Federal Register

8–23–04 Monday
Vol. 69 No. 162 Aug. 23, 2004

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(ISSN 0097-6326)

Federal Register

8–23–04 Monday
Vol. 69 No. 162 Aug. 23, 2004

Pages 51761–51942

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–10–AD; Amendment 39–13776; AD 2004–17–04]

RIN 2120–AA64

Airworthiness Directives; Grob-Werke Gmbh & Co KG Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA supersedes Airworthiness Directive (AD) 2001–26–25, which applies to all Grob-Werke Gmbh & Co KG (Grob) Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes. AD 2001–26–25 currently requires you to apply a red mark and install a placard on the airspeed indicator to restrict the Vne airspeed. This AD requires you to install additional mass balance in the elevator and ailerons and determine resultant empty weight and empty weight center of gravity; incorporate a revision in the sailplane maintenance manual; and remove the red mark and the red placard on the airspeed indicator (both required by AD 2001–26–25). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent elevator flutter, which could cause structural damage. Such damage could result in loss of control of the sailplane.

DATES: This AD becomes effective on October 7, 2004.

As of October 7, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–10–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, reported that during flight operation of Model G102 CLUB ASTIR IIIb sailplanes, two events of elevator flutter occurred in the upper flight speed range due to unknown causes. This resulted in us issuing AD 2001–26–25, Amendment 39–12591 (67 FR 809, January 8, 2002).

AD 2001–26–25 currently requires the following on Grob Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes:

—Application of a red mark on the airspeed indicator at 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration); and

—Installation of a red placard to the airspeed indicator restricting the Vne airspeed to 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration).

What has happened since AD 2001–26–25 to initiate this action? The LBA recently notified FAA of the need to change AD 2001–26–25. As a result of extensive tests and calculations, the LBA has determined that operation within the original margins can be approved if additional mass balance is installed in the elevators and ailerons.

Additionally, the LBA has determined that the operation with restricted Vne airspeed to 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration) is permitted to continue until additional mass balance is installed in the elevator and ailerons.

What is the potential impact if FAA took no action? Elevator flutter could cause structural damage. Such damage could result in loss of control of the sailplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Grob-Werke Gmbh & Co KG (Grob) Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 3, 2004 (69 FR 31327). The NPRM proposed to supersede AD 2001–26–25 with a new AD that would require you to:

—Install additional mass balance in the elevator and ailerons and determine empty weight and empty weight center of gravity after installing any additional mass balance;

—Incorporate Revision 2, dated December 4, 2002, in the sailplane maintenance manual or other appropriate document; and

—Remove the red mark on the airspeed indicator (required by AD 2001–26–25) at 165 km/h, 89.1 kts, or 102.5 mph.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many sailplanes does this AD impact? We estimate that this AD affects 50 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the modification to install additional mass balance in the elevator and ailerons and determine the empty weight and empty weight center of gravity; incorporate a revision in the applicable sailplane maintenance manual; and remove the red mark on the airspeed indicator and the red placard to the airspeed indicator:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
10 workhours × $65 per hour = $650	Not Applicable	$650	$32,500

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–10–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2001–26–25, Amendment 39–12591 (67 FR 809, January 8, 2002), and by adding a new AD to read as follows:

2004–17–04 Grob-Werke Gmbh & Co KG: Amendment 39–13776; Docket No. 2004–CE–10–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 7, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2001–26–25.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent elevator flutter, which could cause structural damage. Such damage could result in loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Install additional mass balance in the elevator and ailerons and determine resultant empty weight and empty weight center of gravity.	Within the next 25 hours time-in-service (TIS) after October 7, 2004 (the effective date of this AD).	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB306–36/3, dated December 4, 2002; GROB Luft-und Raumfahrt Service Installation Instructions No. MSB306–36/3, dated April 18, 2002; and Instructions for Continued Airworthiness GROB G 102, Revision 1, dated April 18, 2002. The applicable sailplane maintenance manual also addresses this issue.
(2) Incorporate Instructions for Continued Airworthiness GROB G 102, Revision 1, dated April 18, 2002, in the sailplane maintenance manual, or other appropriate document.	Before further flight after installing the additional mass balance and determining the empty weight and empty weight center of gravity required by paragraph (e)(1) of this AD.	Not applicable.

Actions	Compliance	Procedures
(3) Remove the red mark on the airspeed indicator (formerly required by AD 2001–26–25) at 165 kilometers/hour (km/h), 89.1 knots (kts), or 102.5 miles per hour (mph).	Before further flight after installing the additional mass balance and determining the empty weight and empty weight center of gravity required by paragraph (e)(1) of this AD.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB306–36/3, dated December 4, 2002, and GROG Luft-und Raumfahrt Service Installation Instruction No. MSB306–36/3, dated April 18, 2002. The applicable sailplane maintenance manual also addresses this issue.
(4) Remove the red placard to the airspeed indicator (formerly required by AD 2001–26–25) restricting the Vne airspeed to 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration).	Before further flight after installing the additional mass balance and determining the empty weight and empty weight center of gravity required by paragraph (e)(1) of this AD.	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130: facsimile: (816) 329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in GROB Luft-und Raumfahrt Service Bulletin No. MSB306–36/3, dated December 4, 2002; GROB Luft-und Raumfahrt Service Installation Instructions No. MSB306–36/3, dated April 18, 2002; and Instructions for Continued Airworthiness GROB G 102, Revision 1, dated April 18, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Is There Other Information That Relates to This Subject?

(h) German AD Numbers 2001–317/4, dated January 9, 2003, and 2001–317/3, dated November 14, 2002, also address the subject of this AD.

Issued in Kansas City, Missouri, on August 13, 2004.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–18997 Filed 8–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30421; Amdt. No. 3103]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective August 23, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2004.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP; or,

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by

reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on August 13, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective September 30, 2004*

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Franklin, PA, Venango Regional, RNAV (GPS) RWY 3, Orig
Franklin, PA, Venango Regional, RNAV (GPS) RWY 21, Orig
Gainesville, TX, Gainesville Muni, RNAV (GPS) RWY 17, Orig-A
Leesburg, VA, Leesburg Executive, RNAV (GPS) RWY 17, Amdt 1

Stafford, VA, Stafford Regional, RNAV (GPS) RWY 33, Amdt 1

** * * Effective October 28, 2004*

Gwinner, ND, Gwinner-Roger Melroe Field, NDB RWY 34, Amdt 1
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 16, Orig
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 34, Orig

** * * Effective November 25, 2004*

Greencastle, IN, Putnam County, NDB RWY 18, Amdt 1

[FR Doc. 04–19160 Filed 8–20–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 2003N–0390]

Dental Devices; Dental Noble Metal Alloys and Dental Base Metal Alloys; Designation of Special Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the identification and classification regulations of gold-based alloys and precious metal alloys for clinical use and base alloys devices in order to designate a special control for these devices. FDA is also exempting these devices from premarket notification requirements. The agency is taking this action on its own initiative. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance documents that would serve as special controls for these devices.

DATES: This rule is effective September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Michael E. Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext.123, e-mail: *mea@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the Medical Devices Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are as follows: Class I (general controls), Class II (special controls), and Class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as preamendments devices. Under the 1976 amendments, class II devices are identified as those devices in which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness of the device, but for which there is sufficient information to establish a performance standard to provide such assurance.

The SMDA broadened the definition of class II devices to include those devices for which general controls would not provide reasonable assurance of the safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance. The special controls include performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary to provide such assurance. See section 513(a)(1)(B) of the act.

FDAMA added, among other sections, a new section 510(m) to the act (21 U.S.C. 360(m)). Under new section 510(m) of the act, FDA may exempt a class II device from premarket notification requirements (510(k)) (21 U.S.C. 360(k)), if the agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device.

In the **Federal Register** of December 1, 2003 (68 FR 67097), FDA issued a proposed rule to amend the classification regulation of gold-based alloys and precious metal alloys for clinical use and base metal alloy devices. FDA identified the draft guidance documents entitled:"Class II Special Controls Guidance Document: Dental Precious Metal Alloys" and "Class II Special Controls Document: Dental Base Metal Alloys" as the proposed special controls capable of providing reasonable assurance of the safety and effectiveness of these devices. FDA invited interested persons to comment on the proposed rule and the draft guidance documents by March 1, 2004. FDA received three comments.

II. Summary of Comments and FDA Response

FDA received one comment from a consumer and one (in duplicate) from a trade association. Both comments were in support of the proposed reclassification with minor modifications suggested. The subject of the consumer comment was that the name of the regulation "gold based alloys and precious metal alloys for clinical use" is unscientific since gold is, by definition, a precious metal.

FDA agrees that the name of the regulation is redundant and, accordingly, has changed the final rule to modify § 872.3060 to read "noble metal," as the term encompasses all precious metals such as gold. The description "for clinical use" has been deleted because it is clear from the identification that such use is intended. For precision and clarity, we have also modified the identifications in §§ 872.3060 and 872.3710 to more precisely describe these alloys and their component metals.

The subject of the trade association comment was that: (1) The scope of the dental base metal alloys guidance is not clear as to what alloys are subject to the guidance and (2) the recommendation that the labeling for nickel-containing alloys contain a contraindication for hypersensitive individuals is unnecessary because nickel has been demonstrated to be biocompatible.

FDA agrees that more clarity is needed and has modified the scope of the guidance to define the devices not clearly addressed by the guidance. Regarding the second point, while FDA agrees that nickel has been demonstrated to be biocompatible for this intended use, FDA disagrees that the labeling should not contain a contraindication for nickel hypersensitive individuals. The agency believes this warning is needed to minimize the potential for adverse events associated with improper use of this device. Nickel, although biocompatible, is a known sensitizing agent for a small percentage of the population. FDA believes that removing this warning will increase the risk of the device by potentially exposing nickel-hypersensitive individuals who, otherwise, would not be exposed because of the current warning labels.

III. FDA's Conclusion

Based on the findings outlined in the preamble, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of these devices. FDA is designating the guidance documents entitled: "Class II Special Controls Guidance Document: Dental Noble Metal Alloys" and "Class II Special Controls Guidance Document: Dental Base Metal Alloys" as the special controls that the agency believes will reasonably assure the safety and effectiveness for noble metal alloys and base metal alloys, respectively.

Following the effective date of the final rule exempting the device, manufacturers of these devices will need to address the issues covered in this special control guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. If manufacturers cannot comply with these recommendations or equivalent measures, they will not be exempt from the requirements of premarket notification and will need to submit a premarket notification and receive clearance for their device prior to marketing.

IV. Electronic Access

Persons with access to the Internet may access the Center for Devices and Radiological Health web site at *http:///www.fda.gov/cdrh*. A search capability for all CDRH documents is available at *http://www.fda.gov/cdrh/guidances.html*. Guidance documents are available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environmental. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The purpose of this final rule is to designate a special control for these devices. FDA has designated guidance documents as the special controls. Because manufacturers, including small manufacturers, are already substantially in compliance with the recommendations in the guidance documents, and they will not add substantially to the information manufacturers presently submit, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $110,000,000 million. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the executive order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 872

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 872.3060 and the section heading are revised to read as follows:

§ 872.3060 Noble metal alloy.

(a) *Identification.* A noble metal alloy is a device composed primarily of noble metals, such as gold, palladium, platinum, or silver, that is intended for use in the fabrication of cast or porcelain-fused-to-metal crown and bridge restorations.

(b) *Classification.* Class II (special controls). The special control for these devices is FDA's "Class II Special Controls Guidance Document: Dental Noble Metal Alloys." The devices are exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9. See § 872.1(e) for availability of guidance information.

■ 3. Section 872.3710 is revised to read as follows:

§ 872.3710 Base metal alloy.

(a) *Identification.* A base metal alloy is a device composed primarily of base metals, such as nickel, chromium, or cobalt, that is intended for use in fabrication of cast or porcelain-fused-to-metal crown and bridge restorations.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Dental Base Metal Alloys." The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9. See § 872.1(e) for availability of guidance information.

Dated: August 11, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–19178 Filed 8–20–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–111]

RIN 1625–AA00

Safety Zone; Metro North Railroad Bridge Over the Norwalk River, Norwalk, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters surrounding the Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut. This zone is necessary to protect vessels that wish to transit past the bridge from construction equipment and barges, and removal and replacement of the fender system on the bridge's eastern span. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from 3 p.m. e.d.t. on August 6, 2004 until 11:59 p.m. e.d.t. on October 15, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–111 and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory History

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. Immediate structural repairs are needed on the Norwalk Metro North Railroad Bridge. The repairs to the bridge and its fendering system must be accomplished for the safety of the vessels and persons transiting in the waters of the Norwalk River under the Metro North Railroad Bridge, Norwalk, Connecticut. Under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to restrict and control maritime traffic while transiting in the waters of the Norwalk River under the Metro North Railroad Bridge, Norwalk, Connecticut. The fendering system on the eastern span of the Norwalk Metro North Railroad Bridge is seriously dilapidated. This condition of the fendering system was determined during recent emergency fendering work in the western channel due to an allision in April 2004, which destroyed the fendering system. The Coast Guard was only notified of the time frame to conduct these repairs on July 30, 2004 by Connecticut Department of Transportation. The delay inherent in the NPRM process is contrary to the public interest and impracticable, as immediate action is needed to close the waterway to prevent vessels from transiting in the eastern channel during construction, which will completely remove and replace the current fendering system. While the bridge has been determined to be safe for rail traffic, the disrepair of a fender system that is designed to protect bridge piers from direct allision leaves the bridge piers exposed to the possibility of direct damage. In addition, at times during this construction, the bridge will be lacking a fendering system, and there will be exposed pilings of the new fendering system in the waterway.

Background and Purpose

While conducting repairs on the bridge fender system under the western span of the bridge, workers determined that the fendering system under the bridge in the eastern channel is seriously dilapidated and in need of replacement. While the bridge has been determined to be safe for rail traffic, the disrepair of a fender system that is designed to protect bridge piers from direct allision leaves the bridge piers exposed to the possibility of direct damage and thus poses serious potential dangers and hazards if not rectified immediately. Further damage to the bridge piers could impede rail traffic, and put the safety of the bridge and the public utilizing the rail service at risk. In addition, at times during this construction, the bridge will be lacking a fendering system, and there will be exposed pilings of the new fendering system in the waterway.

Currently, contractors are on the western side of the channel completing repairs from an April 2004 allision that destroyed the fendering system in the western channel. When repair work on the western side of the railroad bridge is completed the contractor will swing its equipment to the east side of the channel and make repairs to the fender system on the eastern side of the railroad bridge.

The Coast Guard is establishing a safety zone in all waters of the Norwalk River in Norwalk, Connecticut, within 100 yards of the Metro North Railroad Bridge. This safety zone is necessary to protect the safety of the bridge, those persons conducting bridge repair operations and the public using the Metro North Railroad, from further allisions with the bridge piers as well as commercial and recreational vessels. It is also necessary to prevent vessels from colliding with exposed steel pilings that are part of the fender system being constructed.

Discussion of Rule

This regulation establishes a temporary safety zone on the waters of the Norwalk River within 100 yards of the Metro North Railroad Bridge, Norwalk, Connecticut. This action is intended to prohibit vessel traffic in a portion of Norwalk River to prevent damage to the Metro North Railroad Bridge that may be caused due to lack of a fender system around bridge piers of the eastern span of the Bridge. The safety zone is in effect from 3 p.m. on August 6, 2004, until 11:59 p.m. on October 15, 2004. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation of the rest of the Norwalk River except for the portion proscribed by this rule. In addition, recreational vessels may pass on the west side of the channel and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound. Other entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

Any violation of the safety zone described herein is punishable by, among others, civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of

DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: the safety zone is only for a temporary period, vessels may transit safely in all areas of the Norwalk River other than the area of the safety zone, recreational vessels may pass on the east side of the channel, and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of the Norwalk River covered by the safety zone for the specified time period. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not concern 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 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.

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 rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Technical Standards

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

This rule does not use technical standards. Therefore, we did not

consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–111 to read as follows:

§ 165.T01–111 Safety Zone: Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut.

(a) *Location.* The following area is a safety zone: All waters of the Norwalk River, Norwalk, Connecticut, within 100 yards of the Metro North Railroad Bridge.

(b) *Effective date.* This section is effective from 3 p.m. EDT on August 6, 2004 until 11:59 p.m. EDT on October 15, 2004.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(d) *Authorizations:* Recreational vessels are authorized to pass under the bridge's west span. All commercial vessels may pass under the bridge's west span upon the request and authorization by the Captain of the Port, Long Island Sound.

(e) *Compliance.* All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. Designated on-scene U.S. Coast Guard representatives include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: August 6, 2004.

Peter J. Boynton,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 04–19280 Filed 8–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD–2003–15030]

RIN 2133–AB49

Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, or we, our or us) is publishing this final rule to implement the changes of the Maritime Transportation Security Act of 2002. This final rule implements regulations to waive the U.S.-build requirements of the Passenger Vessel Services Act and section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. This final rule also brings the application procedure into compliance with the Government Paperwork Elimination Act, which requires that by October 21, 2003, the government must provide "the option of electronic maintenance, submission, or disclosure of information when practicable as a substitute for paper."

DATES: The effective date of this final rule is September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; telephone: (202) 366–0760.

SUPPLEMENTARY INFORMATION: Public Law 105–383, which authorized the Secretary of Transportation to grant waivers of certain requirements for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade, contained a sunset provision effective September 30, 2002. The Maritime Transportation Security Act of 2002, section 207(c), Public Law 107–295 (the Act), removed the sunset provision and added anti-fraud revocation authority.

Between January 2000 and September 2002, MARAD utilized regulations published at 46 CFR part 388 to accept applications from the public and to provide public notice of the intent to issue waivers to foreign built vessels for use in the coastwise passenger trade (*See* **Federal Register** notice at 65 FR 6905) (February 11, 2000). However, the regulation also contained the sunset included in the enabling legislation. The application process required a $300 non-refundable fee, an "adverse affect" assessment on the U.S.-flag shipping and vessel building community, and a requirement that the vessel meet U.S. Coast Guard documentation standards. Waivers approved by MARAD, which set limits on vessel's geographic use and required that all significant changes be conducted with MARAD's prior approval, became a permanent part of the vessel's coastwise endorsement. As required by the original enabling legislation and the implementing regulations, MARAD granted no waivers after September 30, 2002.

The Act signed by President Bush on November 25, 2002, repealed the September 30, 2002, sunset provision contained in section 505 of the Coast Guard Authorization Act of 1998 (Pub. L. 105–383). The Act also substitutes a new section 503, which requires the Secretary to revoke "a certificate or an endorsement issued under section 502, after notice and opportunity for a hearing, if the Secretary determines that the certificate or endorsement was obtained by fraud." This section changes and supersedes the circumstances under which a waiver can be revoked. This final rule implements these two legislative changes.

This final rule also makes several administrative changes designed to simplify the application process. Under the simplified process, applicants are encouraged to apply online. The application is available on the MARAD Web site at *http://www.marad.dot.gov*

and includes the ability to charge the application fee to a major credit card.

MARAD initially published this rule in the **Federal Register** on April 30, 2003, as an interim final rule with request for comments. Comments on the interim final rule were due by May 30, 2003, and one set of comments was timely filed.

Program Description: Two agencies have responsibilities related to the coastwise trade laws: the Coast Guard, which issues the vessel documents and endorsements that authorize vessels to engage in the coastwise trade; and the Maritime Administration, by delegation from the Secretary of Transportation, which has the authority to process applications for waivers of the coastwise laws and to grant such waivers if they do not adversely affect United States vessel builders or United States-built vessel coastwise trade businesses. In this rulemaking, MARAD is providing the procedures to be followed in processing applications for waivers, or revoking waivers previously granted. Upon grant of a waiver, MARAD will notify the applicant and the Coast Guard. Thereafter, you may register the vessel so waived with the Coast Guard under the Coast Guard's normal procedures, provided the vessel is otherwise eligible.

Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign-built or foreign rebuilt small passenger vessels and uninspected passenger vessels as defined by section 2101 of title 46, United States Code. Vessels of unknown origin are considered to be foreign built. Additionally, vessels requested for consideration must be at least three (3) years old. MARAD will not grant waivers in instances where such waiver activity will have an unduly harmful impact on U.S. shipyards or U.S.-flag ship operators. In order to meet the public comment provisions of title V of Public Law 105–383, MARAD will give notice of applications in the **Federal Register** and will provide the appropriate references to the DOT Dockets where applications are filed for public reference and where comments may be submitted. After a period of time to analyze comments and to assess the impact that a proposed waiver will have on the U.S.-flag shipping and shipbuilding industries, MARAD will issue a determination.

MARAD does not have the authority to waive citizenship requirements for vessel ownership and documentation. The Coast Guard will ascertain whether the shipowner is qualified as a citizen to register a vessel. In addition, the Coast Guard, not MARAD, will determine whether a particular vessel will be considered a small passenger vessel or an uninspected passenger vessel. However, we may refuse to process an application if the vessel is not the type eligible for a waiver. Prospective applicants for a coastwise trade law waiver may wish to consult with the Coast Guard in order to make a determination regarding the vessel's status prior to initiating the waiver application process with MARAD.

Under title V, section 503 previously contained authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, that had been allowed into service, substantially changed that service. The Act amended section 503 to provide fraud in the application process as the basis to revoke an endorsement. MARAD's procedure for revocation of a waiver will not change significantly. Procedures will still include the publication of a notice in the **Federal Register** seeking public comments on the proposed revocation. A hearing will be provided, on MARAD's motion or at the applicant's request, prior to making a determination. If MARAD determines that the endorsement was obtained by fraud, MARAD will issue a formal letter of waiver revocation with an appropriate grace period. This determination will be sent to the Coast Guard for revocation of the vessel's coastwise endorsement.

MARAD's decisions to grant or deny a waiver and to revoke or not revoke a waiver are appealable to the Maritime Administrator and are final only on expiration of the time period for these petitions, or, where the Administrator grants review, upon the Administrator's final decision.

Comments on the Interim Final Rule

One letter commenting on the interim final rule was received. The comments were submitted by counsel for The Boat Company, an owner of U.S.-built vessels and a Southeastern Alaskan charter operator. Review and consideration of the opinions and recommended changes set forth in the comments follows.

The first comment criticizes MARAD's application of sections 388.4(b) and (c) of title 46, Code of Federal Regulations, in prior waiver application determinations. The Boat Company argues that MARAD should not grant applications in cases where applicants describe their intended area of operation too broadly (*e.g.*, where waiver is sought for "all navigable waterways of" or "all coastal waters of the United States"). The Boat Company believes that applicants cannot attest that grant of a requested waiver will not adversely affect U.S.-hull vessel owners or boat builders if the area described in the waiver is too broad. Further, The Boat Company argues, abstractly, that broad waivers defeat the intent of the Act and reasonable public notice requirements.

Despite The Boat Company's criticism as to how MARAD applies sections 388.4(b) and (c), it did not provide, suggest, or request that any changes be made to either section. Since MARAD believes that sections 388.4(b) and (c) provide sufficiently clear standards regarding geographic regions (*i.e.*, "the same geographic region" in 388.4(b); "the same geographic area" in 388.4(c)(1); and "the same market" in 388.4(c)(2)), MARAD declines to change these sections on its own motion. As changes to MARAD's rules were neither proposed nor requested, no further action on the part of MARAD is required with regard to this input in the context of this rulemaking.

MARAD notes that criticisms such as those above underscore the reason why MARAD publishes all waiver applications in the **Federal Register** and solicits public comment thereon. This notice and comment mechanism provides an avenue whereby concerned parties may raise objections to applications, including such things as the breadth of waivers and other fact-specific issues. MARAD encourages parties with concerns regarding specific applications to file comments so that MARAD may address such issues on a case by case basis.

