excess feed. The following requirements only apply to waste streams that are not subject to numeric limits for TSS. Minimize the re-introduction of solids removed through the treatment of the water supply and minimize excess feed entering the aquatic animal production system. Minimize the discharge of unconsumed food. Minimize discharge of feeds containing high levels of fine particulates and/or high levels of phosphorus. Clean raceways at frequencies that minimize the disturbance and subsequent discharge of accumulated solids during routine activities, such as harvesting and grading of fish.

(b) Proper operation and maintenance of a concentrated aquatic animal production facility:

(1) *Structural maintenance.* Maintain in-system technologies to prevent the overflow of any floating matter and subsequent by-pass of treatment technologies.

(2) *Materials storage.* Ensure the storage of drugs and chemicals to avoid inadvertent spillage or release into the aquatic animal production facility; and

(3) Disposal of biological wastes. Collect aquatic animal mortalities on a regular basis. Store and dispose of aquatic animal mortalities to prevent discharge to waters of the United States.

(c) The permittee must develop and implement practices to minimize the potential escape of non-native species.

(d) The permittee must ensure that the facility staff are familiar with the BMP Plan and have been adequately trained in the specific procedures that the BMP plan requires.

Subpart B—Recirculating Systems

§ 451.20 Applicability.

This subpart applies to the discharge of pollutants from a concentrated aquatic animal production facility that produces 100,000 pounds or more per year in a recirculating system.

§ 451.21 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, discharges from a recirculating system subject to this subpart must achieve the following effluent limitations representing the application of BPT:

Regulated parameter	Maximum daily	Maximum monthly average
TSS (mg/l)	50	30
Non-conventional and toxic pollutants	(1)	(1)

[1] Develop and implement a BMP plan as specified in §§ 451.15(b)–(d) and 451.3(b).

§ 451.22 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, discharges from a recirculating system subject to this subpart must achieve the following effluent limitations representing the application of BAT: The limitations for Total Suspended Solids (TSS) and non-conventional and toxic pollutants are the same as the corresponding limitations specified in § 451.21.

§ 451.23 Effluent Limitations attainable by the application of the Best Conventional Technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, discharges from a recirculating system subject to this subpart must achieve the following effluent limitations representing the application of BCT: The limitation for Total Suspended Solids (TSS) is the same as the corresponding limitation specified in § 451.21.

§ 451.24 New source performance standards (NSPS).

Any new source recirculating system subject to this subpart must achieve the following performance standards: The standard for Total Suspended Solids (TSS) and non-conventional and toxic pollutants are the same as the corresponding limitations specified in § 451.21.

§ 451.25 Best management practices (BMP).

Any recirculating system subject to this subpart must develop and implement a Best Management Practices (BMP) Plan to achieve the objectives and the following specific requirements:

(a) Management of removed solids and excess feed. The following requirements only apply to waste streams that are not subject to numeric limits for TSS. Minimize the re-introduction of solids removed through the treatment of the water supply and minimize excess feed entering the aquatic animal production system.

(b) Proper operation and maintenance of a concentrated aquatic animal production facility:

(1) *Structural Maintenance.* Maintain in-system technologies to prevent the overflow of any floating matter and subsequent by-pass of treatment technologies.

(2) *Materials storage.* Ensure the storage of drugs and chemicals to avoid inadvertent spillage or release into the aquatic animal production facility; and

(3) *Disposal of biological wastes.* Collect aquatic animal mortalities on a regular basis. Store and dispose of aquatic animal mortalities to prevent discharge to waters of the United States.

(c)The permittee must develop and implement practices to minimize the potential escape of non-native species.

(d) The permittee must ensure that the facility staff are familiar with the BMP Plan and have been adequately trained in the specific procedures that the BMP plan requires.

Subpart C—Net Pen Systems

§ 451.30 Applicability.

This subpart applies to the discharge of pollutants from a concentrated aquatic animal production facility that produces 100,000 pounds or more per year in net pen systems, except for net pen facilities located in the State of Alaska producing native species of salmon.

§ 451.31 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, discharges from a net pen system subject to this subpart must achieve the following best management practice representing the application of BPT:

(a) The permittee must maintain a real-time monitoring system to monitor the rate of feed consumption. The system must be designed to allow detection or observation of uneaten feed passing through the bottom of the net pens and to prevent accumulation.

(b) [Reserved]

§ 451.32 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, discharges from a net pen system subject to this subpart must achieve the following best management practice representing the application of BAT: Active feed monitoring as specified in § 451.31.

§ 451.33 Effluent limitations attainable by the application of the Best Conventional technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, discharges from a net pen system subject to this subpart must achieve the following best management practice representing the application of BCT: Active feed monitoring as specified in § 451.31.

§ 451.34 New source performance standards (NSPS).

Any new source net pen system subject to this subpart must achieve the following performance standards: Active feed monitoring as specified in § 451.31.

§ 451.35 Best Management Practices (BMPs).

Any net pen system subject to this subpart must develop and implement a Best Management Practices (BMP) plan to achieve the objectives and the following specific requirements:

(a) The permittee must operate the facility so as to minimize the concentration of net-fouling organisms that are discharged, for example, changing and cleaning nets and screens onshore.

(b) The following discharges into waters of the United States should be avoided to the maximum extent feasible:

(1) Blood, viscera, fish carcasses, or transport water containing blood associated with the transport or harvesting of fish;

(2) Substances associated with in-place pressure washing nets. The use of air-drying, mechanical, and other non-chemical procedures to control net-fouling are strongly encouraged.

(c) The permittee must develop and implement practices to minimize the potential escape of non-native species.

(d) The following discharges from a net pen system into waters of the United States are prohibited :

(1) Feed bags and other solid wastes;

(2) Chemicals used to clean nets, boats or gear; and

(3) Materials containing or treated with tributyltin compounds.

[FR Doc. 02–21673 Filed 9–11–02; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Thursday,
September 12, 2002

Part III

Department of Education

Disability and Rehabilitation Research Projects (DRRP) Program; Notices

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces final priorities on Health Services Research; Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals from Diverse Racial, Ethnic, and Linguistic Backgrounds; and Developing Models To Promote the Use of NIDRR Research under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an identified national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

New Freedom Initiative and The NIDRR Long-Range Plan

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Supplementary Information: General

We published a notice of proposed priority (NPP) for Health Services Research projects in the **Federal Register** on May 29, 2002 (67 FR 37655). We also published separate NPPs for Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals from Diverse Racial, Ethnic, and Linguistic Backgrounds in the **Federal Register** on May 29, 2002 (67 FR 37653) and for Developing Models To Promote the Use of NIDRR Research under the Disability and Rehabilitation Research Projects in the **Federal Register** on May 29, 2002 (67 FR 37647). We have combined in this notice of final priorities (NFP) three priorities. This NFP contains several significant changes from the NPPs. Specifically, for the Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals from Diverse Racial, Ethnic, and Linguistic Backgrounds, we have made changes to include a question pertaining to the criminal justice system; an additional requirement that family members, as well as deaf, hard-of-hearing, and deaf-blind mental health consumers from diverse backgrounds be included in all stages of research; and that question (2) regarding model psychological testing instruments and mental health outcome measures be split into two separate research questions. For the Developing Models To Promote the Use of NIDRR Research under the Disability and Rehabilitation Research Projects, we have made three changes. We have added the words "principally", "alternative", and "rehabilitation researchers" and "family members" to the priority.

Analysis of Comments and Changes

In response to our invitation in the NPPs, several parties submitted comments on the proposed priorities (three parties for the Health Services Research, twenty parties for the Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals from Diverse Racial, Ethnic, and Linguistic Backgrounds, and two parties for the Developing Models To Promote the Use of NIDRR Research under the Disability and Rehabilitation Research Projects). We fully discuss these comments as well as changes made in the Analysis of Comments and Changes published as an appendix to this notice.

The backgrounds for the priorities were published in the NPPs.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, an application that meets the invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1—Health Services Research Projects

This priority is intended to improve delivery of health services to individuals with disabilities. An applicant must propose research projects under one of the following specific topic areas:

(1) *Availability and Access to Community-Based Health Services.* To be funded under the priority, a project must:

(a) Investigate the availability and accessibility of community-based health services for individuals with disabilities who move from institutional care to community living or who are at risk for institutional care;

(b) Document the extent to which access to appropriate health services, including home-health, is a component of State task force recommendations

regarding transitioning of individuals from institutional to community settings; and

(c) Evaluate the role of accessible community-based mental health services in the successful integration of individuals with long-term mental illness into community settings.

(1) *Impact of the Prospective Payment System for Medical Rehabilitation.* To be funded under the priority, a project must:

(a) Evaluate the impact of the prospective payment system for medical rehabilitation on access to medical rehabilitation services by individuals with disabilities, examining the impact on settings, services, and length of stay; and

(b) Identify the impact of multiple, health-related conditions, commonly called co-morbidities, on classification and reimbursement in the medical rehabilitation prospective payment system.