Finally, MARAD fails to see how a broad waiver application negates or diminishes the adequacy of public notice provided in the **Federal Register**. Simply stated, companies that are concerned that a specific waiver application may have an undue adverse effect on them are encouraged to file comments on the waiver request. If such companies are uncertain as to whether or not a specific waiver application encompasses regions in which they conduct business, MARAD encourages them to file comments so that MARAD may consider and address, where appropriate, any ambiguities or uncertainties.

The second comment by The Boat Company concerns the word "unduly" in section 388.4(a). Counsel for The Boat Company suggests that MARAD's inclusion of the word "unduly" in our regulations was "tantamount to an agency rewriting legislation." The Boat Company argues that there is no evidence of congressional intent or authority to include such language, and that it creates a standard not called for

in the legislation. MARAD disagrees for several reasons.

Public Law 105–383, title V, sections 501 and 502 specifically delegated authority to the Secretary of Transportation to review and approve waiver applications, (which was in turn delegated to MARAD). Sections 501 and 502 provide that MARAD, in its discretion, may approve waiver applications if it "determine(s) that the employment of the vessel in the coastwise trade will not adversely affect" United States vessel builders or United States-built vessel coastwise trade businesses. The statute did not provide any specific standards MARAD should apply in making such determinations, nor did it define "adverse affect." Instead, Congress deferred to MARAD's "appropriate expertise" and discretion in exercising its delegated authority to review and approve waiver applications.

To carry out its delegated duties, MARAD drafted implementing regulations to provide standards used to evaluate waiver applications. As part of its evaluation standards, MARAD included "unduly" in its regulations in response to section 501(3) of Public Law 105–383. In section 501(3), Congress made its intent clear that most waiver applications should be granted, by providing "each Congress *routinely* approves numerous such requests for waiver and *rarely* rejects any such request" (emphasis added). To advance this congressional intent, and thereby insure that applications are infrequently denied, MARAD included the word "unduly" in section 388.4 to prevent meritless challenges to applications based on frivolous, trivial, or insubstantial showings of "adverse affect."

MARAD believes that its interpretation of "adverse affect," read in light of the statute as a whole, is a reasonable and permissible interpretation under *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 842 (1984) ("Chevron"). Applying Chevron, agencies are confronted with two questions regarding their interpretation of congressional language. The first question is "whether Congress has directly spoken to the precise question at issue (*Id.* at 842) ("Chevron step one"). To find no ambiguity, Congress must have clearly manifested its intention with respect to a particular issue (*See Young* v. *Community Nutrition Institute,* 476 U.S. 974, 980 (1986)). If Congress has spoken directly and plainly, the agency must implement Congress' unambiguously expressed intent (Chevron, 467 U.S. at 842–843). If, however, legislation is silent or ambiguous as to the meaning of a term, an agency may elucidate the term in a reasonable fashion ("Chevron step two"); (Chevron, 467 U.S. at 842–843; *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)). Since the term "adverse affect" was not defined by Congress, and is ambiguous as to what kind (*e.g.*, tangible or intangible, monetary or non-monetary) or what degree of "adverse affect" would warrant denial of a wavier application, MARAD may elucidate the term, under Chevron, in a reasonable and permissible fashion. It did so by adding "unduly" to modify "adverse affect."

Without the addition of "unduly," "adverse affect," if strictly interpreted, could produce absurd results. For instance, MARAD could not grant a waiver application if granting it would reduce a competing company's revenue by one dollar per year. Such a strict reading of "adverse affect" would clearly frustrate Congress' intent, as it could potentially lead to the denial of most or all waiver applications by a showing of minimal adversity, or, in our example, the loss of one dollar per annum. Thus, MARAD, in its discretion, adopted a reasonable standard in interpreting "adverse affect" in order to carry out its delegated duties and to effectuate the intent of Congress. MARAD's now extensive experience with the implementation of the Small Vessel Waiver Program has found this standard to be both reasonable and practicable. Accordingly, MARAD declines to delete the term "unduly" from this final rule.

The third and final comment asks MARAD to summarily eliminate the Southeast Alaska region as an area eligible for waivers. The Boat Company argues that since we have denied waivers in this region in the past, as we did in the Caledonia decision, (Docket No. MARAD 2001–8932–16) we should codify this result and deny even the possibility of future waivers to applicants in this region. MARAD declines to implement this suggestion, finding instead that a case basis approach is required, should regional market conditions or other variables change in the future that may warrant a reassessment of the Southeast Alaska region as an area eligible for waivers.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of congressional review under Public Law 104–121. The costs and overall economic impact of this rulemaking are so minimal that no further analysis is necessary. Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign built or foreign rebuilt small passenger vessels and uninspected passenger vessels as defined by section 2101 of title 46, United States Code. Additionally, vessels requested for consideration must be greater than three years old. We will not grant waivers in instances where such waiver activity will have an unduly adverse effect on U.S. vessel builders or U.S. businesses that use U.S. flag vessels. Under title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, is deemed to have obtained such endorsement through fraud.

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations herein have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small entities. After analysis of this final rule, MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small businesses. Although we expect many applicants for vessel waivers to be small businesses, we do not believe that the economic impact will be significant. This regulation allows MARAD to waive the U.S.-build and other requirements for eligible vessels and adds a small economic benefit to applicants. This regulation will only allow vessels to carry the statutory maximum of 12 passengers. As a consequence, MARAD estimates that a vessel owner who

receives a waiver may earn a few hundred dollars per year for localized operations (geographic restrictions apply) such as whale watching and personalized fishing expeditions. Also, the economic impact of this rule is limited because it precludes vessel owners from participating in other economic activities such as carrying cargo and commercial fishing.

Environmental Assessment

This rule would not significantly affect the environment because the small number and small size of vessels admitted to U.S. registry under this waiver program will have little or no effect on the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This final rule reactivates a requirement for the collection of information that was used before the sunset provision contained in the Coast Guard Authorization Act of 1998 ended the authority to grant waivers. The Office of Management and Budget (OMB) has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The OMB approval number is 2133–0529.

Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves this objective of U.S. policy.

Executive Order 13175

MARAD believes that regulations evolving from this final rule will have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Regulation Identifier Number (RIN)

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

List of Subjects in 46 CFR Part 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

■ Accordingly, the Maritime Administration amends 46 CFR chapter II, subchapter J, by revising part 388 to read as follows:

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

Sec.

Authority: 46 App. U.S.C. 1114(b); Pub. L. 105–383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66.

§ 388.1 Purpose.

This part prescribes regulations implementing the provisions of Title V of Public Law 105–383 (112 Stat. 3445), which grants the Secretary authority to review and approve applications for waiver of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more, built or rebuilt outside the United States, and grants authority for revocation of those waivers.

§ 388.2 Definitions.

For the purposes of this part:

(a) *Administrator* means the Maritime Administrator.

(b) *Coastwise Trade Laws* include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12106);

(2) The Passenger Services Act, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289); and

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) *Eligible Vessel* means a vessel of five or more tons that is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certificate of documentation with appropriate endorsement if granted, would become effective.

(d) *MARAD* means the Maritime Administration, U.S. Department of Transportation.

(e) *Secretary* means the Secretary of Transportation.

(f) The terms *small passenger vessel, uninspected passenger vessel* and *passenger for hire* have the meaning given such terms by 46 U.S.C. 2101.

(g) *Fraud* means the intentional misrepresentation of a material fact or facts.

§ 388.3 Application and fee.

(a) An owner of a vessel may choose either of two methods to apply for an administrative waiver of the coastwise trade laws of the United States for an eligible vessel to carry no more than twelve passengers for hire.

(1) The application form contained on MARAD's Web site at *http://www.marad.dot.gov* may be submitted electronically with credit card or Automated Clearinghouse (ACH) payment of the $300 application fee.

(2) Alternatively, applicants may send written applications to Small Vessel Waiver Applications, Office of Ports and Domestic Shipping, MAR–830, Room 7201, 400 7th St., SW., Washington, DC 20590. Written applications need not be in any particular format, but must be signed, be accompanied by a check for $300 made out to the order of "Maritime Administration", and contain the following information:

(i) Name of vessel and owner for which waiver is requested and the vessel's official number.

(ii) Size, capacity and tonnage of vessel (state whether tonnage is measured pursuant to 46 U.S.C. 14502, or otherwise, and if otherwise, how measured).

(iii) Intended use for vessel, including geographic region of intended operation and trade.

(iv) Date and place of construction and (if applicable) rebuilding. (If applicant is unable to document the origin of the vessel, foreign construction will be assumed).

(v) Name, address, and telephone number of the vessel owner.

(vi) A statement on the impact this waiver will have on other commercial passenger vessel operators, including a statement describing the operations of existing operators.

(vii) A statement on the impact this waiver will have on U.S. shipyards.

(viii) A statement that the applicant represents that the foregoing information is true to the best of the applicant's knowledge.

(b) MARAD may ask additional questions of the applicant as part of the application review.

§ 388.4 Criteria for grant of a waiver.

(a) General Criteria. (1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws

will be granted for an eligible vessel only if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

(2) The determination of "unduly adverse affect" on a coastwise operator or a U.S. vessel builder may not be limited to operators or builders of vessels carrying 12 or fewer passengers.

(3) We may evaluate the expected impact of the proposed waiver on the basis of the information received from all sources, including public comment, internal investigation and analysis, and any other sources of information deemed appropriate.

(b) Impact on U.S. vessel builders. We may use the following criteria to determine the effect on U.S. vessel builders: Whether a potentially affected U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity and the fact it has taken definite steps to offer to build a similar vessel, for use in the same geographic region of the United States, as the proposed vessel of the applicant.

(c) Impact on coastwise trade business. We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and a vessel of an existing operator (or the vessel of an operator that can demonstrate it has taken definite steps to begin operation) would provide similar commercial service and would operate in the same geographic area.

(2) The number of similar vessels operating or proposed to operate in the same market with the same or similar itinerary, relative to the size of the market. For example, a single vessel may have a small impact on a large market.

(d) Advance notice and approval needed for changes. When we approve a waiver application, we will notify the applicant that no substantial change in the employment of the vessel in the coastwise trade may be made without prior notice to MARAD. In general, a substantial change in operating area will require a new waiver application.

§ 388.5 Criteria for revocation of a waiver.

We shall revoke a waiver previously granted under this part if we determine, after notice and opportunity for a hearing, that fraud was involved in any part of the waiver application.

§ 388.6 Process.

(a) Initial process. (1) We will review each application for completeness as received. We will notify the applicant if additional information is necessary or if the application does not meet the initial eligibility requirements for waiver. All applications will be available for public inspection electronically in the Department of Transportation Docket at *http://dot.dms.gov*.

(2) Applications being processed on the merits will be noticed in the **Federal Register**. Interested parties will be given an opportunity to comment on whether introduction of any proposed vessel would adversely affect them. In the absence of duly filed objections to an application, and in the absence of unduly adverse impact on vessel builders or businesses employing U.S.-built vessels otherwise discovered by us, we will conclude that there will be no adverse effect. If an objection to an application is received, additional information may be sought from the objector. The applicant will be given a sufficient amount of time to respond. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or, on MARAD's motion or at the applicant's request, hold a hearing on the application and make a decision based on the hearing record. The decision will be communicated to the applicant, commenters and the United States Coast Guard in writing and placed in the docket. If MARAD grants a waiver, the applicant must thereafter contact the Coast Guard to obtain the necessary documentation for domestic operation. MARAD's waiver does not satisfy other requirements of the Coast Guard for documentation. The waiver, if approved, will be assigned to the vessel.

(b) Revocation. We may, upon the request of a U.S. builder or a coastwise trade business of a person who employs U.S.-built vessels or upon our own initiative propose to revoke a waiver granted under this part, on the basis that the waiver was obtained through fraud. The grantee of the waiver in question will be notified directly by mail, and a notice will be published in the **Federal Register**. The original docket of the application will be reopened. We may request additional information from the applicant granted the waiver or from any respondent to the notice. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or, on MARAD's motion or at the applicant's request, hold a hearing on the proposed revocation and make a decision based on the hearing record. The decision will be communicated in writing to: the applicant granted the waiver, the requestor (if any), each respondent to the proposed revocation notice, the Coast Guard; and placed in the docket. If MARAD revokes a waiver, the Coast Guard, automatically and without further proceedings, shall revoke the vessel's coastwise endorsement.

(c) Review of determinations. (1) The decisions by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver, or revoke a waiver will not be final until time for discretionary review by the Administrator has expired. Each decision to grant, deny, or revoke a waiver will be made in writing and a copy of the written decision will be provided to each applicant and other parties to the decision. Applicants, persons who requested revocation of a waiver, and persons who submitted comments in response to a **Federal Register** notice may petition the Administrator to review a decision by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver, or revoke a waiver within five (5) business days after such decision is filed in the docket. Each petition for review should state the petitioner's standing and the reasons review is being sought, clearly pointing out alleged errors of fact or misapplied points of law. Within five (5) business days of submission of a petition for review, the applicant, and other persons with standing, may request that the Administrator not review a decision by the Director, Office of Ports and Domestic Shipping, to grant, deny, or revoke a waiver. Such petitions and responses must either be sent by facsimile to the Secretary, Maritime Administration, at (202) 366–9206 or filed electronically in the appropriate DOT docket at *http://dms.dot.gov*. The Administrator will decide whether to review within five (5) business days following the last day for submission of a request that the Administrator not take review. If the Administrator undertakes review, the decision by the Director, Office of Ports and Domestic Shipping, is stayed until final disposition. In the event the Administrator decides to undertake review, a decision will be made based on the written submissions and all available information. As a matter of discretion, the Administrator or designated representative may hold a hearing on the proposed action and make a decision based on the hearing record. The decision will be

communicated in writing to the interested parties and the Coast Guard. In the review process, the decision of the Maritime Administrator is the final disposition. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping, becomes final on the sixth business day after the decision. The Secretary, MARAD, may extend any of the time limits, but only for good cause shown.

(2) Such petitions and responses must either be sent by facsimile to the Secretary, Maritime Administration, at (202) 366–9206 or filed electronically in the appropriate DOT docket at *http://dms.dot.gov*. The Administrator will decide whether to review within five (5) business days following the last day for submission of a request that the Administrator not take review. If the Administrator takes review, the decision by the Director, Office of Ports and Domestic Shipping, is stayed until final disposition. In the event the Administrator decides to take review, a decision will be made based on the written submissions and all available information. As a matter of discretion, the Administrator or designated representative may hold a hearing on the proposed action and make a decision based on the hearing record. The decision will be communicated in writing to the interested parties and the Coast Guard. In the review process, the decision of the Maritime Administrator is the final disposition. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping, becomes final on the sixth business day after the decision. The Secretary, MARAD, may extend any of the time limits, but only for good cause shown.

By Order of the Maritime Administrator.

Dated: August 11, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–18861 Filed 8–20–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–4240–12; I.D. 081704A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,942 square nautical miles (nm^2) (6,660 km^2), southeast of Cape Cod, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours August 25, 2004, through 2400 hours September 8, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On August 10, 2004, NMFS received a report of six right whales in the proximity of 41°15′ N. lat. and 69°18′ W. long. This position lies southeast of Cape Cod, MA. After conducting an investigation, the Northeast Fisheries

Science Center ascertained that the report came from a qualified individual and determined that the report was reliable.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bounded by the following coordinates:

41°37′ N., 69°49′ W. (NW Corner)
41°37′ N., 68°50′ W.
40°53′ N., 68°50′ W.
40°53′ N., 69°49′ W.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: Portions of this DAM zone overlap the year round Northeast Multispecies' Closed Area I and the Nantucket Lightship Closed Area. This DAM action does not supersede Northeast multispecies closures found at 50 CFR 648.81.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area and the Great South Channel Restricted Lobster Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, the Great South Channel Restricted Gillnet Area, and the Great South Channel Sliver Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours August 25, 2004, through 2400 hours September 8, 2004, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial

lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: August 18, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 04–19270 Filed 8–18–04; 4:53 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 162
Monday, August 23, 2004

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.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF30

Revised Medical Criteria for Evaluating Genitourinary Impairments

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving genitourinary impairments. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating genitourinary impairments.

DATES: To be sure your comments are considered, we must receive them by October 22, 2004.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830, or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, SSA Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1767 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.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (*see* 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above and that results in . . .
Title II	An adult or a child	The inability to do any substantial gainful activity (SGA).
Title XVI	A person age 18 or older	The inability to do any SGA.
Title XVI	A person under age 18	Marked and severe functional limitations.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent a person from doing any gainful activity or that result in "marked and severe functional limitations" in children seeking SSI payments under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (*See* §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (*See* §§ 404.1526 and 416.926.)

We use the listings only to decide that people are disabled or that they are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s)

does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" that we use to evaluate all disability claims. (*See* §§ 404.1520, 416.920, and 416.924.)

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended based only on any changes in the listings. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled the listings. In these cases, we determine whether you have experienced medical improvement and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. *See* §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule after we decide that you have experienced medical improvement in your condition(s). *See* § 416.994a(b)(2).

Why Are We Proposing To Revise the Listings for the Genitourinary System?

We last published final rules revising the listings for the genitourinary system in the **Federal Register** on December 6, 1985 (50 FR 50068). In that notice, we said that those rules would be effective for 8 years unless we extended them, or revised and issued them again. The current listings for the genitourinary system will no longer be effective on July 1, 2005, unless we extend them, or revise and issue them again.

We are proposing these revisions because we decided to update the medical criteria in the listings and to provide more information about how we evaluate genitourinary impairments.

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

How Long Would These Rules Be Effective?

If we publish these proposed rules as final rules, they will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

What Revisions Are We Proposing To Make?

We are proposing to present the listings criteria in a more logical order, and to make the listings easier to use. To do this, we propose to:

- Expand the language in the introductory text (preface) in proposed 6.00 and 106.00 to bring it up to date and to reflect the new listings. We are designating the paragraphs numerically to make it easier to use the proposed listings.
- Add a new section in proposed 6.00 and 106.00 defining important terms in the listings.
- Remove listings that are obsolete due to the fact that dialysis is now initiated earlier in the treatment of chronic renal failure, before some of the associated complications specified in the current listings appear or reach listing-level severity. (We define the medical term "renal" in section 6.00A, as pertaining to the kidney. We use "renal" in most of these listings because it is the term that physicians use.) For example, while intractable pruritis still may occur (current listing 6.02C4), you usually will be receiving dialysis for the underlying chronic renal disease, and as such, your impairment will meet listing 6.02A. In addition, treatment modalities for many of the side effects and complications of chronic renal disease have improved.
- Revise listings to reflect current medical practice and to be consistent with the terminology used in other body system listings. For example, in the childhood listings, we would change "Renal transplant" (current listing 106.02D) to "Kidney transplantation."
- Remove reference listings and replace them with guidance in the preface. Reference listings are listings that are met by satisfying the criteria of another listing. For example, current listing 6.02C6 for chronic renal disease with persistent anorexia is a reference listing that requires evaluation under current listing 5.08 for weight loss. Therefore, it is redundant. Instead of using a reference listing, we propose to provide general guidance in the preface to the listings (proposed 6.00H), stating that resulting impairments should be evaluated under the criteria for the affected body system.
- Redesignate the listings in part B to correspond with listings addressing the same impairments in part A. Except for minor changes to refer to children, we have repeated much of the language of proposed 6.00 in proposed 106.00. This is because the same basic rules for establishing and evaluating the existence and severity of genitourinary impairments in adults also apply to children.
- Add a listing in part B, proposed listing 106.07, to address congenital genitourinary impairments that are not addressed in listings 106.02 or 106.06.

We also propose to make nonsubstantive editorial changes to update the medical terminology in the listings and to make the language clearer.

How Are We Proposing To Change the Introductory Text to the Listings for Evaluating Genitourinary Impairments in Adults?

6.00 Genitourinary Impairments

We propose to change the name of this body system from Genito-Urinary System to Genitourinary Impairments to more accurately reflect that we use these listings to evaluate genitourinary impairments in accordance with the requirements of the disability program. Even though we recognize that we list only kidney impairments in part A of the listings, we believe it is preferable to use the same heading in part A and part B of the listings, and since kidney impairments are types of genitourinary impairments, we believe this heading is appropriate.

We propose to expand and reorganize the introductory text to these listings to provide additional guidance and to reflect the new listings. The proposed changes to the preface should also improve clarity and readability. The following is a detailed explanation of the proposed rules.

Proposed 6.00A—What Impairments Do These Listings Cover?

In this new section, we explain that we use these listings to evaluate genitourinary impairments resulting from chronic renal disease. Proposed 6.00A2 replaces the parenthetical statement in current listing 6.02, giving examples of chronic renal disease that can lead to renal dysfunction. Proposed 6.00A3 explains that we use the criteria in listing 6.06 to evaluate nephrotic syndrome due to glomerular disease.

Proposed 6.00B—What Do We Mean by the Following Terms?

In proposed 6.00B, we define what we mean by important terms in these listings.

Proposed 6.00C—What Evidence Do We Need?

In proposed 6.00C1, we expand and clarify the documentation requirements discussed in current 6.00A.

In proposed 6.00C2, we explain that we need a longitudinal clinical record covering a period of at least 3 months of observations and treatments, unless we can make a fully favorable determination or decision without it.

We also explain that the record should include laboratory findings, such as serum creatinine or serum albumin values, obtained on more than one examination over at least a 3-month period.

Proposed 6.00C3 corresponds to current 6.00C. We explain that laboratory findings should include pre-dialysis renal function.

Proposed 6.00C4 and 6.00C5 correspond to current 6.00B, which discusses nephrotic syndrome. We clarify the language and specify appropriate laboratory evidence. In the last sentence of proposed 6.00C5, we clarify the documentation requirements in the absence of a pathology report. We did not retain the last sentence of current 6.00B, which explains how we consider complications of nephrotic syndrome such as severe orthostatic hypotension, recurrent infections or venous thromboses; however, proposed 6.00D2 addresses these complications of nephrotic syndrome.

Proposed 6.00D—How Do We Consider the Effects of Treatment?

In this new section, we set forth our policy concerning treatment, including your response to treatment, its efficacy, and any adverse consequences.

Proposed 6.00E—What Other Things Do We Consider When We Evaluate Chronic Renal Disease Under These Listings?

In this new section, proposed 6.00E1 explains that if you have a kidney transplant, we will consider you disabled for 12 months following the surgery. We explain further that we will determine whether your disability is ongoing based upon any residual impairment(s), as shown by signs, symptoms, and laboratory findings, following the first year after the date of transplantation.

In proposed 6.00E2, we explain what the longitudinal clinical record should include in order for us to evaluate nephrotic syndrome.

Proposed 6.00F—What Does the Term Persistent Mean in These Listings?

In proposed 6.00F, we explain that the term persistent in these listings means that the longitudinal clinical record shows that, with few exceptions, the required finding(s) has been at, or is expected to be at, the level specified in the listing for a continuous period of at least 12 months.

Proposed 6.00G—How Do We Evaluate Specific Genitourinary Listings?

In this new section, we provide additional information on the documentation requirements for three specific listings: 6.02A, Chronic hemodialysis or peritoneal dialysis; 6.02C1, Renal osteodystrophy; and 6.02C2, Persistent motor or sensory neuropathy.

Proposed 6.00H—How Do We Evaluate Impairments That Do Not Meet One of the Genitourinary Listings?

In this new section, we state our basic adjudicative principle that if your impairment(s) does not meet or medically equal the requirements of a listing, we will continue the sequential evaluation process to determine whether or not you are disabled.

How Are We Proposing To Change the Criteria in the Listings for Evaluating Genitourinary Impairments in Adults?

6.01 Category of Impairments, Genitourinary Impairments.

Proposed Listing 6.02—Impairment of Renal Function

We propose to remove the examples listed in the parenthetical statement under the heading for this listing because we address them in proposed 6.00A, making their inclusion in the listing redundant.