(3) *Analysis of Quality Indicators for Assessing Health Services Provided to Individuals with Disabilities.* To be funded under the priority, a project must:

(a) Conduct an assessment of the use of quality indicators in both the private and public sectors to determine the extent to which the needs of individuals with disabilities are reflected in these indicators;

(b) Examine the relationship of function and disability in defining the population of individuals with disabilities to whom the indicators are applied; and

(c) Determine how individuals with disabilities, payers, and providers use information from quality assessment of medical rehabilitation services.

In addition, each project must:

- Consult with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR) to develop and implement, in the first year of the grant, a plan to disseminate the DRRP's research results to: disability organizations, individuals with disabilities or their family members or both, researchers, providers, and policymakers; and
- Ensure the participation of individuals with disabilities in all phases of the research and dissemination activities.

Priority 2—Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals From Diverse Racial, Ethnic, and Linguistic Backgrounds

This priority is intended to enhance the quality of the delivery of mental health services for deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds. For purposes of this priority, "individuals from diverse linguistic backgrounds" includes not only individuals who are fluent in languages other than English, but also individuals with minimal language skills who are not fluent in any language.

To be funded under this priority, a project must choose at least one, but no more than four, of the following research activities:

(1) Investigate, compare, and evaluate the effectiveness of mental health services provided by mental health providers using qualified sign language interpreters as opposed to services provided by mental health providers fluent in sign language. The research project must consider the educational, clinical, and professional credentials of each provider.

(2) Investigate, evaluate, and develop, as needed, model psychological testing instruments for deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

(3) Identify, evaluate, and develop, as needed, for use in mental health settings, model communication strategies for individuals with minimal language skills who are deaf, hard-of-hearing, or deaf-blind.

(4) Identify and evaluate factors that assist or hinder entrance into the delivery system of mental health services for deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

(5) Identify and evaluate factors that have an impact on the effectiveness of the delivery of mental health services to deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

(6) Investigate and evaluate factors that have an impact on mental health service provision in the criminal justice system to deaf, hard-of-hearing, and deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds, including individuals with minimal language skills.

(7) Investigate, evaluate, and develop, as needed, mental health outcome measures for deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

In addition, each project must:

- Involve deaf, hard-of-hearing, and deaf-blind mental health consumers from diverse racial, ethnic, and linguistic backgrounds in all phases of research, as appropriate.
- Involve family members of deaf, hard-of-hearing, and deaf-blind mental health consumers from diverse racial, ethnic, and linguistic backgrounds in all phases of research, as appropriate.
- Involve individuals with disabilities and individuals from diverse racial, ethnic, and linguistic backgrounds in all phases of research, as appropriate.
- As directed by the NIDRR project officer for these programs, collaborate with other NIDRR projects and the National Center for the Dissemination of Disability Research.

Priority 3—Developing Models To Promote the Use of NIDRR Research

This priority is intended to establish a project that will develop and test models for increasing the effective use of NIDRR research results.

To be funded under this priority a project must—

(1) Analyze research information principally produced by NIDRR grantees to determine the extent to which any of the information has not been disseminated or has been disseminated but not effectively used.

(2) Develop models for particular kinds of information, such as engineering, health, employment, education, and independent living, and for particular intended groups such as professionals, individuals with disabilities, their family members, and researchers.

(3) Describe the models and prepare training materials in accessible and alternative formats to assist others to use the models.

(4) Test each model.

(5) Evaluate the success of each model.

In carrying out these activities, the project must:

- Provide training for NIDRR research projects and centers;
- Ensure the relevance of all activities to rehabilitation researchers, individuals with disabilities, and their family members;
- Include techniques to reach individuals from diverse racial, ethnic, and cultural backgrounds; and
- Collaborate with NIDRR-funded projects and centers.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of

Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: September 9, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

Priority 1—Health Services Research

Comment: Two commenters suggested that NIDRR add depression or other psychological conditions to the study of prospective payment in medical rehabilitation.

Discussion: Applicants could choose to propose a study pertaining to depression or other psychological conditions and the prospective payment system in medical rehabilitation; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter asked for clarification of whether the priority focuses exclusively on acute rehabilitation and not other levels and settings of care.

Discussion: Applicants could choose to propose a study that examines the range of rehabilitation settings; however, the peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter asked whether the priority should focus on longer intervals of care, rather than a single inpatient rehabilitation admission.

Discussion: Applicants could choose to propose a study that focuses on longer intervals of care; however, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter asked whether NIDDR would allow applicants to propose related projects within a single proposal. This commenter was concerned because relevant Medicare data for examining the impact of Prospective Payment System (PPS) will not be available until later in the time period for the proposed grant award(s).

Discussion: Applicants could choose to propose related projects during the course of the study; the peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter asked whether priority (2)(b) duplicates work that the Center for Medicaid and Medicare Services (CMS) plans to perform to recalculate medical rehabilitation prospective payment adjustments and asked if there were specific issues about this process of concern to NIDRR, such as "omitted comorbidity codes in the IRF–PAI, inconsistent coding of comorbidities, or comorbidities that develop or become apparent after an inpatient rehabilitation hospitalization."

Discussion: NIDRR is not specifying that applicants duplicate work being undertaken by CMS. It is anticipated that NIDRR's research will build on and support research being done at CMS by focusing on issues specifically affecting provision of and access to medical rehabilitation services for persons with disabilities. To the extent that the topic examples provided in the comment meet this expectation, applicants could choose to propose research on one of these areas. The peer review process will evaluate the merits of the proposals.

Changes: None.

Priority 2—Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals From Diverse Racial, Ethnic, and Linguistic Backgrounds

Comment: Several commenters suggested that the priority include mental health service delivery to deaf, hard of hearing, and deaf-blind individuals in the criminal justice system, including both prisons and courtrooms. Competency determinations, particularly for deaf, hard-of-hearing, and deaf-blind persons with limited language abilities, therapies and psycho-educational programs within the prison system, communications accessibility and general mental health service delivery were described as areas in need of research.

Discussion: A review of the literature reveals a paucity of published information regarding mental health service delivery to deaf, hard-of-hearing, and deaf-blind individuals in the criminal justice system. This indeed suggests a need for further study and research.

Changes: The final priority invites applicants to investigate and evaluate factors that have an impact on mental health service provision in the criminal justice system to deaf, hard-of-hearing, and deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

Comment: Several commenters suggested that the priority include a focus on mental health service delivery to deaf, hard-of-hearing, and deaf-blind children.

Discussion: NIDRR agrees that a focus on children would be worthwhile, and applicants may submit applications in this area. However, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter suggested that funding eligibility be prioritized to State Departments of Mental Health Research Divisions, with academic institution support and consultation.

Discussion: U.S. Department of Education regulations implementing the Rehabilitation Act (34 CFR 350.3) stipulate who is eligible for an award. States and institutions of higher education are included on that list, as are public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, and Indian tribes and tribal organizations. NIDRR will consider applications from any applicant that meets the statutory requirements under the funding authority. The peer review process will evaluate the merits of submitted proposals.

Changes: None.

Comment: One commenter suggested a focus on mental health service delivery in rural areas.

Discussion: NIDRR is concerned about mental health service delivery in rural areas. Applicants may propose to study service delivery in rural areas under questions (4) or (5); however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: Two commenters suggested that the priority require that deaf, hard of hearing, and deaf-blind mental health consumers from diverse backgrounds be included in all stages of research.

Discussion: NIDRR is a strong proponent of participatory action research and encourages consumer involvement in all stages of NIDRR-sponsored research. The proposed priority requires the involvement of individuals with disabilities, including deaf, hard-of-hearing, and deaf-blind individuals and individuals from diverse racial, ethnic, and linguistic backgrounds. This designation includes mental health consumers and deaf, hard-of-hearing, and deaf-blind mental health consumers.

Changes: The final priority specifies that deaf, hard-of-hearing, and deaf-blind mental health consumers should be included in all phases of research.

Comment: One commenter suggested that NIDRR require that family members be included in all stages of research.

Discussion: NIDRR agrees that the addition of family members would be helpful to the research process.

Changes: The priority has been changed to include a requirement that family members be included in all stages of research.

Comment: One commenter suggested that the research priority focus on mental health generally, rather than focusing specifically on mental health and deafness.

Discussion: NIDRR funds (and has funded) a variety of mental health-related initiatives, of which this is one. The background statement supporting this priority is available from the person listed in **FOR MORE**

INFORMATION CONTACT or in the application package. It demonstrates a compelling need for research in this particular area. Therefore, NIDRR has decided upon this area of focus.

Changes: None.

Comment: One commenter noted the growing importance of interactive video technology in psychological test instruments.

Discussion: Applicants may propose research related to interactive video technology under question (2), which deals with model psychological test instruments, or under question (5), which covers factors that have an impact on the effectiveness of service delivery. However, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter suggested that question (2) be split into two separate research questions so that psychological test instruments and mental health outcome measures are listed as two separate research areas.