Proposed listing 6.02A, Chronic hemodialysis or peritoneal dialysis, corresponds to current listing 6.02A, except that we propose to remove the statement "necessitated by irreversible renal failure" because it is redundant.

Proposed listing 6.02B corresponds to current listing 6.02B, except that we propose to change the name to "kidney transplantation" to be consistent with the terminology used in other body system listings.

Proposed listing 6.02C corresponds to current listing 6.02C, except that we propose to remove the word "severe" from the phrase describing bone pain, and to replace the word "marked" with the word "significant" in the phrase describing osteoporosis in proposed listing 6.02C1, Renal osteodystrophy. We use the term "severe" in our regulations to describe a measure of functional limitations. An impairment is "severe" if it significantly limits an individual's physical or mental ability to do basic work activities. Renal osteodystrophy with bone pain is always a "severe" impairment. We also use the term "marked" in our regulations to describe a measure of functional limitations, and to avoid confusion with our use of "marked" in these regulations, we are replacing it with "significant." However, we are not changing the degree of osteoporosis required to meet this listing.

We propose to remove current listings 6.02C2, A clinical episode of pericarditis, and 6.02C4, Intractable pruritus, because current treatment for most individuals with chronic renal disease includes the initiation of dialysis earlier in the course of treatment. Previously, dialysis would be delayed and the individual would be maintained on a low protein diet. However, now it is known that the long*term prognosis improves for individuals when dialysis is initiated earlier in the course of treatment. Therefore, if you have pericarditis or intractable pruritus, you usually will be receiving dialysis and your impairment will satisfy the criteria in proposed listing 6.02A.

Because of the proposal to remove current listing 6.02C2, we would redesignate current listing 6.02C3, Persistent motor or sensory neuropathy, as proposed listing 6.02C2.

We propose to reorganize current listing 6.02C5, Persistent fluid overload syndrome, and to redesignate it as listing 6.02C3. In addition, we propose that there must be persistent symptoms and signs of congestion despite therapy when considering vascular congestion. Symptoms and signs may include, shortness of breath, edema, ascites, and pleural effusion demonstrated on imaging studies.

We propose to remove current listing 6.02C6, Persistent anorexia, since it is a reference listing and we are removing such listings. We have proposed guidance in the preface on evaluating an impairment(s) when it is more appropriately addressed under the affected body system.

We also propose to remove current listing 6.02C7, Persistent hematocrits of 30 percent or less, because hematocrits at this level do not necessarily correlate with an inability to do any gainful activity. An individual with chronic renal disease generally will tolerate hematocrit levels persistently at 30 percent or less.

This does not preclude us from finding you disabled if you have chronic renal disease and persistently low

hematocrit levels. As we discuss in proposed 6.00H, we must consider whether your impairment(s) satisfies the criteria of any appropriate listing. If your impairment(s) does not meet a listing, we will determine whether it medically equals a listing. If your impairment(s) does not meet or medically equal a listing, we proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process as described in §§ 404.1520 and 416.920. We will consider the facts of your individual case, including your symptoms, such as fatigue and weakness, which may limit your functioning.

Proposed Listing 6.06—Nephrotic Syndrome

We propose to remove the word "significant" from the description of anasarca. Anasarca is, by definition, significant.

How Are We Proposing To Change the Preface to the Listings for Evaluating Genitourinary Impairments in Children?

106.00 Genitourinary Impairments

As in proposed 6.00 in the adult rules, we propose to change the name of this body system to "Genitourinary Impairments."

We propose to add a new section 106.00H to explain how we evaluate episodic genitourinary impairments in children. We also propose to add a new section 106.00I to explain what we mean by "systemic infection," a criterion we use in proposed listing 106.07B.

We also propose to repeat much of the preface of proposed 6.00 in the preface to proposed 106.00, except for minor changes that are specific to the childhood listings. This is because the same basic rules for establishing and evaluating the existence and severity of genitourinary impairments in adults also apply to children. Because we already have described these provisions under the explanation of proposed 6.00ff, the following discussions describe only those provisions that are unique to the childhood rules or that require further explanation specific to the evaluation of children's claims.

Proposed 106.00A—What Impairments Do These Listings Cover?

In this section, we provide general guidance on evaluating chronic renal disease or renal dysfunction and congenital genitourinary impairments in children. We propose changes to this section to give additional information about types of renal and urinary tract impairments that are specific to children. For example, we explain that we use the criteria in proposed listing 106.07 to evaluate congenital genitourinary impairments and give examples of such impairments.

Proposed 106.00G—How Do We Evaluate Specific Genitourinary Listings?

We propose to add guidance for proposed listing 106.07, Congenital genitourinary impairments, to explain some factors that we need to consider when evaluating congenital genitourinary impairments under this proposed listing. We also define hospital admissions as inpatient admissions of at least 24 hours duration.

Proposed 106.00H—How Do We Evaluate Episodic Genitourinary Impairments?

In this new section, we explain that some episodic genitourinary impairments will meet a listing when the longitudinal clinical record shows that at least three events have occurred within a consecutive 12-month period, with intervening periods of improvement. These events include surgical procedures, hospitalizations, and treatment with parenteral antibiotics. The occurrence of these events within the specified time period serves to support the severity and chronicity of the underlying impairment(s).

We also indicate that in every listing in which we require more than one event, there must be at least 1 month between the events. We propose this requirement to ensure that we are evaluating separate episodes.

Proposed 106.00I—What Do We Mean By Systemic Infection?

In this section, we explain that the criterion for systemic infection in listing 106.07B means an infection requiring an initial course of parenterally administered antibiotics occurring at least once every 4 months or at least 3 times a year. This chronicity supports the severity required for this listing.

Proposed 106.00J—How Do We Evaluate Impairments That Do Not Meet One of the Genitourinary Listings?

In this section, we repeat the guidelines used in 6.00H, but we include the definition of disability for children who claim SSI payments.

How Are We Proposing To Change the Criteria in the Listings for Evaluating Genitourinary Impairments in Children?

106.01 Category of Impairments, Genitourinary Impairments

We propose to add a new listing 106.07, Congenital genitourinary impairments, specifically for children. There is no parallel in the adult genitourinary listings because we expect with treatment that these impairments will have been resolved before a child reaches adulthood. We also propose to redesignate the childhood listings to be consistent with the adult listings. Because of this, the numbers of the proposed childhood listings are not consecutive.

Proposed Listing 106.02—Impairment of Renal Function

In proposed listing 106.02, we propose to change the heading to make it consistent with the proposed adult criteria.

We also propose to reorder the sequence of disorders included under listing 106.02 to more closely follow the order as those in proposed listing 6.02. Thus:

- Proposed listing 106.02A, Chronic hemodialysis or peritoneal dialysis, would replace current listing 106.02C.
- Proposed listing 106.02B, Kidney transplantation, would replace current listing 106.02D.
- Proposed listing 106.02C, Persistent elevation of serum creatinine, would replace current listing 106.02A.
- Proposed listing 106.02D, Reduction of creatinine clearance, would replace current listing 106.02B.

Proposed Listing 106.06—Nephrotic Syndrome

In proposed listing 106.06, Nephrotic syndrome, we specify that anasarca must persist despite at least 3 months of prescribed therapy. Anasarca, rather than edema, is a more accurate term to define this criterion.

In proposed listing 106.06B, we are revising the terminology in current listing 106.06B for measuring proteinuria to reflect current medical practice. This revision does not make the criteria more stringent. Rather, it is a more appropriate method of measuring proteinuria in children and is equivalent to the measurements used in current listing 106.06B.

Proposed Listing 106.07—Congenital Genitourinary Impairments

In this proposed new listing, we provide criteria that include consideration of repeated surgical

procedures, episodic systemic infections requiring parenteral antibiotics, and episodes of electrolyte disturbance requiring repeated hospitalizations.

Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules 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 rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements at 6.00C, 6.00E, 6.00G, 106.00C, 106.00E and106.00G. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burdens referenced in these rules because they were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to the Office of Management and Budget and to the Social Security Administration at the following addresses/numbers: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974; Social Security Administration, Attn: SSA Reports Clearance Officer, Rm: 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

List of References

We consulted the following sources when developing these proposed rules:

Richard J. Johnson and John Feehally, Eds., Comprehensive Clinical Nephrology, (London: Mosby, 2000).

Anthony Fauci, et al., *Harrison's Principles of Internal Medicine,* (15th ed., New York: McGraw-Hill, 2001.)

John P. Gearhart, Richard C. Rink and Pierre D.E. Mouriquand, *Pediatric Nephrology.* (Philadelphia: W.B. Saunders Co., 2001).

S.G. Massry and R. J. Glassock, *Massry & Glassock's Textbook of Nephrology,* (4th ed. Philadelphia: Lippincott Williams & Wilkins, 2000).

Robert W. Schrier, Ed., *Diseases of the Kidney and Urinary Tract,* (7th ed. Philadelphia: Lippincott Williams & Wilkins, 2001).

These references are included in the rulemaking record for these proposed rules and are available for inspection by interested persons by making arrangements with the contact person shown in this preamble.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: May 19, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart.P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)-(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

PART 404—[AMENDED]

2. Appendix 1 to subpart P of part 404 is amended as follows:

a. Item 7 of the introductory text before part A of appendix 1 is amended by revising the body system name and expiration date.

b. The Table of Contents for part A of appendix 1 is amended by revising the body system name for section 6.00.

c. Section 6.00 of part A of appendix 1 is revised.

d. The Table of Contents for part B of appendix 1 is amended by revising the body system name for section 106.00.

e. Section 106.00 of part B of appendix 1 is revised.

The revised text is set forth as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

7. Genitourinary impairments (6.00 and 106.00): (*insert date 5 years from the effective date of the final rules*).

* * * * *

Part A

* * * * *

6.00 Genitourinary Impairments

* * * * *

6.00 GENITOURINARY IMPAIRMENTS

A. *What impairments do these listings cover?*

1. We use these listings to evaluate genitourinary impairments resulting from chronic renal disease.

2. We use the criteria in 6.02 to evaluate renal dysfunction due to any chronic renal disease, such as: glomerulonephritis due to hypertensive, diabetic, or metabolic renal disease; interstitial nephritis; renovascular disease; chronic obstructive uropathy; and hereditary nephropathies.

3. We use the criteria in 6.06 to evaluate nephrotic syndrome due to glomerular disease.

B. *What do we mean by the following terms?*

1. *Anasarca* is generalized massive edema (swelling).

2. *Creatinine* is a normal product of muscle metabolism.

3. *Creatinine clearance test* is a test for renal function based on the rate at which creatinine is excreted by the kidney.

4. *Diastolic hypertension* is elevated diastolic blood pressure.

5. *Fluid overload syndrome* associated with renal disease occurs when there is excessive sodium and water retention in the body that cannot be adequately removed by the diseased kidneys. This may contribute to hypertension, congestive heart failure, and sometimes accumulation of fluid in the abdomen (ascites), or chest (pleural effusions).

6. *Glomerular disease* can be classified into two broad categories, nephrotic and nephritic. Nephrotic conditions are associated with increased urinary protein excretion and nephritic conditions are associated with inflammation of the internal structures of the kidneys.

7. *Hemodialysis*, or *dialysis*, is the removal of toxic metabolic byproducts from the blood by diffusion in an artificial kidney machine.

8. *Motor neuropathy* is neuropathy or polyneuropathy involving only the motor nerves.

9. *Nephrotic syndrome* is a general name for a group of diseases involving defective kidney glomeruli, characterized by massive proteinuria and lipiduria with varying degrees of edema, hypoalbuminemia, and hyperlipidemia.

10. *Neuropathy* is a problem in peripheral nerve function (any part of the nervous system except the brain and spinal cord) that causes pain, numbness, tingling, swelling, and muscle weakness in various parts of the body.

11. *Osteitis fibrosa* is fibrous degeneration with weakening and deformity of bones.

12. *Osteomalacia* is a softening of the bones.

13. *Osteoporosis* is a thinning of the bones with reduction in bone mass resulting from the depletion of calcium and bone protein.

14. *Pathologic fractures* are fractures resulting from weakening of the bone structure by pathologic processes, such as osteomalacia, osteomyelitis, and other diseases.

15. *Peritoneal dialysis* is a method of hemodialysis in which the dialyzing solution is introduced into and removed from the peritoneal cavity either continuously or intermittently.

16. *Proteinuria* is excess protein in the urine.

17. *Renal* means pertaining to the kidney.

18. *Renal osteodystrophy* is a variety of bone disorders usually caused by chronic kidney failure.

19. *Sensory neuropathy* is neuropathy or polyneuropathy that involves only the sensory nerves.

20. *Serum albumin* is a major plasma protein that is responsible for much of the plasma colloidal osmotic pressure and serves as a transport protein.

21. *Serum creatinine* is the amount of creatinine in the blood and is measured to evaluate kidney function.

C. *What evidence do we need?*

1. We need a longitudinal record of your medical history that includes records of treatment, response to treatment, hospitalizations, and laboratory evidence of renal disease that indicates its progressive nature. The laboratory or clinical evidence will indicate deterioration of renal function, such as elevation of serum creatinine.

2. We generally need a longitudinal clinical record covering a period of at least 3 months of observations and treatment, unless we can make a fully favorable determination or decision without it. The record should include laboratory findings, such as serum creatinine values, obtained on more than one examination over the 3-month period.

3. When you are undergoing dialysis, we should have laboratory findings showing your renal function before you started dialysis.

4. The medical evidence establishing the clinical diagnosis of nephrotic syndrome must include a description of the extent of edema, including pretibial, periorbital, or presacral edema. If present, the medical evidence should describe any ascites, pleural effusion, or pericardial effusion. Levels of serum albumin and proteinuria must be included.

5. If a renal biopsy has been performed, the evidence should include a copy of the report of the microscopic examination of the specimen. However, if we do not have a copy of the microscopic examination in the evidence, we can accept a statement from an acceptable medical source that a biopsy was performed, with a description of the results.

D. *Do we consider the effects of treatment?* We consider factors such as the:

1. Type of therapy.
2. Response to therapy.
3. Side effects of therapy.
4. Effects of any post-therapeutic residuals.
5. Expected duration of treatment.

E. *What other things do we consider when we evaluate chronic renal disease under these listings?*

1. *Kidney transplantation.* If you have undergone kidney transplantation, we will consider you to be disabled for 12 months following the surgery because, during the first year, there is a greater likelihood of rejection of the organ and recurrent infection. After the first year posttransplantation, we will base continuing disability evaluation upon the residual impairment as shown by symptoms, signs, and laboratory findings. We will include absence of symptoms, signs, and laboratory findings indicative of kidney dysfunction in our consideration of whether medical improvement (as defined in §§ 404.1579(b)(1) and (c)(1), 404.1594(b)(1) and (c)(1), 416.994(b)(1)(i) and (b)(2)(i), or 416.994a as appropriate) has occurred. We will consider any residual impairment arising from:

a. The occurrence of rejection episodes.
b. The use of immunosuppressants.
c. Frequent renal infections.
d. Side effects of corticosteroids.
e. The presence of systemic complications such as other infections, neuropathy, or deterioration of other organ systems.

2. *Nephrotic syndrome.* The longitudinal clinical record should include a description of prescribed therapy, response to therapy, and any side effects of therapy. In order for your nephrotic syndrome to meet 6.06A or B, the medical evidence must document that you have the appropriate laboratory findings required by these listings and that your anasarca has persisted for at least 3 months despite prescribed therapy. However, we will not delay adjudication if we can make a fully favorable determination or decision based on the evidence in your case record.

F. *What does the term persistent mean in these listings? Persistent* means that the longitudinal clinical record shows that, with few exceptions, the required finding(s) has been at, or is expected to be at, the level specified in the listing for a continuous period of at least 12 months.

G. *How do we evaluate specific genitourinary listings?*

1. *Chronic hemodialysis or peritoneal dialysis* (6.02A). A report from an acceptable medical source describing the chronic renal disease and the need for ongoing dialysis is sufficient to satisfy the requirements in 6.02A.

2. *Renal osteodystrophy* (6.02C1). This condition is bone deterioration resulting from chronic renal disease. The resultant bone disease includes osteitis fibrosa cystica, osteomalacia, osteoporosis, and osteosclerosis.

3. *Persistent motor or sensory neuropathy* (6.02C2). The longitudinal clinical record must show that the neuropathy is a "severe" impairment as defined in §§ 404.1520(c) and 416.920(c) that has lasted or can be expected to last for a continuous period of at least 12 months.

H. *How do we evaluate impairments that do not meet one of the genitourinary listings?*

1. These listings are only examples of common genitourinary impairments that we consider severe enough to prevent you from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system. For example, weight loss associated with chronic renal disease should be evaluated under 5.08.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing(s). (See §§ 404.1526 and 416.926.) If you have an impairment(s) that does not meet or medically equal the criteria of the listings, you may or may not have the residual functional capacity to engage in substantial gainful activity. Therefore, we proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. When we decide whether you continue to be disabled, we use the rules in §§ 404.1579(b)(1) and (c)(1), 404.1594(b)(1) and (c)(1), 416.994(b)(1)(i) and (b)(2)(i), or 416.994a as appropriate.

6.01 Category of Impairments, Genitourinary Impairments

6.02 *Impairment of renal function,* due to any chronic renal disease expected to last 12 months. With:

A. *Chronic hemodialysis or peritoneal dialysis* (see 6.00G1);

or

B. *Kidney transplantation.* (See 6.00E1.) Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment;

or

C. *Persistent elevation of serum creatinine* to 4 mg per dL (100 ml) or greater or *reduction of creatinine clearance* to 20 ml per minute or less, over at least 3 months, with one of the following:

1. Renal osteodystrophy (see 6.00G2) manifested by bone pain and appropriate medically acceptable imaging demonstrating abnormalities such as osteitis fibrosa, significant osteoporosis, osteomalacia, or pathologic fractures;

or

2. Persistent motor or sensory neuropathy (see 6.00G3);

or

3. Persistent fluid overload syndrome with:

a. Diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg; or

b. Persistent symptoms and signs of vascular congestion despite prescribed therapy.

6.06 *Nephrotic syndrome,* with anasarca, persistent for at least 3 months despite prescribed therapy (see 6.00E2). With:

A. Serum albumin of 3.0 g per dL (100 ml) or less and proteinuria of 3.5 g or greater per 24 hours;

or

B. Proteinuria of 10.0 g or greater per 24 hours.

* * * * *

Part B

* * * * *

106.00 Genitourinary Impairments

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106.00 GENITOURINARY IMPAIRMENTS

A. *What impairments do these listings cover?*

1. We use these listings to evaluate genitourinary impairments resulting from chronic renal disease and congenital genitourinary disorders.

2. We use the criteria in 106.02 to evaluate renal dysfunction due to any chronic renal disease, such as: glomerulonephritis due to hypertensive, diabetic, or metabolic renal disease; interstitial nephritis; renovascular disease; chronic obstructive uropathy; and hereditary nephropathies.

3. We use the criteria in 106.06 to evaluate nephrotic syndrome due to glomerular disease.

4. We use the criteria in 106.07 to evaluate congenital genitourinary impairments such as ectopic ureter, urethral valves, and neurogenic bladder.

B. *What do we mean by the following terms?*

1. *Anasarca* is generalized massive edema (swelling).

2. *Creatinine* is a normal product of muscle metabolism.

3. *Creatinine clearance test* is a test for renal function based on the rate at which creatinine is excreted by the kidney.

4. *Glomerular disease* can be classified into two broad categories, nephrotic and nephritic. Nephrotic conditions are associated with increased urinary protein excretion and nephritic conditions are associated with inflammation of the internal structures of the kidneys.

5. *Hemodialysis,* or *dialysis,* is the removal of toxic metabolic byproducts from the blood by diffusion in an artificial kidney machine.

6. *Nephrotic syndrome* is a general name for a group of diseases involving defective kidney glomeruli, characterized by massive proteinuria and lipiduria with varying degrees of edema, hypoalbuminemia, and hyperlipidemia.

7. *Neuropathy* is a problem in peripheral nerve function(any part of the nervous system except the brain and spinal cord) that causes pain, numbness, tingling, swelling, and muscle weakness in various parts of the body.

8. *Parenteral antibiotics* refer to the administration of antibiotics by intravenous, intramuscular, or subcutaneous injection.

9. *Peritoneal dialysis* is a method of hemodialysis in which the dialyzing solution is introduced into and removed from the peritoneal cavity either continuously or intermittently.

10. *Proteinuria* is excess protein in the urine.

11. *Renal* means pertaining to the kidney.

12. *Serum albumin* is a major plasma protein that is responsible for much of the plasma colloidal osmotic pressure and serves as a transport protein.

13. *Serum creatinine* is the amount of creatinine in the blood and is measured to evaluate kidney function.

C. *What evidence do we need?*

1. We need a longitudinal record of your medical history that includes records of treatment, response to treatment, hospitalizations, and laboratory evidence of renal disease that indicates its progressive nature or of congenital genitourinary impairments that documents their recurrent or episodic nature. The laboratory or clinical evidence will indicate deterioration of renal function, such as elevation of serum creatinine, or changes in genitourinary function, such as episodes of electrolyte disturbance.

2. We generally need a longitudinal clinical record covering a period of at least 3 months of observations and treatment, unless we can make a fully favorable determination or decision without it. The record should include laboratory findings, such as serum creatinine values, obtained on more than one examination over the 3-month period.

3. When you are undergoing dialysis, we should have laboratory findings showing your renal function before you started dialysis.

4. The medical evidence establishing the clinical diagnosis of nephrotic syndrome must include a description of the extent of edema, including pretibial, periorbital, or presacral edema. If present, the medical evidence should describe any ascites, pleural effusion, or pericardial effusion. Levels of serum albumin and proteinuria must be included.

5. If a renal biopsy has been performed, the evidence should include a copy of the report of the microscopic examination of the specimen. However, if we do not have a copy of the microscopic examination in the evidence, we can accept a statement from an acceptable medical source that a biopsy was performed. with a description of the results.

6. The medical evidence documenting congenital genitourinary impairments should include treating physician records, operative reports, and hospital records. They should describe the frequency of your episodes, prescribed treatment, laboratory findings, and any surgical procedures performed.

D. *Do we consider the effects of treatment?* We consider factors such as the:

1. Type of therapy.
2. Response to therapy.
3. Side effects of therapy.
4. Effects of any post-therapeutic residuals.
5. Expected duration of treatment.

E. *What other things do we consider when we evaluate chronic renal disease under these listings?*

1. *Kidney transplantation.* If you have undergone kidney transplantation, we will consider you to be disabled for 12 months following the surgery because, during the first year, there is a greater likelihood of rejection of the organ and recurrent infection. After the first year posttransplantation, we will base continuing disability evaluation upon the residual impairment as shown by symptoms, signs, and laboratory findings. We will include absence of symptoms, signs, and laboratory findings indicative of kidney dysfunction in our consideration of whether medical improvement (as defined in §§ 404.1594(b)(1) and (c)(1) and 416.994a, as appropriate) has occurred. We will consider any residual impairment arising from:

a. The occurrence of rejection episodes.
b. The use of immunosuppressants.
c. Frequent renal infections.
d. Side effects of corticosteroids.
e. The presence of systemic complications such as other infections, neuropathy, or deterioration of other organ systems.

2. *Nephrotic syndrome.* The longitudinal clinical record should include a description of prescribed therapy, response to therapy, and any side effects of therapy. In order for your nephrotic syndrome to meet 106.06A or B, the medical evidence must document that you have the appropriate laboratory findings required by these listings and that your anasarca has persisted for at least 3 months despite prescribed therapy. However, we will not delay adjudication if we can make a fully favorable determination or decision based on the evidence in your case record.