Discussion: NIDRR recognizes that different areas of expertise may be needed for research on psychological test instruments and mental health outcome measures.

Changes: The priority has been changed to include two separate research activities, one on psychological test instruments and a separate activity on mental health outcome measures.

Comment: One commenter suggested that the order of the listed research questions be changed to: (4), (5), (1), (2), (3), to demonstrate that the questions are interconnected and do not stand apart from each other.

Discussion: The scope of this grant is small, encouraging depth of focus. Applicants are instructed to select between one and four research questions. Applicants may, but are not required to, conceptualize the research questions as an interconnected whole.

Changes: None.

Comment: One commenter suggested that the priority be specific as to which population (deaf, hard-of-hearing, or deaf-blind) is being addressed, since each population has separate needs.

Discussion: Within the scope of the priority, applicants may choose to focus on any population or grouping of populations. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: A number of commenters raised the issue of the use of technology in mental health service delivery for deaf, hard-of-hearing, and deaf-blind individuals.

Discussion: Technology is an area ripe for research, and NIDRR encourages those who are interested to submit proposals in this area. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter stated that the issue of direct communication with a therapist who can sign, as opposed to communication with therapists via interpreters is not relevant given recent technological developments such as cochlear implants and voice-to-text computers.

Discussion: Recent technological developments certainly are relevant to communication in mental health settings. However, they do not render the question of therapists who sign vs. those who use interpreters irrelevant. Many deaf, hard-of-hearing, and deaf-blind individuals do not use voice-to-text computers or do not have cochlear implants. If applicants wish to propose research on technology in mental health settings, they are encouraged to do so. However, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: Two commenters suggested that the priority include a focus on deaf, hard-of-hearing, and deaf-blind individuals who communicate orally as well as those who communicate through sign language. One suggested a focus on the use of technology with oral deaf persons.

Discussion: Applicants may propose projects that focus on oral, manual, or any other type of communication, including technological. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter suggested that the term "late-deafened" be added to the priority, noting that for individuals who are late-deafened, deafness may be seen as a loss rather than as a culture (as it is for many pre-lingually deaf people). This commenter also noted that late-deafened individuals may have different social, emotional and vocational experiences than pre-lingually deaf individuals.

Discussion: Individuals who are late-deafened are subsumed under the category "deaf" and thus are included in the priority. NIDRR recognizes that the social, emotional, vocational and communicative experiences of late-deafened individuals may differ from those of culturally deaf individuals. Applicants may choose to focus research on the specific needs of late-deafened individuals. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter noted that research is needed on the use of interpreters with deaf, hard-of-hearing, and deaf-blind individuals who have minimal language skills (MLS). This commenter noted, for example, that specialized training is needed for MLS interpreters, and that the use and role of deaf interpreters for deaf, hard-of-hearing, and deaf-blind people with MLS should be studied.

Discussion: These indeed are important issues, and they can be proposed under question (3) of the priority. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter suggested research into the "one-stop shop" concept for purposes of mental health service delivery to deaf, hard-of-hearing, and deaf-blind individuals.

Discussion: Applicants may propose research into the "one-stop shop" concept under questions (4) or (5) of this priority. However, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter stated that funds should be directed to obtaining basic prevalence, demand, and incidence data to define the scope of a particular study within a particular geographic area.

Discussion: An exploration of prevalence, demand, and incidence data within a particular geographic area could be included within an application for funding. However, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter suggested the development of standards for clinician sign language competency, and noted that many clinicians who think they can communicate in sign language in fact are not competent.

Discussion: Clinician sign language competency could be a measure of treatment effectiveness for clinicians who sign for themselves, and could be studied under question (1). The development of actual standards of competence would need to be done in conjunction with appropriate sign language agencies and professionals in the deaf community. An applicant could propose such a project as part of question (1). The peer review process would evaluate the merits of the proposals.

Changes: None.

Comment: One commenter suggested that the priority focus on systems of care rather than clinical issues.

Discussion: Applicants who wish to focus on systems of care issues may do so under questions (4), (5), or (6). The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter suggested a focus on a comprehensive mental health delivery system for deaf, hard-of-hearing, or deaf-blind persons. The commenter noted that the system should include a broad focus of therapeutic options such as: housing, substance abuse rehabilitation, case management, mental health therapists fluent in American Sign Language, and sign language interpreters (for when signing therapists are unavailable).

Discussion: Applicants who wish to focus on systems of care issues may do so under questions (4), (5), or (6). The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter stated that psychological testing for hard-of-hearing and late-deafened individuals currently is not a problem and does not need attention in the priority.

Discussion: All applicants, including those focusing on psychological test instruments, will need to define and justify their target population(s). The literature review will be an important part of that justification. The peer review process will evaluate the merits of submitted proposals.

Changes: None.

Comment: One commenter suggested that the priority focus on deaf, hard-of-hearing, and deaf-blind populations generally, and include diversity within that focus (rather than focusing exclusively on diversity).

Discussion: The focus of this priority is on persons from diverse racial, ethnic, and linguistic backgrounds. However, individual applicants may devise their own organizational framework, including target population. The peer review process will evaluate the merits of submitted proposals.

Changes: None.

Comment: One commenter suggested educating clinicians on communication with deaf-blind individuals.

Discussion: An applicant could pursue this issue under question (3), covering model communication strategies with deaf, hard-of-hearing, or deaf-blind individuals who have minimal language skills, or under questions (4) or (5). The peer review process will evaluate the merits of the proposals.

Changes: None.

Priority 3—Developing Models To Promote the Use of NIDRR Research

Comment: One commenter suggested that the priority be broadened to include research projects that were not sponsored by NIDRR.

Discussion: NIDRR understands the value of research sponsored by other entities, and it may be necessary to look at this research to fully develop topic areas; however, an emphasis on NIDRR-sponsored research is preferred.

Changes: The priority has been changed to reflect that NIDRR-sponsored research is preferred.

Comment: One commenter felt that nondisability-focused research should be included, such as that pertaining to welfare-to-work projects, in order to infuse disability research with what has been learned in that area and to promote the transfer of disability research to the non-disability field.

Discussion: This comment is broader than the proposed priority area to develop specific models that could be useful for the utilization of disability research. Just developing a model that includes other types of research will not achieve the kind of outcome this commenter seeks. This might lend itself to a broader priority in the future.

Changes: None.

Comment: One commenter suggested that bullet number 3 be changed to add the words "alternate media" to ensure that training materials produced would be ready for use with audiences with disabilities.

Discussion: NIDRR agrees that NIDRR supported programs should develop products that are accessible to all individuals, including alternative formats.

Changes: The priority has been changed to add the word alternative.

Comment: One commenter suggested that the second unnumbered bullet be amended to include the words "rehabilitation researchers and" individuals with disabilities.

Discussion: NIDRR wants to ensure that this priority is relevant to rehabilitation researchers and to individuals with disabilities. In the original priority, we required participation of individuals with disabilities.

Changes: The priority has been changed to reflect rehabilitation researchers, as well as family members.

[FR Doc. 02–23270 Filed 9–11–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year (FY) 2003

Purpose of the Program: The purpose of the DRRP Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended.

For FY 2003, the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

APPLICATION NOTICE FOR FISCAL YEAR 2003 DISABILITY REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Application Available	Deadline for transmittal of applications	Estimated available funds	Estimated average size of awards	Maximum award amount (per year)*	Estimated number of awards	Project period (months)
84.133A–8: Health Services Research.	September 12, 2002	November 12, 2002	$600,000	$300,000	$300,000	2	60
84.133A–11: Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals from Diverse Racial, Ethnic, and Linguistic Backgrounds.	September 12, 2002	November 12, 2002	600,000	300,000	300,000	2	60
84.133A–14: Developing Models to Promote the Use of NIDRR Research.	September 12, 2002	November 12, 2002	350,000	350,000	350,000	1	60

Note 1: We will reject without consideration any application that proposes a budget exceeding the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Note 2: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and (b) The program regulations 34 CFR part 350.

Priorities

This competition focuses on projects designed to meet the priorities in the notice of final priorities for these programs, published elsewhere in this issue of the **Federal Register**.

For FY 2003, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of these priorities.

Selection Criteria: The selection criteria to be used for these

competitions will be provided in the application package for each competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or its E-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: September 9, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–23271 Filed 9–11–02; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 67, No. 177

Thursday, September 12, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.nara.gov/fedreg**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

30 CFR

42.....57635
46.....57635
47.....57635
48.....57635
56.....57635
57.....57635
77.....57635
260.....57737

Proposed Rules:

924.....56967

31 CFR

Proposed Rules:

538.....56969
550.....56969
560.....56969

32 CFR

220.....57739

Proposed Rules:

861.....56777

33 CFR

6.....56215
100.....56220, 56222
117 .....56222, 56754, 56929, 57147
165 .....56222, 56485, 56488, 56755, 57331, 57742