F. *What does the term persistent mean in these listings? Persistent* means that the longitudinal clinical record shows that, with few exceptions, the required finding(s) has been at, or is expected to be at, the level specified in the listing for a continuous period of at least 12 months.

G. *How do we evaluate specific genitourinary listings?*

1. *Chronic hemodialysis or peritoneal dialysis* (106.02A).A report from an acceptable medical source describing the chronic renal disease and the need for ongoing dialysis is sufficient to satisfy the requirements in 106.02A.

2. *Congenital genitourinary impairments* (106.07).

a. The criteria include the need for repeated surgeries, recurrent infection, and electrolyte imbalance.

b. Diagnostic cystoscopy does not satisfy the requirement for repeated surgical procedures.

c. Appropriate laboratory and clinical evidence document electrolyte disturbance.

d. Hospital admissions are inpatient hospitalizations for 24 hours or more.

H. *How do we evaluate episodic genitourinary impairments?* Some listings for genitourinary impairments are met when the longitudinal clinical record shows that at least three events have occurred within a consecutive 12-month period, with intervening periods of improvement. *Events* include urological surgical procedures, hospitalizations, and treatment with parenteral antibiotics. In every listing in which we require more than one event, there must be at least 1 month between the events, in order to ensure that we are evaluating separate episodes.

I. *What do we mean by systemic infection? Systemic infection* (106.07B) is an infection requiring an initial course of parenterally administered antibiotics occurring at least once every 4 months or at least 3 times a year. *See* 106.00H for information about how we evaluate episodic genitourinary impairments.

J. *How do we evaluate impairments that do not meet one of the genitourinary listings?*

1. These listings are only examples of common genitourinary impairments that we consider severe enough to prevent you from doing any gainful activity or that result in marked and severe functional limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing(s), or, in the case of a claim for SSI payments, functionally equals the listings. (*See* §§ 404.1526, 416.926, and 416.926a.) When we decide whether a child receiving SSI payments continues to be disabled, we use the rules in § 416.994a.

106.01 Category of Impairments, Genitourinary Impairments

106.02 *Impairment of renal function,* due to any chronic renal disease expected to last 12 months. With:

A. *Chronic hemodialysis or peritoneal dialysis* (*see* 106.00G1);

or

B. *Kidney transplantation.* (*See* 106.00E1.) Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment;

or

C. *Persistent elevation of serum creatinine* to 3 mg per deciliter (100 ml) or greater, over at least 3 months;

or

D. *Reduction of creatinine clearance* to 30 ml per minute (43 liters/24 hours) per 1.73 m^2 of body surface area over at least 3 months.

106.06 *Nephrotic syndrome,* with anasarca, persistent for at least 3 months despite prescribed therapy. (*See* 106.00E2.)With:

A. Serum albumin of 2.0 g/dL (100 ml) or less;

or

B. Proteinuria of 40 $mg/m^2/hr$ or greater.

106.07 *Congenital genitourinary impairments* (*see* 106.00G3 and 106.00H) resulting in one of the following:

A. Repeated urological surgical procedures, occurring at least 3 times in a consecutive 12-month period;

or

B. Documented episodes of systemic infection requiring an initial course of parenteral antibiotics, occurring at least 3 times in a consecutive 12*month period (*see* 106.00I);

or

C. Hospitalization (for 24 hours or more) for episodes of electrolyte disturbance, occurring at least 3 times in a consecutive 12-month period.

[FR Doc. 04–19188 Filed 8–20–04; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AB34 and RIN 1219–AA98

High-Voltage Continuous Mining Machines and Low- and Medium-Voltage Diesel-Powered Electrical Generators

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Change of hearing dates and locations; close of comment periods.

SUMMARY: This document announces changes in the dates and locations of the public hearings for the proposed rules addressing (1) High-Voltage Continuous Mining Machines; and (2) Low- and Medium-Voltage Diesel Powered Electrical Generators. The hearings for both proposed rules have been rescheduled for November 2004. The hearings in Pittsburgh, Pennsylvania have been moved to Morgantown, West Virginia.

The hearings for the High-Voltage Continuous Mining Machines (HVCM) proposed rule will be held first, starting at 9 a.m. local time each day; and the hearings for the proposed rule for Low- and Medium-Voltage Diesel PoweredElectrical Generators will follow.

DATES: The post-hearing comment period for both proposed rules will close on December 10, 2004.

The public hearing dates and locations are listed in the Public Hearing Section under **SUPPLEMENTARY INFORMATION** below. Individuals or organizations wishing to make oral presentations for the record should submit a request at least 5 days prior to the hearing dates. However, commenters do not need to submit a request in advance in order to speak at the hearing.

ADDRESSES: You may submit comments, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *Comments@MSHA.gov*. You must include the Regulatory Identification Number (RIN) in the subject line for each rule you are commenting on. For comments on the proposed rule addressing Low- and Medium-Voltage Diesel Powered Electrical Generators include RIN 1219–AA98 in the subject line of the message. To submit comments for the proposed rule addressing High-Voltage Continuous Mining Machines include RIN 1219–AB34 in the subject line.
- Fax: (202) 693–9441.
- Mail/Hand Delivery/Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

Instructions: All submissions must reference MSHA and RIN numbers 1219–AA98 for the proposed rule addressing Low—and Medium-Voltage Diesel Powered Electrical Generators or RIN 1219-AB34 for the proposed rule addressing High-Voltage Continuous Mining Machines.

Docket: To access comments received, go to *http://www.MSHA.gov* or MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. All comments received will be posted without change to *http://www.msha.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at nichols.marvin@dol.gov (Internet E-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile). This notice is available on the Internet

at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION:

I. Proposed Rule for High-Voltage Continuous Mining Machines

On July 16, 2004 we published a proposed rule in the **Federal Register** (69 FR 42812) addressing design requirements for approval of high-voltage continuous mining machines operating in face areas of underground mines. The rule also proposed to establish new mandatory electrical safety standards for the installation, use, and maintenance of high-voltage continuous mining machines used in underground coal mines. The provisions would enable mines to safely utilize high-voltage continuous mining machines with enhanced safety protection from fire, explosion, and shock hazards without the need for mine operators to file petitions for modification to use high-voltage continuous mining machines.

Also in that notice we announced that four public hearings would be held in September 2004. The post-hearing comment period was scheduled to close on October 14, 2004.

II. Proposed Rule for Low- and Medium-Voltage Diesel Powered Electrical Generators

On June 25, 2004, we published a proposed rule in the **Federal Register**, (69 FR 35992), amending low- and medium-voltage three-phase circuits used underground. It would allow the use of low- and medium-voltage diesel-powered electrical generators as an alternative means of powering electrical equipment. The generators are portable and are used to power electrical equipment when moving the equipment in, out, and around the mine and when performing work in areas where permissible equipment is not required. The proposed rule would eliminate the need for mine operators to file petitions for modification to use these generators to power electrical equipment while maintaining the existing level of protection for miners.

On July 26, 2004, we published a notice in the **Federal Register**, (69 FR 44480), announcing the dates and locations of four public hearings. The hearings were scheduled to be held on the same days and in the same locations as the hearings for the HVCM proposed rule. The post-hearing comment period was scheduled to close on October 14, 2004.

III. Public Hearings

Since announcement of the public hearings for both rules, we have changed the dates and locations of the hearings. We will still hold four public hearings for both proposed rules; however, the hearings will be held in November, 2004 instead of September, 2004. The hearings addressing HVCM will begin at 9 a.m. local time each day; the hearings addressing Low- and Medium-Voltage Diesel Powered Electrical Generators will be held on the same days, beginning at 1 p.m. local time and will end after the last speaker testifies. The hearings will be held on the following dates at the locations indicated:

Date	Location	Telephone
November 4, 2004	Little America Hotel, 500 S Main Street, Salt Lake City, Utah 84101	(801) 363–6781
November 16, 2004	Sheraton Birmingham, 2101 Richard Arrington Jr. Blvd. North, Birmingham, Alabama 35203.	(205) 324–5000
November 18, 2004	Sheraton Suites Lexington, 2601 Richmond Road, Lexington, Kentucky 40509	(859) 268–0060
November 30, 2004	Radisson Hotel at Waterfront Place, 2 Waterfront Place, Morgantown, West Virginia 26501.	(304) 296–1700

If individuals or organizations wish to make an oral presentation, we ask that you submit your request at least 5 days prior to the hearing dates. You do not have to make a written request to speak; however, the speakers who make a request in advance will speak first. Any unallotted time will be made available for persons making same-day requests. These commenters will speak in the order they sign in.

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations to a panel. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at *http://www.msha.gov.*

IV. Close of Comment Periods

We will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, prior to the close of the December 10, 2004 post-hearing comment periods.

Dated: August 17, 2004.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 04–19190 Filed 8–20–04; 8:45 am]

BILLING CODE 4510–42–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–099]

RIN 2115–AA00

Safety Zone; Wiscasset, ME, Demolition of Maine Yankee Former Containment Building

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone around the former Maine Yankee Nuclear Power Plant during the demolition of the containment building. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the demolition of a large building by controlled implosion. Entry into this safety zone will be prohibited unless authorized by

the Captain of the Port, Portland, Maine during the specified closure periods.

DATE: Comments and related material must reach the Coast Guard on or before September 2, 2004.

ADDRESSES: You may mail comments and related material to Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101. Marine Safety Office Portland maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Portland between the hours of 8 a.m. EDT and 4 p.m. EDT, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign J. B. Bleacher, Port Operations Department, Marine Safety Office Portland at (207) 780–3251.

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 (CGD01–04–099), 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 Marine Safety Office Portland at the address listed under **ADDRESSES** explaining why one may be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On July 20, 2004 representatives of Maine Yankee Nuclear Power Plant presented the Coast Guard with plans for the demolition of a former containment building. Maine Yankee plans to use controlled explosive charges to bring down the containment building. The tentative date for this operation is the second week of September 2004 but may be changed earlier or later, due to weather, winds, or other unforeseen changes in project scheduling. This safety zone will remain in effect approximately one hour before and one hour after the scheduled demolition. Due to hazards associated with the demolition of a large building, this temporary safety zone will be needed to ensure the safety of the maritime community and workers involved with the project during all portions of this evolution.

Start date for this project is scheduled for the second week of September 2004, but is subject to change.

Discussion of Proposed Rule

This proposed rule would establish a safety zone in all navigable waters 1000-feet around the former containment building at 321 Old Ferry Road, Wiscasset, Maine, from a point located at Latitude 43° 57′ 00″ N, Longitude 069° 41′ 42″ W. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the demolition of a large building by controlled implosion. The Captain of the Port, Portland, Maine will notify the marine community when this zone will be enforced using marine safety information broadcasts and on-scene notifications by Coast Guard personnel and patrol vessels. The Captain of the Port, Portland Maine, using marine safety information broadcasts, or on-scene notifications, or both, also will notify the marine community when this zone will not be enforced and when a general permission to enter is granted.

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 Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation of the regulatory policies and procedures of DHS is unnecessary. The effect of this proposed regulation will not be significant for several reasons: there will be impact on the navigational channel for only a minimal amount of time, there will be ample space for vessels to navigate around the zone, and broadcast notifications will be made to the maritime community advising them of the boundaries of the zone before and during its effective period.

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 will not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in these safety zones during this demolition event. However, this proposed rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area, there will be ample space for vessels to maneuver and navigate around the zone, and advance notifications will be made to the local maritime community by marine information broadcasts.

If you think 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 Ensign J.B. Bleacher, Marine Safety Office Portland, at (207) 780–3251.

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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T01–099 to read as follows:

§ 165.T01–099 Safety Zone; Wiscasset, Maine, Demolition of Maine Yankee former containment building.

(a) *Location.* The following area is a safety zone: All navigable waters within 1000 feet around the former Maine Yankee containment building from a point located at Latitude 43°57′00″ N., Longitude 69°41′42″ W.

(b) *Effective date.* This section is effective from 12:01 a.m. EDT on September 1, 2004, to 11:59 p.m. EDT on September 30, 2004.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Portland, Maine or his designated representative.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated U.S. Coast Guard representative. Designated U.S. Coast Guard representatives include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative. Upon being hailed by U.S. Coast Guard personnel or a U.S. Coast Guard vessel, via siren. radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

Dated: August 6, 2004.

Gregory D. Case,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Portland, Maine.

[FR Doc. 04–19251 Filed 8–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

RIN 0710–AA59

Department of Army, Fort Richardson AK, Small Arms Complex, Fort Wainwright, AK

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing an amendment to its regulations to designate an existing military small arms impact area as a Danger Zone. The military exercise area is located within the Small Arms Complex of Fort Wainwright, Alaska, along the Tanana. The Danger Zone will only be activated by the United States Army Fort Wainwright, during live fire training exercises. The Army will advise residents in the vicinity when a military firing exercise is scheduled and thus ensure their safety by alerting them of, temporary, potentially hazardous conditions which may exist as a result of the military exercises. There will be no change in the use of the existing military exercise area. The area, however, needs to also be marked on navigation charts as a Danger Zone to insure security and safety for the public.

DATES: Written comments must be submitted on or before September 22, 2004.

ADDRESSES: U.S Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne M. Barry, Headquarters Regulatory Branch, Washington, DC at (202) 761–7763, or Mrs. Sheila Newman, Corps of Engineers, Alaska District, Regulatory Branch, at (907) 474–2166.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding section 334.1301 as a Danger Zone along the Tanana River as shown in the attached description.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the identification of this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

A preliminary draft environmental assessment has been prepared for this action. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. The environmental assessment will be finalized after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either section 202 or section 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.1301 would be added to read as follows:

§ 334.1301 United States Army Danger Zone, Small Arms Complex, Fort Wainwright, Alaska along the Tanana River.

(a) *The area.* The waters within an area beginning at latitude 64° 79′ 37″N, longitude 147° 66′ 50″W; thence southerly to latitude 64° 77′ 98″N, longitude 147° 66′ 64″W; thence easterly along the shore line to latitude 64° 76′ 33″N, longitude 147° 57′ 42″W, thence northerly to latitude 64° 78′ 21″N, longitude 147° 57′ 46″W; thence westerly along the shorelines to the point of origin.

(b) *The regulation.* (1) During specific periods when military exercises will be conducted, as promulgated in the local notice to residents published by the United States Army, all vessels entering the Danger Zone are advised to proceed across the area by the most direct route and without unnecessary delay.

(2) During specific periods when Military exercises will be conducted, as promulgated in the local notice to residents published by the United States Army no vessel or craft of any size shall lie-to or anchor in the Danger Zone, other than a vessel operated by or for the USCG, or any other authorized agency.

(c) *Normal use.* At all other times, nothing in this section shall prohibit any lawful uses of this area.

(d) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, Fort Richardson, Alaska, and/or persons or agencies as he/she may designate.

Dated: August 5, 2004.

Michael White,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 04–19229 Filed 8–20–04; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC94

Fire Island National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may

be used in Fire Island National Seashore, New York. This rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS *Management Policies 2001* require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: Comments must be received by October 22, 2004.

ADDRESSES: Comments on the proposed rule should be sent to Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772. E-mail: *michael_bilecki@nps.gov*. Fax: (631) 289–4810.

If you comment by e-mail, please include "PWC rule" in the subject line and your name and return address in the body of your Internet message. Also, you may hand deliver comments to Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York.

For additional information *see* "Public Participation" under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *Kym_Hall@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

Additional Alternatives

The information contained in this proposed rule supports implementation of the modified preferred alternative for Fire Island National Seashore in the Environmental Assessment (EA) published in September, 2002, and the errata issued March, 2004. The changes to the environmental assessment in the errata were made to modify the preferred alternative and its analysis, to address public comments on the EA, and to clarify the text. The public should be aware that three other alternatives including a no-PWC alternative were presented in the EA. Those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation on the management of PWC use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be permitted to continue.

Description of Fire Island National Seashore

Fire Island National Seashore is a vital part of America's national system of parks, monuments, battlefields, recreation areas, and other natural and cultural resources. Located on a 32-mile long barrier island off the south shore of Long Island, New York, Fire Island National Seashore encompasses approximately 19,500 acres—many of which are bay and ocean waters—available to more than 4 million visitors each year. The National Seashore is interspersed with 17 local private communities, the William Floyd Estate, a maritime forest known as the Sunken Forest, and the Otis Pike Wilderness Area—the only Federal wilderness area in New York State. Together, these components comprise a seashore ecosystem of wildlife, private communities, and outdoor recreational activities, such as the use of personal watercraft (PWC).

The Fire Island National Seashore extends from the easterly boundary of the main unit of Robert Moses State Park eastward to Moriches Inlet and includes Fire Island proper and the surrounding islands and marshlands in the Great South Bay, Bellport Bay, and Moriches Bay adjacent to Fire Island. Included in the boundaries are Sexton Island, West Fire and East Fire Islands, Hollins Island, Ridge Island, Pelican Island, Pattersquash Island, and Reeves Island and other small and adjacent islands, marshlands, and wetlands that lend themselves to contiguity and reasonable administration within the National Seashore and the waters surrounding the National Seashore to distances of 1,000 feet in the Atlantic Ocean and up to 4,000 feet in Great South Bay and Moriches Bay. The NPS mainland terminal and headquarters are on the Patchogue River within Suffolk County, New York.

Fire Island National Seashore is fragmented by public and private beaches. Fire Island National Seashore includes the Otis Pike Wilderness Area established in 1981, the Sunken Forest, Watch Hill, Sailors Haven, the Fire Island Lighthouse (placed on the National Register of Historic Places in 1981), and the William Floyd Estate (placed on the National Register of Historic Places in 1980).

The resources and values that define the natural environment of Fire Island National Seashore include a diverse assemblage of wildlife, vegetation communities, water resources, geological features, and physical processes reflecting the complexity of the land/sea interface along the North Atlantic coast. Wildlife resources are a myriad of aquatic and terrestrial species inhabiting estuarine, dune and beach habitats. The indigenous plant communities reflect the adaptive extremes necessary for survival on a barrier island, where exposure to salt spray, lack of freshwater, and shifting sands create a harsh and dynamic environment.

The aquatic habitats of Fire Island and the adjacent coastal bays are central to the significance of the National Seashore. The inshore waters are part of a network of coastal lagoons that parallel the south shore of the Long Island coast from Breezy Point, off the tip of southern Manhattan, over 100 miles east to South Hampton. Fire Island lies in the middle of this complex system. The bays are uniformly shallow with an average depth of 1.2 meters (4 feet) and are generally characterized as poorly flushing due to restricted inlet tidal exchange.

From a regional perspective, Fire Island National Seashore includes the highest percentage of remaining undeveloped barrier islands of the south shore of the Long Island barrier island system. Extensive salt marshes, intertidal flats, and the broad shallow margins of the coastal bays within and adjacent to Fire Island are key components of an estuarine system crucial to the maintenance of regional biological diversity and ecosystem health.

Fire Island National Seashore provides important habitat for a number of federally listed threatened and endangered species, including but not limited to the peregrine falcon, roseate tern, loggerhead, Kemp's ridley, leatherback, hawksbill, and green sea turtles, bald eagle, piping plover, and sea beach amaranth. Of these species, the National Seashore provides critical habitat for piping plover and sea beach amaranth and is a focal point for North Atlantic conservation and restoration efforts. The eastern 8 miles of the park provide the most favorable conditions for piping plover breeding activity and

support a majority of the local population of the species.

In addition to the piping plover, the National Seashore provides important habitat for a multitude of bird species throughout the year. The island is renowned for the autumn migration of hawks and abundance of wintering waterfowl and is of critical importance as wintering, staging, and breeding habitat for myriad of bird species. Shorebirds, colonial waterbirds, neotropical migratory songbirds, and a variety of wading birds intensively utilize park habitats, and in general, occur in greater abundance and diversity than on the adjacent mainland.

The coastal waters within Fire Island National Seashore are regularly used by a variety of marine mammals on a seasonal or transitory basis. More than fifteen species have been documented in the National Seashore, all of which are protected under the Marine Mammal Protection Act of 1972. The most commonly observed species are seals, harbor porpoise, and bottlenose dolphin, generally occurring in ocean nearshore waters. Seals are most commonly observed during the fall and winter months, while bottlenose dolphins are present largely during the summer.

Oceanic and estuarine waters and their associated animal and plant life (biota) also play a dominant role in recreational use of the National Seashore. Over 90 percent of visits to the park involve the use of aquatic habitats. The primary recreational activities include swimming, walking, sightseeing, wildlife photography and observation, picnicking, and saltwater fishing.

Purpose of Fire Island National Seashore

Fire Island National Seashore was authorized on September 11, 1964 (Public Law 88–587) "for the purpose of conserving and preserving for the use of future generations certain relatively unspoiled and undeveloped beaches, dunes, and other natural features within Suffolk County, New York, which possess high values to the Nation as examples of unspoiled areas of great natural beauty * * * to establish an area to be known as the 'Fire Island National Seashore.'"

The purposes of Fire Island National Seashore, as stated in its *Strategic Plan* (available at *http://www.nps.gov/fiis/stratplanFY01–05.htm*), are as follows:

- Preserve the natural and cultural resources within administrative boundaries.
- Permit hunting, fishing, and shellfishing within boundaries in accordance with U.S. and New York State laws.
- Preserve the Sunken Forest tract from bay to ocean without developing roads therein.
- Preserve the main dwelling, furnishings, grounds, and outbuildings of the William Floyd Estate, home of the Floyd family for eight generations.
- Administer mainland ferry terminal and headquarters sites not to exceed 12 acres on the Patchogue River.
- Preserve the Otis Pike Fire Island High Dunes Wilderness.
- Provide for public access, use, and enjoyment.
- Work with the communities within the park to mutually achieve the goals of both the park and the residents.

Authority and Jurisdiction

The National Park Service is granted broad authority under 16 U.S.C. 1 *et seq.*, the NPS' "Organic Act," to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) authorizes the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *"

16 U.S.C. 1a–1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *"

The NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Fire Island National Seashore

PWC use at Fire Island National Seashore is a relatively recent phenomenon, paralleling the national trend of increasing popularity and sales of PWC during the 1980s and 1990s.

Personal watercraft use began within the Fire Island National Seashore boundaries in the Great South Bay over 20 years ago, as soon as they were available and on the market. PWC users can access Fire Island National Seashore in a variety of ways; however, there are no public boat ramps or public roads located within the National Seashore boundaries. PWC users access the National Seashore via marinas located in the private communities and by landing on and launching from undeveloped beaches or larger vessels.

A variety of sources within the region provided estimates of typical PWC use in the Great South Bay and Fire Island NationalSeashore area. Staff from the Suffolk County Department of Parks and the Police Marine Bureau, local municipalities, local dealerships, and local marinas provided estimates of PWC use ranging from 5 to 25% of all watercraft on the water at any given time of the day during peak season. Although no annual counts are conducted of visitors accessing the park by boat or personal watercraft, the National Park Service conducted an informal survey on Saturdays and Sundays during the month of July 1999. During this survey, NPS staff counted the number of boats, including PWC, that were present. Based on the 1999 survey, the estimated number of boats during that time period was between 200 and 300 watercraft. Approximately 20% of the total, or between 40 and 60 watercraft, were PWC. The waterways on the bayside of Fire Island are often congested, with a variety of recreational and fishing boats accessing the waters of the National Seashore from the Great South Bay.

PWC use is typically localized within Fire Island National Seashore, occurring in areas near the private communities, ferryways and navigation channels, and in areas near boat ramps. Park staff indicate that the heaviest usage and highest general visitation area for watercraft of any type is the western end of the island. PWC use is also prevalent along the eastern boundary in Moriches Bay near Smith Point County Park.