Proposed Rules:

110.....56245
117 .....56247, 57355, 57773
165.....56245

36 CFR

1191.....56352

Proposed Rules:

7.....56785, 57357
1190.....56441
1191.....56441

38 CFR

Proposed Rules:

4.....56509
21.....57543

40 CFR

52 .....57148, 57155, 57515, 57517, 57520, 57744
58.....57332
60.....57520
61.....57159
75.....57272
81.....57332
180 .....56225, 56490, 57521, 57748
271.....57337
300.....56757, 57753

Proposed Rules:

52 .....57187, 57188, 57357, 57549, 57550, 57775, 57776
58.....57362
70.....57496
81.....56249, 57362
86.....57188
90.....57188
152.....56970
158.....56970
194.....57189, 57190
271.....57191
300.....56794, 57778
451.....57872
1045.....57188
1051.....57188
1065.....57188
1068.....57188

41 CFR

Ch. 301 57169
102–42.....56495

42 CFR

51d.....56930
403.....56618

44 CFR

65.....57173, 57174
67.....57177

Proposed Rules:

67.....57193, 57196

45 CFR

Proposed Rules:

5b.....56252
1604.....57550

47 CFR

43.....56496
63.....56496, 57344
68.....57181
76.....56880

Proposed Rules:

73 .....57203, 57779, 57780, 57781
76.....56882

48 CFR

52.....57635

49 CFR

1200.....57532
1201.....57532
1241.....57532
1242.....57532
1243.....57532
1244.....57532
1511.....56496

Proposed Rules:

195.....56970
571.....56976
580.....56976
581.....56976
582.....56976
583.....56976
584.....56976
585.....56976
586.....56976
587.....56976
588.....56976
1002.....57554
1109.....57557
1114.....57557

50 CFR

17.....57638
223.....56931
635.....56934
648 .....56229, 56765, 57758
660 .....56497, 56500, 57345, 57346, 57534
679 .....56230, 56231, 56766, 56934, 57183, 57184, 57185

Proposed Rules:

17 .....56254, 56257, 57558, 57783, 57784
223.....57204
224.....57204
622.....56516, 57785
648.....56525, 57207
679.....56692
697.....56800

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 12, 2002

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Apple Market Loss Assistance Payment Program II; published 9-12-02

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; emergency exemption, etc.:
Thiophanate-methyl; published 9-12-02

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
California; published 8-5-02

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Manufactured housing program; fee modification; published 8-13-02

PERSONNEL MANAGEMENT OFFICE
Awards:
Senior career employees and Senior Executive Service career members; Presidential Rank Awards and other awards; published 8-13-02

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
San Diego Bay, CA; safety zone; published 8-26-02

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Learjet; published 8-28-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Kiwifruit grown in—
California; comments due by 9-16-02; published 8-15-02 [FR 02-20688]
Onions (sweet) grown in—
Washington and Oregon; comments due by 9-20-02; published 7-22-02 [FR 02-18256]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Bovine spongiform encephalopathy; disease status change—
Israel: comments due by 9-16-02; published 7-18-02 [FR 02-18160]
Plant pests:
Redelivery of cargo for inspection; comments due by 9-16-02; published 8-27-02 [FR 02-21738]

COMMERCE DEPARTMENT
Industry and Security Bureau
Export administration regulations:
Cuba; agricultural commodities; licensing procedures effectiveness; comments due by 9-20-02; published 8-21-02 [FR 02-21161]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf of Mexico, and South Atlantic fisheries—
Gulf of Mexico shrimp; comments due by 9-18-02; published 8-19-02 [FR 02-21023]
Red snapper; comments due by 9-18-02; published 8-19-02 [FR 02-21024]
Reef fisheries; red snapper and shrimp; comments due by 9-18-02; published 9-12-02 [FR 02-23097]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 9-19-02; published 9-4-02 [FR 02-22523]

DEFENSE DEPARTMENT
Air Force Department
DOD Commercial Air Transportation Quality and Safety Review Program; comments due by 9-20-02; published 9-5-02 [FR 02-22307]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Brick and structural clay products manufacturing and clay ceramics manufacturing: comments due by 9-20-02; published 7-22-02 [FR 02-15869]
Air programs:
Outer Continental Shelf regulations—
California; consistency update; comments due by 9-16-02; published 8-16-02 [FR 02-20867]
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 9-20-02; published 8-21-02 [FR 02-21286]
Florida; comments due by 9-16-02; published 8-15-02 [FR 02-20744]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Florida; comments due by 9-16-02; published 8-15-02 [FR 02-20745]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Kentucky; comments due by 9-16-02; published 8-15-02 [FR 02-20746]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Kentucky; comments due by 9-16-02; published 8-15-02 [FR 02-20747]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Montana; comments due by 9-18-02; published 8-19-02 [FR 02-20988]

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Florida; comments due by 9-19-02; published 8-20-02 [FR 02-21193]

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Florida; comments due by 9-19-02; published 8-20-02 [FR 02-21194]

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Florida; comments due by 9-19-02; published 8-20-02 [FR 02-21190]

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Florida; comments due by 9-19-02; published 8-20-02 [FR 02-21191]
Hazardous waste:
Identification and listing—
Exclusions; comments due by 9-16-02; published 7-31-02 [FR 02-19325]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2,4-D, etc.
Correction; comments due by 9-17-02; published 8-16-02 [FR 02-20748]
Radiation protection standards:
Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability—
Argonne National Laboratory-East Site; comments due by 9-16-02; published 8-15-02 [FR 02-20864]
Los Alamos National Laboratory; comments due by 9-16-02; published 8-15-02 [FR 02-20865]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 9-16-02; published 8-15-02 [FR 02-20446]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 223/P.L. 107–211
To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act. (Aug. 21, 2002; 116 Stat. 1050)

H.R. 309/P.L. 107–212
Guam Foreign Investment Equity Act (Aug. 21, 2002; 116 Stat. 1051)

H.R. 601/P.L. 107–213
To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes. (Aug. 21, 2002; 116 Stat. 1052)

H.R. 1384/P.L. 107–214
Long Walk National Historic Trail Study Act (Aug. 21, 2002; 116 Stat. 1053)

H.R. 1456/P.L. 107–215
Booker T. Washington National Monument Boundary Adjustment Act of 2002 (Aug. 21, 2002; 116 Stat. 1054)

H.R. 1576/P.L. 107–216
James Peak Wilderness and Protection Area Act (Aug. 21, 2002; 116 Stat. 1055)

H.R. 2068/P.L. 107–217
To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, "Public Buildings, Property, and Works". (Aug. 21, 2002; 116 Stat. 1062)

H.R. 2234/P.L. 107–218
Tumacacori National Historical Park Boundary Revision Act of 2002 (Aug. 21, 2002; 116 Stat. 1328)

H.R. 2440/P.L. 107–219
To rename Wolf Trap Farm Park as "Wolf Trap National Park for the Performing Arts", and for other purposes. (Aug. 21, 2002; 116 Stat. 1330)

H.R. 2441/P.L. 107–220
To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Aug. 21, 2002; 116 Stat. 1332)

H.R. 2643/P.L. 107–221
Fort Clatsop National Memorial Expansion Act of 2002 (Aug. 21, 2002; 116 Stat. 1333)

H.R. 3343/P.L. 107–222
To amend title X of the Energy Policy Act of 1992, and for other purposes. (Aug. 21, 2002; 116 Stat. 1336)

H.R. 3380/P.L. 107–223
23 To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park. (Aug. 21, 2002; 116 Stat. 1338)

Last List August 12, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

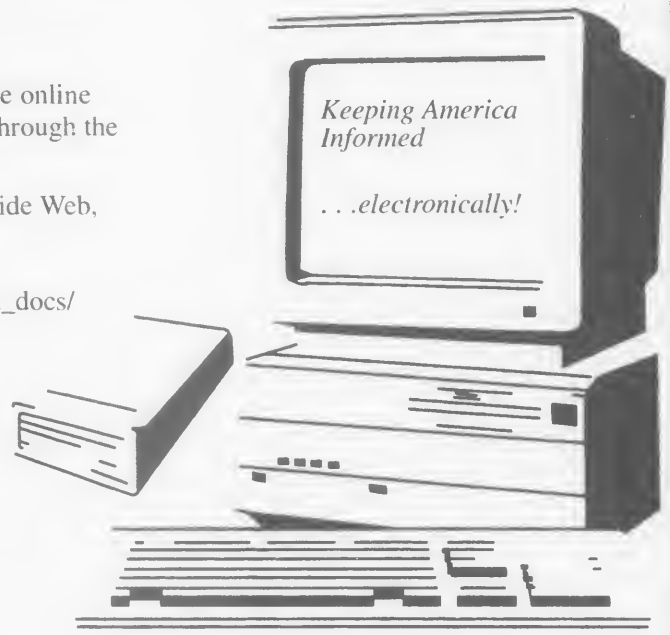
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Printed on recycled paper