As previously stated, on April 20, 2000, the NPS adopted a final rule for managing PWC use in areas of the National Park System. The rule was implemented to ensure a prudent approach to PWC management that would potentially allow their use, yet protect park resources, sensitive natural areas, plants and wildlife, and reduce conflicts between park visitors. The final rule prohibited PWC use in all National Park System areas unless the NPS determined that this type of water-based activity was appropriate for a

specific park based upon the legislation establishing the area, the park's resources and values, other visitor uses of the area, and overall management objectives.

Prior to April 22, 2002, PWC use was allowed throughout FireIsland National Seashore. On April 22, 2002 all of the waters within the National Seashore were closed to PWC use consistent with the 2000 NPS PWC rule (36 CFR 3.24).

Resource Protection and Public Use Issues

Fire Island National Seashore Environmental Assessment

In September 2002 NPS posted on its Web site*(http://ww.nps.gov/fiis/)* the *Personal Watercraft UseEnvironmental Assessment* for Fire Island National Seashore. The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Fire Island National Seashore to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Seashore's enabling legislation, purpose, mission, and goals. In March 2004 an errata was issued. The changes to the environmental assessment were made to modify the preferred alternative and its analysis, to address public comments, and to clarify the text.

The environmental assessment evaluated four alternatives concerning the use of PWC at Fire Island National Seashore. The alternatives considered included three alternatives to continue PWC use under certain conditions: Alternative A would establish, through regulation, the PWC policies that existed prior to 2000 when PWC use was permitted throughout Fire Island NationalSeashore; alternative B would limit PWC use to areas adjacent to beach communities; and modified alternative C would continue to allow PWC *access to the national seashore with additional management and geographic restrictions*. The additional geographic restrictions west of Sunken Forest would include a 1,000 foot buffer around all shorelines, with access to beach communities only through established access channels and ferryways. East of the western boundary of Sunken Forest PWC use would be forbidden in Seashore waters, except for access to beach communities only through established access channels and ferryways. In addition, a no-action alternative was considered that would discontinue all PWC use within the National Seashore. The four alternatives were evaluated with respect to PWC impacts on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, and visitor safety.

Based on the analysis NPS determined that modified alternative C is the environmentally preferred alternative. (For the remainder of this document "alternative C" refers to modified alternative C.) Alternative C best fulfills NPS responsibilities as trustee of Fire Island National Seashore's sensitive habitat; ensuring safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attaining a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences. Alternative C is the preferred alternative for fulfilling the park's environmental mission without restricting valid and lawful use. This document proposes regulations to implement alternative C at Fire Island National Seashore.

The following summarizes the predominant resource protection and public use issues associated with PWC use at Fire Island National Seashore. Each of these issues was analyzed in the *Fire Island National Seashore, Personal Watercraft Use Environmental Assessment*, which was posted to the Fire Island National Seashore Web site on September 3, 2002 *(http://www.nps.gov/fiis/)*.

Water Quality

The main issues associated with PWC use and water resources at Fire Island are those related to water quality. Chemical impacts on water quality result from PWC emissions of hydrocarbons including benzene, toluene, ethylbenze, xylene (BTEX), polycyclic aromatic hydrocarbon (PAH) and of methyl tertiary butyl ether (MTBE) directly into the water. Yet, the impacts on water quality from pollutants vary according to the PWC use areas. Areas of high tidal flushing dispel pollutants faster than areas of low tidal flushing. Fire Island's inlets experience very high flushing while its bays experience low flushing. Thus, toxic pollutants remain in the bays for longer periods of time than they do in the inlets.

The majority of locations proposed for continued use by PWC are located in the western area of the park between Fire Island Inlet and Sunken Forest. Because the allowed use areas under the proposed rule are surrounded by Great South Bay, an extensive area of water both within and outside park jurisdiction, the actual mixing/dilution volumes would be substantially greater than in the PWC restricted use areas. As such, allowing PWC use in only these areas will have negligible to minor adverse impacts on water quality. When analyzed in relation to all vessels in these areas, the cumulative impacts of all vessels will be negligible to moderate adverse.

Air Quality

PWC emit various compounds that pollute the air even though the exhaust is usually routed below the waterline. As much as one third of the fuel delivered to current two-stroke PWC remains unburned and is discharged as gaseous hydrocarbons (HC); the lubricating oil is used and expelled as part of the exhaust; the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter (PM), and carbon monoxide (CO).

NPS analyzed two categories of airborne pollution impacts: impacts on human health and impacts on air quality related values in Fire Island. Pollutants emitted from PWC that affect human health include VOC and NO_X, which in sunlight form ozone. Ozone can cause or contribute to respiratory illness. Carbon monoxide (CO) also affects humans by interfering with the oxygen carrying capacity of blood.

With regard to impacts on human health, continuation of PWC use in the locations proposed at Fire Island would result in minor adverse impacts for CO and NO_X and negligible adverse impacts for PM. For VOC emissions the impact would be major adverse in 2002, decreasing to moderate adverse by 2012 due to improved emission controls. When considering cumulative emissions from all boating activities in both 2002 and 2012 the result would be negligible adverse impacts for PM_{10}, moderate adverse impacts for NO_X, and major adverse impacts for CO andVOC.

Soundscapes Values

Studies by many organizations on different types of PWC have found noise levels associated with PWC to vary and range from about 80 to 102 dB. However, unlike motorboats, PWC are highly maneuverable and are used for activities such as wave jumping, which often result in quickly varying noise levels due to changes in acceleration and exposure of the jet exhaust when crossing waves. The frequent change in pitch and noise levels, especially if operated closer to land, make the noise from PWC more noticeable to human ears.

One of the Seashore's natural resources is the natural soundscape, also referred to as "natural ambient

sounds" or "natural quiet." The natural soundscape includes all of the naturally occurring sounds of the National Seashore. Conversely, "noise" is defined as unwanted sound. Sounds are described as noise if they interfere with an activity or disturb the person hearing them. The level of sound generated by watercraft using the National Seashore area is expected to affect recreation users differently. For example, visitors participating in less sound-intrusive activities such as bird watching and hiking would likely be more adversely affected by PWC noise than another PWC or motorboat user.

The proposed rule would require PWC users to operate at flat wake speeds (maximum 6 mph) within ferryways and navigation channels, which would reduce PWC-generated noise levels. Impacts would be negligible adverse under the proposed rule. PWC operating at an idle would also reduce noise levels farther from the shoreline. Noise reductions 1,000 feet from shore and beyond in the area west of Sunken Forest would be substantial since PWC would be required to stay at least 1000′ offshore with the exception of marked ferryways and navigation channels in the communities. East of the Sunken Forest PWC would be excluded from the waters of the seashore or approximately 4000′ offshore.

The cumulative adverse impact of boating noise, ambient noise levels, and PWC use (where permitted) would continue to range from negligible to minor, depending on the location of the hearer. As with alternative B, under the proposed rule noise from personal watercraft and other boats would have negligible to minor adverse impacts on other recreational users at other locations within the National Seashore.

Removing PWC use from many areas of the National Seashore, as well as implementing a 1,000-foot buffer zone, would result in negligible adverse impacts. Specifically, noise from PWC and motorized boat use within and near the National Seashore would have negligible to minor adverse impacts on other recreational users at other locations within the National Seashore.

Submerged Aquatic and Shoreline Vegetation

PWC have the potential to impact submerged aquatic vegetation and shoreline vegetation as a result of operating in shallow waters or adjacent to wetland habitats.

Submerged aquatic vegetation (SAV) benefit the aquatic ecosystems because they provide a protective habitat for fish and shellfish; food for waterfowl, fish, and mammals; and aid in oxygen production; absorb wave energy and nutrients; and improve the clarity of the water. In addition, SAV beds stabilize bottom sediments and reduce suspended sediments present in the water column.

Under the proposed rule, PWC use would be limited to beach community access channels and ferryways east of Sunken Forest. Users would have to stay 1,000 feet away from any shoreline (including smaller island shorelines) in the area west of Sunken Forest, except for in the navigation channels and ferryways. PWC users operating in navigation channels and ferryways would be required to maintain a flat-wake speed. PWC are not allowed within the National Seashore boundaries east of the western boundary of the Sunken Forest with the exception of navigation channels into the communities.

Direct impacts on shoreline vegetation from PWC use are expected around landing areas. Impacts on wetland vegetation and habitat are expected to be beneficial because no PWC use would be allowed within 1,000 feet of any shoreline in the National Seashore. Effects to shoreline vegetation associated with PWC use under the proposed rule are expected to be short term and minor.

Adverse direct cumulative effects associated with increased future PWC and other motorized watercraft use are expected to be minor. Impacts on shoreline vegetation around landing areas associated with foot traffic would continue. Cumulative beneficial impacts on shoreline vegetation associated with the wetland habitats are expected due to the 1,000-foot buffer zone.

Short-term, minor impacts on shoreline vegetation would result primarily from foot traffic associated with PWC access to beach areas. PWC may access shoreline areas in community marinas that are not bulkheaded and would not have any restrictions on them coming ashore. Outside of these areas, no beach access would be permitted. Impacts on tidal wetland habitats are expected to be beneficial as a result of restricting PWC use within 1,000 feet of any shoreline.

Wildlife and Habitats

Some research suggests that PWC impact wildlife by interrupting normal activities, causing alarm or flight, causing animals to avoid habitat, displacing habitat, and affecting reproductive success. PWC may have a greater impact on waterfowl and nesting birds because of their noise, speed, and ability to access shallow-water areas more readily than other types of watercraft. Literature suggests that PWC can access sensitive shorelines, disrupting riparian habitat areas critical to wildlife.

Impacts on wildlife from PWC use would be short term and minor because species sensitive to noise and human activity are not expected to regularly occur in these areas during high use periods. Prohibiting PWC use over a large area of the National Seashore would have short- and long-term, minor, beneficial impacts on wildlife and habitat in the closed areas. Implementing flat wake zones in ferryways and navigation channels would minimize the potential for collisions with wildlife. Restricting PWC access to most of the shallow water habitat along the National Seashore would also enhance the quality of essential fish habitats in these areas, a long-term beneficial impact.

Discontinuing PWC use over a large percentage of the National Seashore and implementing flat wake zones in ferryways and navigation channels would have minor, beneficial impacts on wildlife and wildlife habitat over the short and long term. Wildlife using closed areas adjacent to PWC use areas could be affected by noise and possible water quality impacts from PWC use in adjacent areas; however, such effects are expected to be negligible.

Threatened and Endangered Species and Species of Concern

Numerous Federal and State listed threatened and endangered species and protected species utilize habitats within Fire IslandNational Seashore on either a permanent, seasonal, or transitory basis. Federally listed species documented on Fire Island include the piping plover, bald eagle, loggerhead sea turtle, the seabeach amaranth, and others.

Threatened or endangered species in the area of Fire Island National Seashore are not likely to be adversely affected by PWC use under the proposed rule. Speed limit restrictions within the channels, closures within the 1,000 foot buffer and closed areas where sensitive shorebird nesting areas are most likely to occur, would reduce the potential for adverse effects. Sea turtles are not likely to be adversely affected by PWC use because the first 1,000 feet from the shore would be closed and they are expected to avoid high use areas as a result of noise and activity. Foraging activities of bald eagles and peregrine falcons could potentially be affected by PWC use. However, because these birds are typically present at a time of year when PWC use is low, adverse effects are not likely. Also, restricting PWC use within 1,000 feet of any shoreline would

further minimize potential impacts on sensitive species. Potential effects on the seabeach amaranth are expected to be minimal because foot traffic associated with PWC use would occur only in community marina beach areas where the plant does not occur.

Visitor Experience

To determine impacts, the current level of PWC use was calculated at locations throughout the National Seashore where PWC use is known to occur. Other recreational activities and the type of visitor experiences that are proposed in these locations were also identified. Visitor surveys (if available) and staff observations were also evaluated to determine visitor attitudes and satisfaction in areas where personal watercraft are encountered.

Data suggest that the vast majority of visitors are satisfied with their current experiences. The potential for change in visitor experiences was evaluated by identifying projected increases or decreases in both PWC and other visitor uses, and by determining whether these projected changes would affect the desired visitor experience and result in greater safety concerns or additional user conflicts.

The proposed rule would have minor beneficial impacts on the experiences of visitors other than PWC users. There would be a minor to moderate adverse impact to PWC users as a consequence of closing areas of the National Seashore to PWC use east of the Sunken Forest, prohibiting use elsewhere within the 1,000-foot buffer zone, and requiring flat wake speed limits in ferryways and navigation channels. However, PWC users would still be allowed to operate outside the restricted areas and flat wake zones at the west end of the island.

Cumulative impacts for all PWC users in the region would be negligible to minor because other nearby areas would remain open to PWC use. Impacts on other boaters and visitors would be negligible since there would be little noticeable change in overall visitor experiences. It is likely that most visitors would continue to be satisfied with their experiences at the National Seashore.

Visitor Conflicts and Safety

PWC comprise 9% of all registered "vessels" in the United States, but are involved in 36% of all boating accidents. In part, this is believed to be a boater education issue (*i.e.*, inexperienced riders lose control of the craft), but it also is a function of the PWC operation (*i.e.*, no brakes or clutch; when drivers let up on the throttle to avoid a collision, steering becomes difficult). Newer models will reportedly have improved safety devices such as better steering and braking systems, however, it will take time to infuse the market with these types of newer machines.

Although a study conducted by National Transportation Safety Board indicates PWC related fatalities will increase in the United States, PWC related fatalities in the Fire Island National Seashore area have been few in recent years.

Under the proposed rule, PWC use would be limited to beach community access channels and ferryways east of Sunken Forest. Users would have to stay 1,000 feet away from any shoreline (including smaller island shorelines) in the area west of Sunken Forest, except in the access channels and ferryways. An additional management restriction would be the requirement to operate at flat wake speeds within ferryways and navigation channels within the seashore boundary.

The potential for impacts on visitor safety resulting from PWC use would be eliminated in areas where PWC use would no longer be allowed and would be further reduced in the ferryways and navigation channels as a result of the flat wake regulation. Swimmers would benefit from restrictions on PWC use.

Depending on the type of activity and its location, potential cumulative impacts on visitor safety would be negligible. Boaters utilizing waters outside the park could be adversely affected to the extent that increased PWC use in these waters would conflict with their activities. Some beneficial impacts would result from restrictions on PWC use and subsequent fewer conflicts and accidents.

The proposed rule would eliminate the potential for PWC-related accidents within the restricted use areas of the National Seashore. Flat wake restrictions in the ferryways and navigation channels would reduce the potential for accidents to negligible to possibly minor adverse impacts.

An increased potential for accidents between PWC users and other boaters could occur outside NPS waters.

The Proposed Rule

As established by the April 2000 National Park Service rule, PWC use is prohibited in all National Park System areas unless determined appropriate. The process used to identify appropriate PWC use at Fire Island National Seashore considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. The proposed rule is designed to manage PWC use within the National Seashore in a manner that achieves the legislated purposes for which the park was established while providing reasonable access to the park by PWC.

The use of motor vessels is a traditional method of accessing Fire Island or land-based recreational activities. Therefore, providing PWC owners with this opportunity is considered both desirable and compatible with park purposes, assuming that such use would not result in unacceptable impacts. To identify areas of potential use, the effects of PWC use were evaluated against a number of resource and public use issues. Given the high value and significance of National Seashore resources, a precautionary approach was employed. Only those areas with minimal, if any, potential for resource and visitor use impacts were selected. A summary of the issues considered and evaluation results are presented previously under "Resource Protection and Public Use Issues."

Under proposed § 7.20(d) the NPS would continue to allow PWC in the areas west of Sunken Forest but will be enforcing a 1,000-foot closed area along the shoreline fronting communities and National Seashore lands. Areas east of Sunken Forest would be closed to PWC use, except that PWCs would be able to use designated channels to access the communities within the boundary of the park. Both east and west of Sunken Forest PWC access would have speed limits of no greater than flat-wake speed via the ferry and navigation channels that access the communities. State and local regulations for travel in ferry channels would also be enforced. All the channels that provide access to the communities are marked with buoys regulated by the U.S. Coast Guard and all the channels are identified on NOAA navigation charts.

Specifically, PWC users would be allowed to operate in:

- Great South Bay from the western boundary of the national seashore adjacent to Robert Moses State Park, east to the western boundary of the Sunken Forest, excluding any area within 1,000 feet of the shoreline, including East Fire Island and West Fire Island.
- Navigation channels marked by buoys and identified on the NOAA navigational chart (12352) to include access channels to and from Fair Harbor, Dunewood, Lonelyville, Atlantique, Cherry Grove, Fire Island Pines, Davis Park, Moriches Inlet, and to the communities of Kismet, Saltaire, Ocean Beach, Ocean Bay Park, Point O'Woods, Oakleyville, and Water Island

at "flat-wake speed" (maximum of 6 mph).

• The Long Island Intracoastal Waterway within the park boundaries.

Also included in proposed § 7.20(d) is a requirement that PWC operating in ferryways and navigation channels would be required to maintain a flat wake speed. All local, state, and federal laws and regulations relative to PWC use would remain in effect and be enforced by the park.

Areas open to PWC use have physical and biological characteristics that minimize the potential for adverse impacts on park resources and values, and are located immediately adjacent to Fire Island population centers that currently experience high levels of general boat traffic. The intended effect is to provide island access for persons wanting to use a PWC to travel to the National Seashore or for persons for whom a PWC is the only form of water access to Fire Island.

The closure of most National Seashore waters to PWC use does not adversely affect the public's ability to operate PWC in the region as a whole. More than three fourths of the Great South Bay, and a little less then half of the waters of Narrows Bay and Moriches Bay are outside National Park Service jurisdiction. These areas are currently available to PWC and constitute alternative use areas for operators who had previously utilized waters within the National Seashore that are now closed.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The National Park Service has completed the report "Economic Analysis of Personal Watercraft Regulations in Fire Island National Seashore" (Law Engineering and Environmental Sciences, Inc.) dated March 2002. The report found that this proposed rule will not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact to the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel policy issues. This regulation is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published the general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based upon the finding in a report prepared by the National Park Service entitled, "Economic Analysis of Personal Watercraft Regulations in Fire Island National Seashore"(Law Engineering and Environmental Sciences, Inc., March 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that the potential loss for these types of businesses as a result of this rule would be minimal to none.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The National Park Service has completed an economic analysis to make this determination. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

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 or the private sector. This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with 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.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). The EA was open for public

review and comment from September 3, 2002, to November 11, 2002. A copy of the EA and the errata is available by contacting the Superintendent, Fire Island National Seashore,120 Laurel Street, Patchogue, New York 11772. E-mail: *michael_bilecki@nps.gov,* Fax: (631) 289–4898, or on the Internet at *http://www.nps.gov/fiis/pwc/pwc.htm.*

Government-to-Government Relationship With Tribes

In accordance with 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 evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, § 7.20 Fire Island National Seashore.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. E-mail: *Execsec@ios.doi.gov.*

Drafting Information

The primary authors of this regulation are: Wayne Valentine, Chief Ranger; Michael Bilecki, Chief of Resource Management, Fire Island National Seashore; Sarah Bransom, Environmental Quality Division; and Kym Hall, Special Assistant.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, comment by electronic mail to: *michael_bilecki@nps.gov,* or comment by Fax at: (631) 289–4898. Please also include "PWC rule" in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and Recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Add new paragraph (d) to § 7.20 to read as follows:

§ 7.20 Fire Island National Seashore.

* * * * *

(d) *Personal watercraft.* (1) Personal watercraft (PWC) may operate in the following locations and under the following conditions:

(i) Great South Bay from the western boundary of the national seashore adjacent to Robert Moses State Park, east to the western boundary of the Sunken Forest, excluding any area within 1,000 feet of the shoreline, including the area surrounding East Fire Island and West Fire Island.

(ii) Navigation channels marked by buoys or identified on the NOAA navigational chart (12352) to include access channels to and from Fair Harbor, Dunewood, Lonelyville, Atlantique, Cherry Grove, Fire Island Pines, Davis Park, Moriches Inlet, Kismet, Saltaire, Ocean Beach, Ocean Bay Park, Point O'Woods, Oakleyville, and Water Island.

(iii) The Long Island Intracoastal Waterway within the park boundaries.

(iv) At "flat wake" speeds (maximum 6 mph) within designated marked channels to access town/community docks and harbors/marinas.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: August 12, 2004.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–19189 Filed 8–20–04; 8:45 am]

BILLING CODE 4312–52–P

Notices

Federal Register
Vol. 69, No. 162
Monday, August 23, 2004

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

Animal and Plant Health Inspection Service

[Docket No. 04–029–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the export of poultry and poultry hatching eggs from the United States.

DATES: We will consider all comments that we receive on or before October 22, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–029–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–029–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–029–1" on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding certificates for exporting poultry and hatching eggs, contact Dr. Ted Williams, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3400. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Certificate for Poultry and Hatching Eggs for Export.

OMB Number: 0579–0048.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301–8317), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA), among other things, collects information and conducts inspections to ensure that poultry and hatching eggs exported from the United States are free of communicable diseases. The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. Receiving countries have specific health requirements for poultry and hatching eggs exported from the United States. Most countries require a certification that our poultry and hatching eggs are free of diseases of concern to the receiving country. This certification generally must carry the USDA seal and be endorsed by an authorized APHIS veterinarian.

Veterinary Services Form 17–6, Certificate for Poultry and Hatching Eggs for Export, is used to meet these requirements.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Owners of poultry and hatching egg operations, exporters of poultry products, and accredited veterinarians.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 70.

Estimated annual number of responses: 21,000.

Estimated total annual burden on respondents: 10,500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of August 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–19236 Filed 8–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–070–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of Hass avocados from Mexico.

DATES: We will consider all comments that we receive on or before October 22, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–070–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–070–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–070–1" on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of Hass avocados from Mexico, contact Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–4382. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Hass Avocados from Mexico.

OMB Number: 0579–0129.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pests and noxious weeds.

The regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) allow the importation of Hass avocados from Michoacan, Mexico, into the United States, including 31 States and the District of Columbia, under certain conditions. The regulations require the use of permits, cooperative agreements, phytosanitary certificates, and box marking to indicate the States where distribution is prohibited.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.00006633 hours per response.

Respondents: Mexican plant health officials; importers, shippers, distributors, and handlers of fresh Hass avocados imported from Michoacan, MX, into the United States.

Estimated annual number of respondents: 3,058.

Estimated annual number of responses per respondent: 23,780.754.

Estimated annual number of responses: 72,721,546.

Estimated total annual burden on respondents: 4,823 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of August 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–19237 Filed 8–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–074–1]

Confinement of Genetically Engineered Crops During Field Testing; Workshop

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This is to notify parties involved in those fields associated with the confinement of genetically engineered crops, as well as other interested persons, that a workshop will be held to review past results and obtain an update on the most recent scientific results relevant to biological dispersal and confinement of genetically engineered crops during field testing. The workshop is being organized by the Animal and Plant Health Inspection Service.

DATES: The workshop will be held September 13 through 15, 2004, from

8:30 a.m. to 5 p.m. each day. The sessions on September 13 and 14, 2004, will include panels of invited scientific experts. The session on September 15, 2004, will be open to the public.

ADDRESSES: The workshop will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Robyn Rose, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0489, or e-mail: *Robyn.I.Rose@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," (referred to below as the regulations) regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

Field tests of genetically engineered crops planted under an Animal and Plant Health Inspection Service (APHIS) permit as plant-made pharmaceuticals (PMPs) and plant-made industrials (PMIs) are currently being conducted under the regulations. In order to provide a forum for the discussion of past and current information relevant to biological and physical factors that influence the design, implementation, efficacy, and feasibility of measures used to confine transgenic plants and their progeny to the authorized field sites, APHIS is organizing a workshop. This workshop will provide a forum for discussing measures that can be taken to limit gene flow beyond the authorized site, commingling with other crops, and persistence of transgenic plants in the environment following termination of the field trial. The workshop will primarily focus on plants most frequently used as PMPs and PMIs, such as corn, barley, rice, safflower, and tobacco, with three break-out groups that will examine wind pollination of crops using corn as a model, self-pollinated crops using rice as a model, and insect-pollinated crops using safflower as a model.

This workshop is scheduled for September 13 through 15, 2004. The sessions on the first 2 days of the workshop will include panels of invited scientific experts. The third day will be open to the public and the results of the panel discussions will be summarized. Preregistration is required for all those who wish to attend the third day of the workshop. The deadline for preregistration is September 10, 2004. Information regarding the meeting and registration instructions are available on the Internet at *http://www.aphis.usda.gov/brs/new_info.html.* Questions that will be discussed during the workshop may be viewed on the Internet at *http://www.aphis.usda.gov/brs/confine_workshop/confine_questions.pdf.*

The third day of the workshop will be open to the public. Persons interested in making an oral presentation during the third day of the workshop related to the topic of the workshop should submit a brief written statement or abstract of the science they wish to present, the name and address of each person who will participate in the presentation, and an estimate of the approximate length of time needed to make the presentation. This information should be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than September 6, 2004. The number of oral presentations on the third day of the workshop and the time allocated for each may be limited, depending upon the number of requests. Send all statements or abstracts to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please state that your statement or abstract refers to Docket No. 04–074–1. If you use e-mail, your comment must be contained in the body of your message or sent as an attachment in WordPerfect or Microsoft Word format. Please include your name and address in your message and "Docket No. 04–074–1" on the subject line.

Following the workshop, a proceedings will be published that will summarize the information gathered during the workshop. The proceedings will outline methods for physical, temporal, spatial, and biological confinement of transgenes incorporated into wind-pollinated, insect-pollinated, and primarily self-pollinating crops along with information regarding their efficacy and feasibility of implementation. The effects of scale and use of models to predict or compare efficacy of options will also be addressed. Information gathered during the workshop will be summarized to illustrate the interaction of available tools for gene confinement to form a comprehensive and flexible approach to field testing. Scientific data and references will be included in a bibliography as part of the proceedings.

Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center at Riverside. The machine accepts $1 bills or quarters.

Upon entering the building, visitors should inform security personnel that they are attending the Crop Field Testing workshop. Identification is required. Security personnel will direct visitors to the sign-in tables located outside of the Conference Center. All participants must sign in upon arrival. Conference badges must be worn throughout the day.

Done in Washington, DC, this 17th day of August 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–19235 Filed 8–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, September 9th, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting September 9th begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Update on 2003 projects; Report of Pine Creek Project field trip; and Meeting Schedule Changes. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, District Ranger and Designated Federal Officer, at (530) 257–4188; or Public Affairs Officer Heidi Perry, at (530) 252–6605.

Jeff Withroe,

Acting Forest Supervisor.

[FR Doc. 04–19212 Filed 8–20–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on September 1, at 6 p.m. at the Historic Raven Ranger State, 30 miles South of Libby, Montana for a business meeting. The meeting is open to the public.

DATES: September 1, 2004.

ADDRESSES: Historic Raven Ranger Station, located at 30753 U.S. Highway 2, 30 miles South of Libby, MT.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include status of approved projects and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: August 13, 2004.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 04–19213 Filed 8–20–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meeting Friday, September 17, 2004 in Lewiston, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on September 17, at the Red Lion Conference Center, Lewiston, ID, begins at 10 a.m. (PST). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

Dated: August 13, 2004.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 04–19274 Filed 8–20–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 081704B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Multispecies Framework Adjustment 40A Permit Information Data Collection.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: -2,094.

Number of Respondents: 997.

Average Hour Per Response: Five seconds per automated position report from a vessel monitoring system; 5 minutes for a transmission for a days-at-sea declaration; and 2 minutes for an observer notification phone call.

Needs and Uses: The National Marine Fisheries Service is submitting the proposed rule to implement provisions contained within Framework Adjustment 40A to the Northeast Multispecies Fishery Management Plan. This submission requests clearance for the following provisions: (1) A Category B (regular) days-at-sea Pilot Program; (2) Closed Area I Hookgear Special Access Program (SAP); (3) Eastern United States/Canada SAP Pilot Program; and (4) Modifications to the Western United States/Canada Area Regulations.

Affected Public: Business or other for-profit organizations; individuals and households.

Frequency: On occasion; annual; twice hourly.

Respondent's Obligation: Mandatory.

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 Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by August 25, 2004 to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: August 11, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–19272 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 21, 2004, 9:30 a.m., at the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks and introductions.
2. Review of Wassenaar Arrangement and Technical Working Group issues.
3. Review of Missile Technology Control Regime issues.
4. Update on Export Administration Regulations.
5. Update on status of U.S. Munitions List.
6. Update on country-specific policies.
7. Update on policies and procedures.
8. Presentation of papers, proposals and comments by the public.
9. Review of new and open action items.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits,

members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to Lee Ann Carpenter at *Lcarpent@bis.doc.gov* For more information, please call Ms. Carpenter on (202) 482–2583.

Dated: August 18, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–19273 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–851]

Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Live Swine From Canada

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

ACTION: Notice of preliminary negative countervailing duty determination and alignment of final countervailing duty determination with final antidumping duty determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are not being provided to producers or exporters of live swine from Canada. We are also aligning the final determination in this investigation with the final determination in the companion antidumping duty investigation of live swine from Canada.

DATES: Effective August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller or S. Anthony Grasso, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116 and (202) 482–3853, respectively.

Petitioners

The petitioners in this investigation are the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine [1] (collectively, "the petitioners").

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Live Swine From Canada*, 69 FR 19818 (April 14, 2004) ("*Initiation Notice*").

On May 3, 2004, the Government of Canada ("GOC") notified the Department of Commerce ("the Department") that certain programs under investigation in this proceeding were not countervailable because they qualified for "green box" status under Article 13 and Annex 2 of the World Trade Organization ("WTO") Agreement on Agriculture ("Agriculture Agreement"). *See also* section 771(5B)(F) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"), and 19 CFR 351.522. On May 6, 2004, the petitioners submitted comments on the GOC's green box filing. *See infra*, section on "Green Box Claims."

On May 4, 2004, the Department received a request from the GOC to amend the scope of this investigation to exclude hybrid breeding stock. On August 4, 2004, the petitioners submitted comments on the proposed exclusion. On August 9, 2004, both the respondent companies (identified below) and the GOC responded to the petitioners' August 4, 2004 submission. The petitioners filed further comments on August 12, 2004. *See infra*, section on "Scope Comments."

On May 5, 2004, we issued the countervailing duty ("CVD") questionnaires in this proceeding. Due to the large number of producers and exporters of live swine ("swine" or "subject merchandise") in Canada, we decided to limit the number of respondents. *See* May 4, 2004 memorandum to Jeffrey May entitled *Respondent Selection or Aggregation* ("*Respondent Selection Memo*"), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building ("CRU"). As discussed in the *Respondent Selection Memo*, we issued questionnaires to producer/exporters Premium Pork Canada Inc. ("Premium") and Hytek Ltd. ("Hytek"), as well as the two largest suppliers of each M & F Trading Inc. ("M&F"), Maximum Swine Marketing ("Maximum"), and Excel Swine Services ("Excel") (all of which are trading companies or cooperatives). Thus, in addition to Hytek and Premium, the Department issued questionnaires to Hart Feeds Limited ("Hart"), Elite Swine Inc. ("Elite")/ Maple Leaf Foods Inc. ("Maple Leaf") (collectively, "Maple Leaf/Elite"), Sureleen-Albion Agra Inc. ("Sureleen")/ Bujet Sow Group ("BSG"), Park View Colony Farms Ltd. ("Park View"), and Willow Creek Colony Ltd. ("Willow Creek"). We also issued separate questionnaires to M&F, Maximum, and Excel in order to confirm that they did not receive any of the subsidies alleged in this investigation.

In our questionnaire that was issued to the GOC on May 5, 2004, we indicated that, because the company respondents' operations were located only in Manitoba, Ontario, Saskatchewan, and Alberta according to record information, we were limiting our requests for information to GOC programs, joint federal/provincial

[1] Alan Christensen, Alicia Prill-Adams, Aulis Farms, Baarsch Pork Farm, Inc., Bailey Terra Nova Farms, Bartling Brothers Inc., Belstra Milling Co. Inc., Berend Bros. Hog Farm LLC, Bill Tempel, BK Pork Inc., Blue Wing Farm, Bornhorst Bros, Brandt Bros., Bredehoeft Farms, Inc., Bruce Samson, Bryant Premium Pork LLC, Buhl's Ridge View Farm, Charles Rossow, Cheney Farms, Chinn Hog Farm, Circle K Family Farms LLC, Cleland Farm, Clougherty Packing Company, Coharie Hog Farm, County Line Swine Inc., Craig Mensick, Daniel J. Pung, David Hansen, De Young Hog Farm LLC, Dean Schrag, Dean Vantiger, Dennis Geinger, Double "M" Inc., Dykhuis Farms, Inc., E & L Harrison Enterprises, Inc., Erle Lockhart, Ernest Smith, F & D Farms, Fisher Hog Farm, Fitzke Farm, Fultz Farms, Gary and Warren Oberdiek Partnership, Geneseo Pork, Inc., GLM Farms, Greenway Farms, H & H Feed and Grain, H & K Enterprises, LTD, Ham Hill Farms, Inc., Harrison Creek Farm, Harty Hog Farms, Heartland Pork LLC, Heritage Swine, High Lean Pork, Inc., Hilman Schroeder, Holden Farms Inc., Huron Pork, LLC, Hurst AgriQuest, J D Howerton and Sons, J. L. Ledger, Inc., Jack Rodibaugh & Sons, Inc., JC Howard Farms, Jesina Farms, Inc., Jim Kemper, Jorgensen Pork, Keith Berry Farms, Kellogg Farms, Kendale Farm, Kessler Farms, L.L. Murphrey Company, Lange Farms LLC, Larson Bros. Dairy Inc., Levelvue Pork Shop, Long Ranch Inc., Lou Stoller & Sons, Inc., Luckey Farm, Mac-O-Cheek, Inc., Martin Gingerich, Marvin Larrick, Max Schmidt, Maxwell Foods, Inc., Mckenzie-Reed Farms, Meier Family Farms Inc., MFA Inc., Michael Farm, Mike Bayes, Mike Wehler, Murphy Brown LLC, Ned Black and Sons, Ness Farms, Next Generation Pork, Inc., Noecker Farms, Oaklane Colony, Orangeburg Foods, Oregon Pork, Pitstick Pork Farms Inc., Prairie Lake Farms, Inc., Premium Standard Farms, Inc., Prestage Farms, Inc., R Hogs LLC, Rehmeier Farms, Rodger Schamberg, Scott W. Tapper, Sheets Farm, Smith-Healy Farms, Inc., Square Butte Farm, Steven A. Gay, Sunnycrest Inc., Trails End Far, Inc., TruLine Genetics, Two Mile Pork, Valley View Farm, Van Dell Farms, Inc., Vollmer Farms, Walters Farms LLP, Watertown Weaners, Inc., Wen Mar Farms, Inc., William Walter Farm, Willow Ridge Farm LLC, Wolf Farms, Wondraful Pork Systems, Inc., Wooden Purebred Swine Farms, Woodlawn Farms, and Zimmerman Hog Farms.

programs, and provincial programs relating to these four provinces only and were not requesting information about programs administered by New Brunswick, Prince Edward Island ("PEI"), or Quebec which were included in our initiation. On May 19, 2004, all of the above company respondents confirmed that none of their companies that could be considered to be "cross-owned" under 19 CFR 351.525(b)(6)(vi) were located in New Brunswick, PEI, or Quebec. (Maple Leaf/Elite filed follow-up comments on its May 19, 2004 submission on May 28, 2004.) Thus, we have not investigated the following programs included in our *Initiation Notice:* Quebec Farm Income Stabilization Insurance/Agricultural Revenue Stabilization Insurance Program, La Financiere Agricole du Quebec Loans (Preferred Rate Loans, Secure Rate Development Loans, and Advantage Rate Loans), New Brunswick Livestock Incentive Program, PEI Hog Loan Programs (Bridge Financing Program, Expansion Loan Program, and Depop-Repop Loan Program), and PEI Swine Quality Improvement Program.

On May 21, 2004, we published a postponement of the preliminary determination in this investigation until August 16, 2004. *See Live Swine From Canada: Postponement of Preliminary Countervailing Duty Determination,* 69 FR 29269 (May 21, 2004).

We received responses to the Department's questionnaire from the companies on June 18, June 30, and July 2, 2004; and from the GOC (which included responses from the Governments of Alberta, Manitoba ("GOM"), and Saskatchewan ("GOS")) on June 30, 2004. On July 13, 2004, the petitioners submitted comments regarding these questionnaire responses. The Department issued supplemental questionnaires to the governments and the companies in June and July 2004 and received responses to those questionnaires in July and August 2004.

In their July 13, 2004 comments on the questionnaire responses, the petitioners submitted a new subsidy allegation. Specifically, the petitioners claimed that information from the Ontario Pork Production Marketing Board submitted in the companion antidumping duty ("AD") case to this proceeding indicated that the provincial marketing boards have been the recipients of large government subsidies to the pork industry. Under 19 CFR 351.301(d)(4)(A), new subsidy allegations are due no later than 40 days prior to a preliminary determination, a deadline which had passed by July 7, 2004. Therefore, this allegation is untimely. Beyond the untimeliness of this allegation, the petitioners have not identified a financial contribution or a benefit provided by the GOC or any of the provincial governments to any of the respondents in this proceeding pursuant to sections 771(5)(D) and (E) of the Act. The provincial marketing boards to which the petitioners' allegation relates are not respondents in the CVD proceeding. Moreover, the petitioners have not alleged that any program through which benefits were conferred was specific according to section 771(5A) of the Act. Consequently, the petitioners have not properly alleged the elements necessary for the imposition of countervailable duties as required by section 701(a) of the Act and we have no basis to initiate an investigation with regard to this allegation. Finally, we note that, even if the allegation were timely and the elements of a countervailable subsidy were properly alleged, we would not examine the alleged subsidy because the Ontario Pork Production Marketing Board is not a respondent in this proceeding. *See Respondent Selection Memo.*

On August 6 and August 9, 2004, respectively, the GOC and the petitioners submitted comments on the upcoming preliminary determination. The GOC submitted further comments on August 10, 2004.

Finally, on August 12, 2004, the petitioners requested that the Department align the final determination in this investigation with the final determination in the companion AD investigation of live swine from Canada. For further information, *see infra* section on "Alignment with Final Antidumping Duty Determination."

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation ("POI"), is calendar year 2003.

Scope of Investigation

The merchandise covered by this investigation is all live swine from Canada except breeding stock swine. Live swine are defined as four-legged, monogastric (single-chambered stomach), litter-bearing (litters typically range from 8 to 12 animals), of the species *sus scrofa domesticus.* This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* ("*HTSUS*") subheadings 0103.91.00 and 0103.92.00.

Specifically excluded from this scope are breeding stock, including U.S. Department of Agriculture ("USDA") certified purebred breeding stock and all other breeding stock. The designation of the product as "breeding stock" indicates the acceptability of the product for use as breeding live swine. This designation is presumed to indicate that these products are being used for breeding stock only. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application, end-use certification for the importation of such products may be required.

Although the *HTSUS* headings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In the *Initiation Notice,* we invited comments on the scope of this proceeding. As noted above, on May 4, 2004, we received a request from the GOC to amend the scope of this investigation and the companion AD investigation. Specifically, the GOC requested that the scope be amended to exclude hybrid breeding stock. According to the GOC, domestic producers use hybrid breeding stock instead of purebred stock to strengthen their strains of swine. The GOC stated that no evidence was provided of injury, or threat of injury, to the domestic live swine industry from the importation of hybrid breeding stock. Furthermore, the GOC noted that the petition excluded USDA certified purebred breeding swine from the scope of the above-mentioned investigations. The GOC argued that the documentation which accompanies imported hybrid breeding swine makes it easy to distinguish hybrid breeding swine from other live swine.

On August 4, 2004, the petitioners submitted a response to the GOC's scope exclusion request and proposed modified scope language. The petitioners stated they do not oppose the GOC's request to exclude hybrid breeding stock, but are concerned about the potential for circumvention of any AD or CVD order on live swine from Canada through non-breeding swine entering the domestic market as breeding stock. Thus, the petitioners proposed modified scope language that would require end-use certification if the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application. Moreover, on July 30, 2004, the petitioners submitted a request to the International Trade Commission ("ITC") to modify the *HTSUS* by adding a

statistical breakout that would separately report imports of breeding animals other than purebred breeding animals, allowing the domestic industry to monitor the import trends of hybrid breeding stock.

On August 9, 2004, both the GOC and the respondent companies submitted comments to respond to the petitioners' proposed revised scope. Both the GOC and the respondent companies stated that they generally agree with the petitioners' modified scope language, with the two following exceptions: (1) They contend that the petitioners' language setting forth the mechanics of any end use certification procedure is premature and unnecessary, and (2) they argue that the petitioners' language stating that "all products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope" is unnecessary because the physical description of the merchandise in scope remains determinative.

On August 12, 2004, the petitioners submitted a response to the August 9, 2004 comments from the GOC and the respondents. The petitioners reiterated their support for their proposed modification to the scope language. They argued that (1) their proposed language has been used before by the Department in other proceedings; (2) since U.S. importers bear the burden of paying the duties, the importers should be required to certify to the end use of the product; and (3) with the petitioners' concerns about circumvention, the "physical description" language provides an important clarification that all live swine except for the excluded products are included in the scope.

As further discussed in the August 16, 2004 memorandum entitled "*Scope Exclusion Request: Hybrid Breeding Stock*" (on file in the Department's CRU), we have preliminarily revised the scope in both the CVD and companion AD proceedings based on the above scope comments. The revised scope language is included in the "Scope of Investigation" section, above.

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On May 10, 2004, the ITC transmitted to the Department its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Canada of the subject merchandise. *See Live Swine From Canada*, 69 FR 26884 (May 14, 2004).

Alignment With Final Antidumping Duty Determination

On August 12, 2004, we received a request from the petitioners to postpone the final determination in this investigation to coincide with the final determination in the companion AD investigation of live swine from Canada.

The companion AD investigation and this countervailing duty investigation were initiated on the same date and have the same scope. *See Initiation Notice* and *Notice of Initiation of Antidumping Investigation: Live Swine from Canada*, 69 FR 19815 (April 14, 2004). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the companion AD investigation of live swine from Canada.

Green Box Claims

According to section 771(5B)(F) of the Act, domestic support measures that are provided with respect to products listed in Annex 1 of the WTO Agriculture Agreement, and that the Department determines conform fully to the provisions of Annex 2 of that same agreement, shall be treated as noncountervailable. The Department's regulations at 19 CFR 351.522(a) further elaborate, stating that the Department will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Department finds that the measure (1) is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers; (2) does not have the effect of providing price support to producers; and (3) meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2. According to 19 CFR 351.301(d)(6), a claim that a particular agricultural support program should be accorded "green box" status under section 771(5B)(F) of the Act must be made by the competent government with the full participation of the government authority responsible for funding and/or administering the program.

As noted above, on May 3, 2004, the GOC notified the Department that certain programs under investigation in this proceeding qualified for green box treatment. Specifically, the GOC has requested green box treatment for the following programs: the Canadian Farm Income Program ("CFIP")/Agricultural Income Disaster Assistance ("AIDA") Program, the Alberta Hog Industry Development Fund, the Producer Assistance 2003 Program/Canadian Agricultural Income Stabilization ("CAIS") Program, and a portion of the Transitional Assistance Program. In its notification, the GOC indicated that, in accordance with 19 CFR 351.301(d)(6), it was filing these claims with the full participation of the provincial governments that share in the funding and/or administration of the programs for which the green box claims were made.

The green box issues with respect to the CFIP/AIDA Program and the Transitional Assistance Program are discussed in the relevant program-specific sections, below. However, because we have preliminarily found that the Alberta Hog Industry Development Fund and the Producer Assistance 2003 Program/CAIS Program were not used during the POI, we have not addressed the issue of whether these two programs should be accorded green box status in this preliminary determination.

Subsidies Valuation Information

Allocation Period

The average useful life ("AUL") period in this proceeding as described in 19 CFR 351.524(d)(2) would be three years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the subject merchandise, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations

states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. (*See Countervailing Duties; Final Rule,* 63 FR 65348, 65401 (November 25, 1998) ("*Preamble*").) According to the *Preamble,* relationships captured by the cross-ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) * * * Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

Furthermore, the Court of International Trade ("CIT") has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F.Supp 2d, 593, 603 (CIT 2001).

The responding companies in this investigation have presented the Department with novel situations in terms of the relationships that exist between the exporters and their suppliers. Our preliminary findings regarding cross-ownership and attribution for individual respondents follow.

Maple Leaf/Elite: Elite is a live swine management and marketing company. It is a wholly-owned subsidiary of Maple Leaf, a Canadian food processing company, and is part of Maple Leaf's Agribusiness Group (one of Maple Leaf's three main operating groups, along with the Meat Products and Bakery Products groups).

In addition to Elite, Maple Leaf has other wholly-owned operating subsidiaries that are involved in the production of live swine, including Shur-Gain and Landmark Feeds Inc. ("Landmark"). These companies produce and sell animal feed and nutrients, including animal feed for swine production. Additionally, in September 2003, Maple Leaf signed an agreement to purchase the Schneider Corporation ("Schneider"), a Canadian food processing company. The acquisition of Schneider was not concluded until April 2004, subsequent to the POI. Finally, certain of Maple Leaf's wholly-owned subsidiaries have ownership positions in companies involved in the production of live swine. (For a more detailed discussion of these equity investments, whose details are proprietary, *see* the August 16, 2004 memorandum entitled "Attribution Issues" ("*Attribution Issues Memo*") (which is on file in the Department's CRU).)

Maple Leaf/Elite has reported that no subsidies were received by Maple Leaf, Elite, Shur-Gain, and Landmark. Therefore, there are no benefits to these companies that require attribution. With regard to Schneider, because this company's purchase was not completed until after the POI, we are preliminarily not including subsidies received by Schneider or Schneider's sales in our subsidy calculations. Also, for the reasons explained in the *Attribution Issues Memo,* we are not finding cross-ownership with respect to the companies owned, in part, by Maple Leaf subsidiaries other than Elite.

Turning to Elite, as noted above, Elite is the principal operating subsidiary of Maple Leaf involved in live swine production. Elite holds an equity position in Genetically Advanced Pigs of Canada (Inc.) ("GAP"), a company which provides genetic services to Elite's suppliers and to other hog producers. Maple Leaf/Elite has reported that GAP received no subsidies. Therefore, we do not need to determine whether cross-ownership exists between Maple Leaf/Elite and GAP.

Elite also has equity positions in many of its suppliers and, depending on the supplier, may also provide operations and/or financial management services. The details of these relationships are proprietary and are discussed further in the *Attribution Issues Memo.*

For purposes of this preliminary determination, we are finding cross-ownership between Maple Leaf/Elite and those suppliers in which Elite both owns shares and provides operations and/or financial management. *See Attribution Issues Memo.* Consequently, we are attributing the subsidies received by these companies to their combined sales.

Hytek: Hytek presents itself as a group of companies, including production operations, feed mills, genetics companies, and marketing companies, that are involved in swine production and sales. Hytek, which was created in 1994 by a small ownership group, has expanded its operations over time and has added new companies to the group each time an expansion occurred. In 2002, the ownership group reorganized its operations in order to simplify the company structure. In addition to the companies within the Hytek group, Hytek uses several contract suppliers in its production and sales of live swine. Hytek has no ownership in or control over these companies, which provide products or services to Hytek on a contract basis.

Hytek has some level of equity interest in all of the companies within the Hytek group. According to Hytek, production and supply among group companies is captive based on long-term, exclusive contracts; most Hytek group companies sell their production to, or purchase their supplies from, Hytek and do business only with companies in the Hytek group. (The distribution companies are one exception to this.) Hytek makes all management decisions regarding the operations of the companies in the group, including what genetics are used, where and when the pigs move throughout the group, how they are raised and fed, and what veterinary services are used. Hytek managers and employees monitor barn management for the entire group and direct the operations of the group companies. Hytek also supplies all feed to the sow and finishing operations.

Financial management of the companies within the group is largely centralized at the Hytek headquarters. A common accounting system for the companies is maintained on the Hytek server, with most of the books and finances managed by Hytek. All financial and company records are kept on Hytek's server. Employees throughout the group are paid through a payroll system on Hytek's server, and Hytek does the banking for almost all of the group companies.

Whether we treat the Hytek group companies individually or collectively would not affect the results in this preliminary determination because, either way, the countervailable subsidy rates for the companies in the Hytek group are *de minimis.* Therefore, we have accepted Hytek's characterization of these companies as a group. Hytek reported its responses that almost all production in the Hytek system was sold to Hytek and/or its marketing

companies for resale. Therefore, we are attributing any subsidies received only to the combined sales of Hytek and its marketing companies. *See also Attribution Issues Memo.*

Premium: Premium consists of a group of companies organized into one system dedicated primarily to the production and sale of live swine. This production system has the following units: operations, multiplication, genetics, and commercial sow barns. The companies of the Premium group are contractually bound to each other through management contracts with Premium and production contracts with the operating companies of the Premium group. In addition, certain group companies manage the overall operations, sales, logistics, customer relations, exports, invoicing, accounting, and financing for the group. Premium is related with each of the companies in the group through direct ownership and/or common shareholders, officers, and directors. The details of these relationships are proprietary and are discussed further in the *Attribution Issues Memo.*

As discussed in the *Attribution Issues Memo,* Premium has reported sales for the Premium group of companies, not for the individual companies that make up the Premium group. Therefore, for purposes of this preliminary determination, we are not able to calculate countervailable subsidy rates on an individual company basis and are accepting Premium's characterization of these companies as a group consistent with our treatment of other respondents who produce live swine as an integrated production unit. Because Premium reported in its responses that almost all production in the Premium system was sold to Premium's operating companies for resale, we are attributing any subsidies received only to the combined sales of these operating companies.

BSG: BSG is a production cooperative made up of ten family-owned farms organized around a local management company, Sureleen. There is no common ownership or shared board members among the eleven BSG companies. There are no contracts or agreements establishing the terms of the BSG arrangement. Instead, BSG's operations are conducted based on verbal agreements among the members.

The members of BSG use a common genetic line and multiplier barn, which ensures a uniform stock of swine among the farms of BSG. As noted above, the members of BSG are linked by common management under Sureleen. Specifically, Sureleen coordinates production, distribution, marketing, and pricing on behalf of the group. Sureleen organizes all bulk purchases of vaccines and makes available to the other BSG members goods such as feed ingredients, tattoo supplies, and other farm supplies. Sureleen also works with the other BSG members to fill in open spaces in the farrowing schedule. Sureleen collects the revenue from sales and allocates the pooled profits to each member on the basis of pigs supplied.

Whether we treat the BSG companies individually or collectively would not affect the results in this preliminary determination because, either way, the countervailable subsidy rates for the companies in the BSG group are *de minimis.* Therefore, we have accepted BSG's characterization of these companies as a group and have attributed subsidies received by the BSG group companies to the combined sales of those companies.

Hart: Hart is primarily engaged in the manufacture and marketing of livestock feed and, as discussed further below, is also involved in the production of live swine. Hart is a wholly-owned subsidiary of Unifeed Limited ("Unifeed"), which is also primarily a livestock feed producer. Unifeed, in turn, is a wholly-owned subsidiary of the United Grain Growers Inc., a grain handling and merchandising, crop production services, and livestock feed and services company which operates under the name of Agricore United ("AU"). AU also has an equity ownership interest in the Puratone Corporation ("Puratone"), a commercial hog and feed producer. Hart, Unifeed, and Puratone together comprise AU's livestock division.

Hart has reported that neither it nor Unifeed received subsidies during the POI. Therefore, there are no benefits to these companies that require attribution.

With regard to Puratone, Hart claims that cross-ownership does not exist with this company. AU has a minority equity interest in Puratone, and no other AU company has an equity interest in Puratone. Similarly, Puratone has no equity interest in any AU companies. AU has only two of six representatives on Puratone's six-person board. Neither AU nor any other company in the AU group supplies feed or live swine to, or purchases swine from, Puratone. Finally, Puratone's operations are in open competition with Hart's operations. Based on the above information, we preliminarily determine that cross-ownership does not exist with regard to Puratone because there is no indication that Hart, Unifeed, or AU can use or direct the assets of Puratone in the same way in which they can use their own assets (*see* 19 CFR 351.525(b)(6)(vi)).

The swine sold by Hart are produced by two swine production groups, the Pro Vista Group and the Russ Fast Group. Companies within the Pro Vista Group are in the business of producing weanlings. The Russ Fast Group companies are dedicated to feeding weanling pigs. Hart does not have an equity interest in any of the ProVista or Russ Fast group companies and does not share or appoint managers or board members for either one of these groups. Instead, their relations are governed by long-term contracts and other mechanisms. The details of these relationships are proprietary and are discussed further in the *Attribution Issues Memo.*

Whether we treat the Hart group companies individually or collectively would not affect the result in this preliminary determination because, either way, the countervailable subsidy rates for the companies in the Hart group are *de minimis.* Therefore, we have accepted Hart's characterization of these companies as a group and have attributed subsidies received by the Hart group companies to the combined sales of those companies.

Park View: Park View, a producer of the subject merchandise, has responded on behalf of itself and the other companies in its group, *i.e.*, the Park View Colony of Hutterian Brethren Trust ("the Trust"), Mountain View Holding Co. Ltd., Beresford Creek 93 Ltd., and P.V. Hogs Ltd. All of the Park View companies are wholly-owned by the Trust. We have thus attributed the subsidies received by these entities to their combined sales. *See* 19 CFR 351.525(b)(6).

Willow Creek: Willow Creek, a producer of the subject merchandise, has responded on behalf of itself and the other companies in its group, *i.e.*, Willow Creek Colony of Hutterian Brethren Trust ("the Trust"), Willow Creek Holding Co. Ltd., Stoney Hill 93 Ltd., and Canuck Trailer Manufacturing Ltd. All of the Willow Creek companies are wholly-owned by the Trust. We have thus attributed the subsidies received by these entities to their combined sales. *See* 19 CFR 351.525(b)(6).

Benchmarks for Loans

Pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is one that, when compared to the loan being examined, has similarities in the structure of the loan (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loan (*e.g.*, short-term v.

long-term), and the currency in which the loan is denominated. In instances where a respondent has no comparable commercial loans to use as a benchmark, 19 CFR 351.505(a)(3)(ii) allows the Department to use a national average interest rate for comparable commercial loans.

Companies being investigated in the instant proceeding reported receiving both long-term fixed and variable-rate loans that were denominated in Canadian currency under certain of the programs being investigated (with the one exception noted below). As benchmarks, in accordance with 19 CFR 351.505(a), we used the actual cost of comparable borrowing by a company, when available. In instances where no comparable commercial loans had been taken out by the recipient, we used a national average interest rate for comparable commercial loans as provided for under 19 CFR 351.505(a)(3)(ii).

Where we relied on national average interest rates as benchmarks, for long-term fixed-rate loans, we used a simple average of the monthly long-term corporate bond rates published by the Bank of Canada ("BOC") for the year in which the government loan was approved. For long-term variable-rate loans, we have used a previously verified benchmark interest rate charged by Canadian commercial banks on loans made to the farming sector. This rate is equal to the prime rate as published by the BOC plus one and one-half percentage points. *See, e.g., Final Negative Countervailing Duty Determination; Live Cattle from Canada*, 64 FR 57040, 57041 (October 22, 1999) ("*Cattle from Canada*") and *Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review*, 63 FR 23723, 23726 (April 30, 1998) (unchanged in *Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 47235, 47236 (September 4, 1998)).

For the Saskatchewan Short-Term Hog Loan Program ("STHLP"), we have treated the amounts outstanding during the POI as series of short-term loans. To measure the benefit from these loans, consistent with past proceedings, we used the prime rate as our short-term benchmark. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52747 (September 5, 2003). Under 19 CFR 351.505(a)(2)(iv), we will normally use an annual average of short-term rates as our benchmark. However, because these loans are advances and repayments on individual lines of credit throughout the POI, we have preliminarily determined that use of monthly benchmarks will yield a more accurate calculation of the benefits.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Farm Credit Canada Financing ("FCC"): Flexi-Hog Loan Program ("FHLP")

The FHLP program, administered by the FCC, was established in May 2000. This program offered hog producers fixed or variable-rate, long-term loans with flexible repayment terms. Specifically, swine producers had the option of deferring their principal repayments for these loans for as much as one year up to three separate times during the life of the loan. These deferrals helped the swine producers to deal with market fluctuations and to manage temporary downturns. Interest payments were required to be made during these "principal holidays" and could not be deferred under the program. FHLP loans were available for terms of up to fifteen years for new facilities construction. The FHLP program was merged into the FCC's Flexi-Farm product in December 2003.

Both Hart and BSG companies reported that they had loans through this program that were outstanding during the POI.

We preliminarily determine that these loans are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. These loans are also specific as a matter of law within the meaning of section 771(5A)(D)(i) of the Act because they are limited to producers of live swine.

Finally, we preliminarily determine that a benefit exists for these loans pursuant to section 771(5)(E)(ii) of the Act and 19 CFR 351.505. In order to determine whether loans under this program conferred a benefit, we used our long-term fixed-rate or variable-rate loan methodology, depending on the terms of the reported loans. For long-term fixed rate loans given under this program, we found a difference between what the recipient would have paid on a benchmark loan during the POI and the amount paid on the government-provided loan (see 19 CFR 351.505(a)(1)). For long-term variable-rate loans, in accordance with 19 CFR 351.505(a)(5), we first compared the benchmark interest rate to the rate on the government-provided loan for the year in which the government loan terms were established, *i.e.*, the origination year. This comparison showed that the government loan provided a benefit. Accordingly, we preliminarily find that these loans confer countervailable subsidies pursuant to section 771(5) of the Act.

In order to calculate the countervailable subsidy rates, we divided the benefit received by each company during the POI by each company's total sales during the POI. To calculate the benefit from these loans, we computed the difference between the amount that would have been paid on the benchmark loans to the amounts actually paid on the government loans (*see* 19 CFR 351.505(c)(2) and (c)(4)). On this basis, we preliminarily determine the countervailable subsidy from the FHLP loans to be 0.14 percent ad valorem for Hart and 0.03 percent ad valorem for BSG.

B. Manitoba Agricultural Credit Corporation ("MACC") Financing: Diversification Loan Guarantee ("DLG") Program and Enhanced Diversification Loan Guarantee ("EDLG") Program

MACC administers both the DLG and the EDLG programs. The DLG program was introduced in December 1995 and was terminated on March 31, 2001. The EDLG program replaced the DLG program on April 1, 2001. Both programs assist producers in diversifying their current operations and/or adding value to commodities produced on the farm.

The DLG program was initially open to all Manitoba individuals, corporations, partnerships, limited partnerships, and cooperatives engaged in agriculture production. In 1998, eligibility was extended to include non-residents of Manitoba that were Canadian citizens or permanent residents as long as the majority of care and control of the project was held by Manitoba agriculture producers. Under the DLG program, the GOM, through MACC, provided a loan guarantee for 25 percent of the principal provided by private sector lenders for the lesser of the term of the loan or 15 years. The maximum amount of money that a participant could borrow under this program was C$3,000,000. Additionally, the maximum number of shareholders permitted per project was 25.

The EDLG Program operates in much the same manner as the DLG Program with a few differences. Under the EDLG program, there are no limits on the amount of money that a participant in the program can borrow, and the limitation on the number of shareholders per project was eliminated.

However, applications for guarantees in excess of C$750,000 (25 percent of a C$3,000,000 loan) are subjected to additional review.

Hytek, Premium, and Hart companies all reported that they had loans that were guaranteed under these programs outstanding during the POI.

The GOM reported that hog farmers received approximately 62 to 73 percent of all guarantees given under the DLG and EDLG programs from 2000 through 2003. Based on this, we preliminarily determine that the swine industry received a disproportionate share of benefits from 2000 through 2003, and, consequently, that these programs are specific under section 771(5A)(D)(iii)(III) of the Act.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act. Furthermore, these guarantees provide a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. *See* section 771(5)(E)(iii) of the Act and 19 CFR 351.506. Therefore, we preliminarily determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by these programs, we used our long-term, fixed-rate or variable-rate loan methodology (depending on the terms of the reported loans) as specified in 19 CFR 351.505. *See* 19 CFR 351.506(a). To calculate the POI subsidy amount, we divided the total POI benefit from these loan guarantees for each company by each company's total sales during the POI.

On this basis, we preliminarily determine the countervailable subsidy from these programs to be 0.11 percent ad valorem for Hart, 0.03 percent ad valorem for Hytek, and 0.01 percent ad valorem for Premium.

C. Saskatchewan Short-Term Hog Loan Program

The STHLP was created by the GOS in October 2002 in order to assist Saskatchewan swine producers with high feed prices brought on by a severe drought in 2001 and 2002 and low market prices in 2002 and 2003. Under the program, hog producers could receive three-year, variable-rate loans that did not require repayment until either (1) hog prices rose above C$150 per hundred kilograms or (2) no later than May 1, 2004, with all loans and accrued interest going into repayment at that time. No payments were made on these loans by producers of mature hogs during the POI except during a single two-week period in June 2003; weanling producers began making continuous repayments starting at the time of the June 2003 trigger period.[2]

In order to receive loans through this program, producers were required to complete a single application for a loan similar to a line of credit. Once approved, the producers could then submit invoices on hogs marketed monthly between September 3, 2002 and April 30, 2003 to draw down on their approved loan, with interest on the draw-down amounts accumulating monthly. The individual draw-down amounts were per-hog amounts based on sales of either weanlings or mature hogs (defined as slaughter hogs or breeding hogs) only, with the loan amount differing depending on whether it was a mature hog or a weanling. The last date that a company could apply for benefits under the program was June 15, 2003, in connection with hogs sold prior to April 30, 2003.

Only companies that were part of the Hytek group had outstanding loans through this program during the POI.

We preliminarily determine that these loans are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. These loans are also specific as a matter of law within the meaning of section 771(5A)(D)(i) of the Act because they are limited to producers of mature and weanling hogs.

Because the recipients of these loans might have to begin repayment whenever the price of weanlings or mature hogs rose above pre-established trigger prices during the POI, we have preliminarily determined to treat the drawdowns taken during the POI as short-term loans that were rolled over each time new amounts were taken out or interest accumulated. Comparing the interest charged on these loans to the interest that would have been paid on a short-term benchmark loan, we preliminarily determine that the STHLP conferred a benefit on the recipients (*see* 19 CFR 351.505(a)(1)).

To calculate the POI subsidy amount, we divided the total POI benefit from these loans by Hytek's total sales of subject merchandise in the POI. On this basis, we preliminarily determine the countervailable subsidy from the STHLP loans to be 0.00 percent ad valorem for Hytek.

D. Saskatchewan Livestock and Horticultural Facilities Incentives Program ("LHFIP")

The LHFIP was created by the GOS in June 1997 to rebate the provincial sales tax ("PST") paid on construction materials and equipment for livestock and horticultural facilities. Specifically, this program allowed for an annual refund of the PST (which was called the education and health tax at the time of the program's creation) paid on building materials and stationary equipment used in livestock operations, greenhouses, or storage facilities for vegetables, raw fruits, medicinal plants, herbs and spices. The purpose of this program was to assist in the diversification of Saskatchewan's rural economy by encouraging investment and job creation.

In order to receive this tax rebate, producers in the above industries had to submit applications to the GOS along with all purchase receipts to verify the types of materials purchased and the amount of the PST paid at the time of the purchase. Once the GOS confirmed that the application was for materials for eligible facilities on which the PST had been paid, the GOS then refunded to the producer the amount of the PST paid. The LHFIP expired on December 31, 2003, and the last date on which a producer could apply for benefits under this program was June 30, 2004.

Only companies that were part of the Hytek group reported receiving assistance through the LHFIP during the POI.

The Department found that LHFIP tax rebates were countervailable subsidies in *Cattle from Canada* (*see* 64 FR 57040, 57047). Specifically, the Department found that the tax benefits under this program were financial contributions as described in section 771(5)(D)(ii) of the Act which provided a benefit to the recipient in the amount of the tax savings. Also, because the legislation establishing this program expressly limited the tax benefits to the livestock and horticulture industries, we determined that the program was specific under section 771(5A)(D)(i) of the Act. The facts on the record with respect to this program are the same as in *Cattle from Canada*.

In the instant proceeding, the GOS has claimed that the LHFIP is integrally linked to the tax exemptions permitted under the Provincial Sales Tax Act. According to 19 CFR 351.502(c), unless the Department determines that two or

[2] Repayment schedules during the POI were triggered only once during a two-week period from June 1, 2003 to June 15, 2003 when market prices for slaughter hogs exceeded the base of C$150 per hundred kilograms. After prices went back below the base rate, mature hog producers were again allowed to defer payments until the next time prices exceeded the base rate or until May 1, 2004; weanling producers were required to continue making repayments followign the trigger period.

more programs are integrally linked, the Department will determine the specificity of a program under section 771(5A)(D) of the Act solely on the basis of the availability and use of the program in question. This section of the Department's regulations states that the Department may find two or more programs to be integrally linked if (1) the subsidy programs have the same purpose; (2) the subsidy programs bestow the same type of benefit; (3) the subsidy programs confer similar levels of benefits on similarly situated firms; and (4) the subsidy programs were linked at inception. *See* 19 CFR 351.502(c).

Based on a review of record information, we preliminarily determine that the LHFIP and the tax exemptions permitted under the Provincial Sales Tax Act are not integrally linked. Under the Provincial Sales Tax Act, all agricultural producers are exempt from paying the PST on select inputs (*e.g.*, machinery and fertilizer) used in their production. In addition, livestock and horticultural operators receive PST refunds for materials used in the construction of new facilities. According to the GOS, this additional tax relief is given to livestock and horticultural operators because they do not benefit as much as other agricultural producers from the more broadly available tax exemption. Thus, the GOS is seeking to balance the treatment of all agricultural producers. Furthermore, the GOS deemed that it was too difficult to require that the vendors of construction materials identify if such purchases were for agricultural or non-agricultural use. Thus, the LHFIP was created to provide PST tax refunds on materials used to construct facilities for livestock and horticultural operators without requiring vendors to identify if the end-use of such facilities was for agricultural purposes.

In accordance with 19 CFR 351.502(c)(1), the subsidy programs must have the same purpose to qualify for integral linkage treatment. Because the LHFIP provides tax refunds to a subset of users that can obtain the tax exemptions permitted under the Provincial Sales Tax Act for an activity that does not qualify for a tax exemption in the Provincial Sales Tax Act (*i.e.*, the construction of facilities), the programs have different purposes.

Additionally, in accordance with 19 CFR 351.502(c)(3), integrally linked programs must confer similar levels of benefits on similarly situated firms. Under the LHFIP, tax refunds are available for livestock and horticultural operators who make specified purchases in conjunction with building facilities. While PST exemptions are available to numerous consumers for purchases of specified items, there is no exemption or rebates of the PST for other companies purchasing construction materials. Thus, similarly-situated firms, *i.e.*, those undertaking construction, are not receiving similar levels of benefits.

Based on the above analysis, we preliminarily find that these programs are not integrally linked in accordance with 19 CFR 351.502(c). Consistent with our findings in *Cattle from Canada*, discussed above, the current record indicates that the tax benefits under this program were financial contributions as described in section 771(5)(D)(ii) of the Act which provided a benefit to the recipient in the amount of the tax savings. Also, the legislation establishing this program expressly limited the tax benefits to the livestock and horticulture industries. Thus, based on the record evidence, which provided no new information that would cause us to depart from our previous determination on this program from *Cattle from Canada*, we preliminarily find that LHFIP tax rebates are countervailable subsidies within the meaning of section 771(5) of the Act.

In calculating the benefit, consistent with 19 CFR 351.524(c)(1), we treated the tax savings as a recurring benefit and divided the tax savings received during the POI by Hytek's total sales during the POI. On this basis, we determine that a countervailable benefit of 0.00 percent *ad valorem* exists for Hytek for this program.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Canadian Farm Income Program/ Agricultural Income Disaster Assistance Program

The CFIP and the AIDA program provided income support to agricultural producers in Canada. The AIDA program was in effect only for the 1998 and 1999 tax years; the CFIP replaced the AIDA program in 2001, extending the assistance through the 2000, 2001, and 2002 tax years. These programs were national programs that were available in all provinces, and were jointly funded by the federal and provincial governments. The GOC directly administered these programs for producers in some provinces; in the remaining provinces, the provincial governments administered the programs on behalf of their own province (or another province) and the GOC. The last date that a company could apply for an AIDA program payment was September 29, 2000; the last date a company could receive an AIDA program payment was March 31, 2003 (except for appeals). The last date that a company could apply for a CFIP payment was October 13, 2003; the last date a company can receive a CFIP payment is March 31, 2005.

The purpose of these programs was to provide short-term income support to eligible applicants who, due to circumstances beyond their control, experienced a dramatic reduction in their farming income relative to previous years. To be eligible for these benefits, a producer's farming income for the year had to fall below 70 percent of the producer's average farming income level in a historical reference period (consisting of either the producer's average farming income over the three preceding years, or the average farming income in three of the preceding five years after eliminating the high and low years). Payments under the programs were intended to bring the producer's farming income back to 70 percent of the historical average, and were calculated by subtracting program year farming income from 70 percent of the historic average. If producers were also participating in the Net Income Stabilization Account ("NISA") program,[3] program payments under these programs were reduced by an amount equivalent to three percent of the applicant's claim year eligible net sales in order to eliminate duplicate support payments.

All agricultural producers who filed a tax return with the Canada Customs and Revenue Agency ("CCRA"), had been actively engaged in farming for six consecutive months in the province for

[3] The Department examined the NISA program in both *Cattle from Canada*, 64 FR 57040, 57054, and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408, 52410 (October 7, 1996) (*"Live Swine 91/92, 92/93, 93/94 Review"*) and found that this program was neither *de facto* nor *de jure* specific in accordance with section 771(5A) of the Act separately with respect to the cattle and live swine industries and, thus not countervailable. As described in *Cattle from Canada*, NISA is designed to stabilize an individual farm's overall financial performance through a voluntary savings plan. Farmers can deposit a portion of the proceeds from their sales of eligible, enrolled NISA commodities (up to three percent of net eligible sales) into individual savings accounts, receive matching government deposits, and make additional, non-matchable deposits, up to 20 percent of net sales. A producer can withdraw funds from a NISA account under a stabilization or a minimum income trigger. The stabilization trigger permits withdrawal when the gross profit margin from the entire farming operation falls below an historical average, based on the previous five years. If poor market performance of some products is offset by increased revenues from others, no withdrawal is triggered. The minimum income trigger permits the producer to withdraw the amount by which income from the farm falls short of a specific minimum income level.

which they were applying, and had completed one production cycle for an agricultural product could apply to receive funds under the CFIP and the AIDA program. In order to receive funds, participating producers were required to submit an application each time they wanted to receive a program payment. However, approval was automatic as long as the applicants met the eligibility criteria and the program requirements noted above and discussed in the program handbooks.

Hytek, Maple Leaf/Elite, BSG, and Park View companies all received funds through the CFIP during the AUL period. Hytek, Maple Leaf/Elite, BSG, Premium, Hart, and Park View companies all received payments under the AIDA program during the AUL period.

Under 19 CFR 351.524(c), the Department first looks to the illustrative list of recurring and non-recurring subsidies to determine whether a particular subsidy should be treated as recurring or non-recurring. Income support payments are not included in the illustrative list. Therefore, we have turned to the test described in 19 CFR 351.524(c)(2) for determining whether payments under CFIP and the AIDA program should be allocated over time or expensed in the year of receipt. First, although each program was in effect for a limited period of time, there is no information to suggest that agricultural income support payments would terminate. *See* 19 CFR 351.524(c)(2)(i). Second, according to the GOC, as long as producers met the pre-established eligibility criteria, discussed above, they could expect to receive additional subsidies under these program on an ongoing basis notwithstanding the fact that an application was required. *See* 19 CFR 351.524(c)(2)(ii). Finally, the subsidy was not provided to, or tied to, the recipients' capital structure or assets. *See* 19 CFR 351.524(c)(2)(iii). Thus, we have preliminarily determined that these programs are recurring subsidies under 19 CFR 351.524(a).[4]

Because none of the responding companies received AIDA benefits during the POI, we preliminarily find that no benefit was provided during the POI under the AIDA program. Thus, the AIDA program did not confer a countervailable subsidy.

With regard to the CFIP, we examined whether this program was specific within the meaning of section 771(5A) of the Act. As noted above, any agricultural producer who filed a tax return with the CCRA, had been actively engaged in farming for six consecutive months in the province for which it was applying, had completed one production cycle for an agricultural product, and whose farming income for the year fell below 70 percent of its average farming income level in a historical reference period could receive funds under this program. According to 19 CFR 351.502(d), the Department will not regard a domestic subsidy as being specific under section 771(5A)(D) of the Act solely because it is limited to the agricultural sector. Moreover, the funds provided under the CFIP were neither export subsidies nor import substitution subsidies according to sections 771(5A)(B) and (C) of the Act, nor is there any basis to find that assistance under the CFIP program is *de jure* specific within the meaning of section 771(5A)(D) of the Act.

We next examined whether the CFIP was *de facto* specific according to section 771(5A)(D)(iii) of the Act. Based on record information, thousands of Canadian farmers across many different agricultural sectors received benefits under the CFIP. Thus, CFIP recipients were not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. As noted above, eligibility was based on established criteria and receipt was automatic as long as the above-noted requirements were met. Thus, the criteria in section 771(5A)(D)(iii)(IV) of the Act are also not met.

We also examined the sectoral distribution of benefits under these programs within the agricultural community in accordance with sections 771(5A)(D)(iii)(II) and (III) of the Act. With regard to the usage data reported by the GOC for this program, the petitioners have argued that certain usage categories reported by the GOC were overly broad. The petitioners have also pointed to *Cattle from Canada*, where the Department found a program to be specific for certain years because the beef and pork industries together received a disproportionate share of the assistance provided under the program. *See Cattle from Canada*, 64 FR 57040, 57042. In light of this precedent, the petitioners argue that the Department should not examine hogs separately and should instead classify hogs together with other livestock.

We disagree with the petitioners' arguments and have based our specificity examination on the categories as they have been reported by the GOC. First, with regard to the categories that the petitioners claim are too broad, we have examined the record evidence and found that the types of category breakdowns used by the GOC in reporting usage data are used in the normal course of business and were not created for the purposes of this investigation. For example, we found in examining record evidence that the types of categories supplied by the GOC are also used in tax documents not related to these programs, program applications, annual reports, and other documents.

We also disagree with the petitioners' arguments that we should combine categories and make our determination based on whether "livestock" was a predominant user or a disproportionate beneficiary of this program. In *Cattle from Canada*, we examined specificity for the Farm Improvement and Marketing Cooperatives Guaranteed Loans ("FIMCLA") program by looking at both hogs and cattle because, at the time, the FIMCLA administration did not keep separate records on the cattle industry and could not break out cattle separately. *See Cattle from Canada*, 64 FR 57040, 57042. Those categories are now separately broken out. Thus, our treatment of the FIMCLA program in *Cattle from Canada* should not be viewed as a preference for combining product categories and aggregating data. Indeed, as noted above, in that same case, the Department found that the NISA program was not *de facto* specific to cattle by examining cattle separately from other livestock. *See Cattle from Canada*, 64 FR 57040, 57054. Moreover, as also noted above, in a prior proceeding on live swine from Canada, the Department found that the NISA program did not benefit swine disproportionately. *See Live Swine 91/92, 92/93, 93/94 Review*, 61 FR 52408, 52410. Thus, where the data could be disaggregated, the Department has not combined different livestock categories for purposes of its specificity analysis.

Finally, according to data from Statistics Canada, swine producers collected 9.94 percent of total agricultural cash receipts in 2003. *See* the August 16, 2004 proprietary memorandum entitled "Specificity Issues for Certain Programs: Canadian Farm Income Program, Farm Improvement and Marketing Cooperatives Guaranteed Loans, and Transitional Assistance" ("*Specificity Memo*"), which is on file in the Department's CRU. Because this

[4] The petitioners have argued that the income support payments can be likened to coverage for operating losses and, hence, should be deemed non-recurring subsidies. We disagree with the petitioners' analogy because the payments under the AIDA program and the CFIP are not based on operating losses. Instead, they are based on income and, as such, may be more analogous to price support payments, which are included on the illustrative list as recurring benefits. In any case, because income support payments are not included in the illustrative list, we have based our decision on 19 CFR 351.524(c).

program is available to all agricultural producers, it may be reasonable to assume that the producers would receive benefits in amounts proportional to their role in the overall agricultural economy. In fact, based on the GOC's usage data, the swine industry actually receives less than 9.94 percent of the total benefits provided under this program.

The petitioners' claim and the Department's position are discussed further in the *Specificity Memo*.

Based on our analysis of the usage data for the CFIP (which is proprietary), we preliminarily find that the live swine industry was not a predominant user of the CFIP nor did it receive a disproportionately large share of the benefits under the CFIP. *See* sections 771(5A)(D)(iii)(II) and (III) of the Act. Thus, the CFIP is not *de facto* specific according to section 771(5A)(D)(iii). Consequently, because assistance under the CFIP is not specific as a matter of law or fact, we preliminarily determine that the CFIP does not confer a countervailable subsidy on live swine from Canada.

The GOC has claimed that both the CFIP and the AIDA program are entitled to green box treatment under section 771(5B)(F) of the Act and are, therefore, not countervailable. However, because we preliminarily determine that neither program conferred a countervailable subsidy during the POI, we have not addressed the GOC's claim.

B. Transitional Assistance Program

The Transitional Assistance program (also called Risk Management Funding), which was created in 2002, was a GOC-funded program that provided stop-gap assistance to the Canadian agricultural sector to transition producers from prior programs that had already expired (*e.g.*, CFIP and the AIDA program) to the CAIS Program, which was still in the process of being implemented.

Transitional Assistance was provided to producers in two tranches, each using a different delivery method. Most of the first tranche of funds was deposited into new or existing accounts held for producers under the NISA program; the remainder of the first tranche went to non-NISA participating producers in Quebec as direct payments. The tranche one Transitional Assistance funds were deposited into NISA fund two (the government contribution fund). Once deposited, the tranche one payments were indistinguishable from the other NISA fund two monies.[5] The second tranche of payments was made directly to producers. For administrative purposes, the payments were recorded as payments into and immediate withdrawals from NISA. However, unlike the first tranche, these payments were not subject to any NISA requirements and were paid directly to producers in the form of checks.

All agricultural producers were eligible to receive Transitional Assistance except those whose products are subject to supply management (dairy and poultry producers). Producers with existing NISA accounts did not need to apply to receive benefits because the information needed to calculate the Transitional Assistance could be obtained from the NISA database. NISA account holders automatically received their payments under tranches one and two. Producers that did not have NISA accounts had to open one to receive benefits, except for producers in Quebec; producers in Quebec that did not have a NISA account had to submit an application to receive benefits under this program.

The payment amounts for all producers were calculated as a percentage of eligible net sales (as computed under NISA) for the previous five years; for tranche one, the payment was 4.25 percent of the average of eligible net sales from 1997 through 2002, and for tranche two, the payment was 3.85 percent of the same sales for 1998 through 2003. Approval for benefits under this program was automatic if producers met the above-noted criteria. The last date that a company could apply for or claim a payment under this program was December 31, 2003.

Hytek, Maple Leaf/Elite, BSG, Premium, Willow Creek, Hart, and Park View companies all reported receiving funds through the Transitional Assistance Program during the AUL period.

As described above, producers of virtually all agricultural products were eligible to receive funds under this program. According to 19 CFR 351.502(d), the Department will not regard a domestic subsidy as being specific under section 771(5A)(D) of the Act solely because it is limited to the agricultural sector. Moreover, these Transitional Assistance funds were neither export subsidies nor import substitution subsidies according to sections 771(5A)(B) and (C) of the Act, nor is there any basis to find that Transitional Assistance is de jure specific within the meaning of section 771(5A)(D) of the Act.

Next, we examined whether Transitional Assistance was de facto specific according to section 771(5A)(D)(iii) of the Act. According to record information, thousands of Canadian farmers across many different agricultural sectors received Transitional Assistance. Thus, recipients of Transitional Assistance were not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. As noted above, eligibility was based on established criteria and receipt was automatic as long as the above-noted requirements were met. Thus, the criteria in section 771(5A)(D)(iii)(IV) of the Act are also not met.

Finally, we examined the sectoral distribution of benefits under these programs within the agricultural community in accordance with sections 771(5A)(D)(iii)(II) and (III) of the Act.[6] According to data on the distribution of benefits under this program across producers of different agricultural products, we preliminarily find that the live swine industry was not a predominant user of the Transitional Assistance program, nor did it receive a disproportionately large share of the benefits under the Transitional Assistance program. *See* sections 771(5A)(D)(iii)(II) and (III) of the Act. *See also* the *Specificity Memo* for our analysis of the proprietary usage data. Also, as noted above, while swine producers collected 9.94 percent of total agricultural cash receipts in 2003 their share of Transitional Assistance benefits was less than that. Thus, the Transitional Assistance program is not de facto specific under section 771(5A)(D)(iii) of the Act.

Consequently, because assistance under the Transitional Assistance Program is not specific as a matter of law or fact, we preliminarily determine that this program does not confer a countervailable subsidy on live swine from Canada. *See* section 771(5A) of the Act.

The GOC has claimed that the funds disbursed as part of tranche two of the Transitional Assistance Program are entitled to green box treatment under section 771(5B)(F) of the Act and are, therefore, not countervailable. However, because we preliminarily determine that Transitional Assistance does not provide a countervailable subsidy during the POI, we have not addressed the GOC's claim.

[5] NISA accounts consist of two funds. The first fund holds all producer deposits; the second fund holds all government matching contributions and earned interest. Withdrawals are taken first from fund two (the government matching funds) and then from fund one (the producer's own funds).

[6] The petitioners raised the same arguments as described above in connection with the CFIP and the AIDA program regarding the specificity of Transition Assistance. Our position is also described there.

C. Farm Improvement and Marketing Cooperatives Guaranteed Loans

Under FIMCLA, the GOC provides guarantees on loans extended by private commercial banks and other lending institutions to farmers across Canada. Enacted in 1987, the purpose of this program is to increase the availability of loans for the improvement and development of farms, and the marketing, processing, and distribution of farm products by cooperative associations. Pursuant to FIMCLA, any individual, partnership, corporation, or cooperative association engaged in farming in Canada is eligible to receive loan guarantees covering 95 percent of the debt outstanding for projects that are related to farm improvement or increased farm production. The maximum amount of money that an individual can borrow under this program is C$250,000. For marketing cooperatives, the maximum amount is C$3,000,000; however, any amount above C$250,000 is subject to prior approval by the GOC.

BSG, Premium, and Maple Leaf/Elite companies all had loans outstanding during the POI that were guaranteed under FIMCLA.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act. Furthermore, these guarantees provide a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. *See* section 771(5)(E)(iii) of the Act and 19 CFR 351.506. In order to determine whether this program conferred a benefit, we used our long-term fixed-rate or variable-rate loan methodology (depending on the terms of the reported loans) to compute the total benefit on the reported loans. *See* 19 CFR 351.505 and 19 CFR 351.506(a). We preliminarily determine that the guaranteed loans under this program taken out in 1997, 1998, 1999, 2000, and 2003 did not provide a benefit to the respondent companies. Therefore, we preliminarily determine that the FIMCLA loan guarantees issued on these loans do not provide a countervailable subsidy according to section 771(5)(B) of the Act. Because these loan guarantees did not confer a benefit on live swine from Canada during the POI, there was no need for the Department to further examine whether these guarantees were specific within the meaning of section 771(5A) of the Act.

The only other year for which respondents had FIMCLA-guaranteed loans was 2001. We preliminarily determine that these guarantees are not specific with regard to the swine industry in 2001 under section 771(5A)(D) of the Act. As described above, the FIMCLA program is available to any individual, partnership, corporation, or cooperative association that is engaged in farming in Canada. According to 19 CFR 351.502(d), the Department will not regard a domestic subsidy as being specific under section 771(5A)(D) of the Act solely because it is limited to the agricultural sector. Moreover, the guarantees under this program were neither export subsidies nor import substitution subsidies according to sections 771(5A)(B) and (C) of the Act, nor is there any basis to find that these guarantees were de jure specific within the meaning of section 771(5A)(D) of the Act.

Next, we examined whether this program was de facto specific with regard to the swine industry in 2001 according to section 771(5A)(D)(iii) of the Act. According to record information, thousands of Canadian farmers across many different agricultural sectors received guarantees under this program. Thus, recipients of these guarantees were not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. Eligibility was based on established criteria and was automatic as long as the eligibility criteria were met. Thus, the criteria in section 771(5A)(D)(iii)(IV) of the Act are also not met.

Finally, we examined the sectoral distribution of benefits under these programs within the agricultural community in accordance with sections 771(5A)(D)(iii)(II) and (III) of the Act.[7] According to data on the distribution of benefits under this program across producers of different agricultural products, we preliminarily find that the live swine industry was not a predominant user of the FIMCLA program in 2001, nor did it receive a disproportionately large share of the guarantees under the FIMCLA program in 2001. *See* sections 771(5A)(D)(iii)(II) and (III) of the Act. *See also* the *Specificity Memo* for our analysis of the proprietary usage data. In this connection, while swine producers collected 10.54 percent of total agricultural cash receipts in 2001, their share of FIMCLA guaranteed loans in 2001 was less than that. Thus, the FIMCLA program is not de facto specific with regard to the live swine industry in 2001 under section 771(5A)(D)(iii) of the Act.

Based on the above analysis, we find that FIMCLA loan guarantees did not confer a countervailable subsidy on live swine from Canada during the POI.

III. Programs Preliminarily Determined Not To Have Been Used

Based on the information provided in the responses, we determine no responding companies applied for or received benefits under the following programs during the POI:

A. *Producer Assistance 2003 Program/ Canadian Agricultural Income Stabilization Program*
B. *Farm Credit Canada Financing: Enviro-Loan Program*
C. *Alberta Agricultural Financial Services Corporation Financing: Developing Farmer Loan Program*
D. *Alberta Disaster Assistance Loan Program*
E. *Alberta Hog Industry Development Fund Program*
F. *Alberta Livestock Industry Development Fund Program*
G. *Ontario Bridge Funding Program*

In October 2002, the Government of Ontario ("GOO") established the Ontario Bridge Funding Program to provide one-time transition funding to Ontario producers to assist them in making the transition from the former set of safety-net programs to the new CAIS program. All agricultural producers participating in NISA in 2001 were eligible for payments as long as their eligible net sales totaled at least C$2,985. Payments were made automatically to NISA participants; no application was required to receive funding under this program. Payments were made for all commodities except for supply-managed commodities (dairy and poultry) and were calculated at a rate of 0.335 percent of eligible net sales. Both Maple Leaf/Elite and BSG companies received funds under this program in 2002.

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Moreover, according to 19 CFR 351.524(a), the Department will allocate (expense) a recurring benefit to the year in which the benefit is received. If benefits under this program were treated as recurring benefits, under 19 CFR 351.524(a), they would have been allocated to 2002, the year in

[7] The petitioners raised the same arguments as described above in connection with the CFIP and the AIDA program regarding the specificity of FIMCLA. Our position is also described there.

which the benefits were received, and would not have provided a benefit during the POI. If the Department treated these grants as non-recurring, because the amount of the bridge funding grants approved by the GOO for these companies under this program was less than 0.5 percent of each company's sales in the year in which the grants were approved, these grants would be expensed prior to the POI in accordance with 19 CFR 351.524(b)(2). Thus, regardless of whether they were treated as recurring or non-recurring, no countervailable benefit was provided to either Maple Leaf/Elite or BSG during the POI under this program.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 16, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–19278 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–002]

Continuation of Antidumping Duty Order: Chloropicrin From the People's Republic of China

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

ACTION: Notice of Continuation of Antidumping Duty Order: Chloropicrin from the People's Republic of China.

SUMMARY: As a result of the determination by the Department of Commerce ("the Department") and the International Trade Commission ("Commission") that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing notice of the continuation of the antidumping duty order on chloropicrin from the People's Republic of China ("PRC").

EFFECTIVE DATE: August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2004, the Department initiated and the Commission instituted a sunset review of the antidumping duty order on chloropicrin from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended, ("the Act").[1] As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked.[2]

On August 10, 2004, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on chloropicrin from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The merchandise subject to this antidumping duty order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre–plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2904.90.50. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on chloropicrin from the PRC. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five–year review of this order not later than July 2009.

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[1] *See Initiation of Five-year (≥Sunset≥) Reviews*, 69 FR 9585 (March 1, 2004).

[2] *See Chloropicrin from the People's Republic of China; Final Results of the Expedited Sunset Review*, 69 FR 40601 (July 6, 2004).

[3] *See Chloropicrin from China*, 69 FR 48520 (August 10, 2004) and USITC Publication 3712 (August 2004), Investigation No. 731-TA-130 (Second Review).

Dated: August 17, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–19279 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–015. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695–7212. *Instrument:* Cryogen-Free Superconductive Magnet System. *Manufacturer:* Cryogenic Limited, United Kingdom. *Intended Use:* The instrument is intended to be used to study properties of newly synthesized magnetic materials, phase separation phenomena and cluster nanostructure in lanthanide-doped optically-active glasses, and structural arrangements of membrane proteins and phospholipid nanoassemblies including:

1. Zero-field splitting energy for effective integer spin-systems of coupled spins that are spectroscopically silent at lower magnetic fields.
2. Spin-polarization phenomena in novel magnetic materials synthesized at the University.
3. Transmembrane location of membrane proteins.

Additionally, the instrument will be used for quantum computing experiments with essentially pure quantum state attained at magnetic fields above 11 Tesla for an ensemble of quantum dots and for experiments to lift degeneracy of quantum states of electronic spins by applying magnetic field.

Application accepted by Commissioner of Customs: August 4, 2004.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 04–19271 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Santa Cruz; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–014.

Applicant: University of California, Santa Cruz.

Instrument: Electron Microscope, Model JEM–1230.

Manufacturer: JEOL, Japan.

Intended Use: See notice at 69 FR 43805.

Order Date: January 29, 2004.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of the instrument OR at the time of receipt of the application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs.

[FR Doc. 04–19269 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081304B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces receipt of an application for an exempted fishing permit (EFP) from the California Department of Fish and Game (CDFG). This EFP application applies to limited entry groundfish vessels that are used to fish for flatfish in Federal waters south of 40°10′ N. lat. If awarded, this EFP would allow qualifying vessels to use a flatfish-selective small footrope trawl net to catch and retain groundfish in the trawl rockfish conservation area (RCA) and to retain groundfish species in excess of cumulative trip limits. Participating vessels would be required to use and carry state-sponsored samplers. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing data that can be used to enhance management of the groundfish fishery.

DATES: Comments must be received by September 7, 2004.

ADDRESSES: You may submit comments, identified by "I.D. 081304B" by any of the following methods:

- E-mail: *EFP2004CAFlatfish.nwr@noaa.gov*. Include the I.D. number above in the subject line of the message.
- Fax: 206–526–6736, Attn: Becky Renko.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

FOR FURTHER INFORMATION CONTACT: Becky Renko (206) 526–6140 or Carrie Nordeen at (206) 526–6144.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745.

The purpose of this exempted fishing activity would be to collect data on the rate at which unintended species, particularly overfished shelf rockfish such bocaccio and canary rockfish, are

taken in commercial catches when an experimental flatfish-selective trawl net is used. If awarded, this EFP would allow six vessels to use the flatfish-selective trawl nets to fish for flatfish in the Trawl RCA south of 40°10′ N. latitude and to retain groundfish species in excess of cumulative trip limits. Participating vessels will be required to carry state-sponsored samplers to monitor fishing activities and collect data that are otherwise not available shoreside.

Shelf flatfish species are abundant and commercially important off California, however, the harvest of these species is constrained by efforts to rebuild overfished shelf rockfish species, particularly bocaccio and canary rockfish. In 2001 and 2002, the Oregon Department of Fish and Wildlife (ODFW) chartered commercial fishing vessels to develop and test flatfish-selective trawl nets. Testing was conducted to compare the new trawl net configurations with those that are typically used in the groundfish fishery. During the initial testing, a gear configuration similar to the design that is proposed for use under this EFP had significant reductions in the catch of overfished rockfish species relative to the catch of flatfish species. An EFP was issued to ODFW in 2003 to evaluate the performance of the experimental trawl net in the commercial flatfish fishery. This trawl net has since been referred to as "selective flatfish trawl gear."

Because this gear design meets the requirements of small footrope bottom trawl gear, as defined by regulations at 50 CFR 660, it is currently legal to use for fishing and it could become an effective way for fishery participants to reduce rockfish bycatch in the flatfish fishery south of 40°10″ N. lat. Vessels participating under this EFP must submit a net plan and only gear that is consistent with the specified requirements may be used for EFP fishing. Fishing under this EFP will be restricted to areas outside of 3 nautical miles. The proposed EFP fishing period is from September 1 through December 31, 2004.

Data collected during this project are expected to benefit the management of the groundfish fishery by: (1) Providing catch rates by fishing location of species incidentally caught with the experimental flatfish-selective net, (2) allowing for the collection of biological data that is otherwise not available from landed catch, and (3) providing data that can be used to evaluate the full retention of rockfish as a management approach. The information gathered through this EFP may lead to future rulemaking.

The flatfish limits for limited entry trawl gear south of 40°10′ N. lat., as currently published in the **Federal Register**, will be available to EFP participants. Vessels used to fish under the EFP may fish for these limits within the Trawl RCA as well as in areas not within the Trawl RCA. If the limits are lowered later in the year through an inseason adjustment, the current limits will continue to be allowed under the EFP. The total amount (discard plus retained) of flatfish allowed to be taken under this EFP is not expected to exceed 653 metric tons (mt) and the total amount (discard plus retained) of petrale sole is not expected to exceed 109 mt. The EFP fishing will be constrained by the following EFP limits for overfished species: bocaccio rockfish, 10.0 mt; cowcod, 0.5 mt; yelloweye rockfish, 0.5 mt; canary 0.5 mt; lingcod, 20.0 mt. If the total catch of any one of these overfished species reaches the EFP limit, the EFP will be terminated for the remainder of the 2004 fishing year. All harvests are expected to be within set asides for 2004 EFP harvests and, therefore, no optimum yield is expected to be exceeded.

In accordance with regulations, NMFS determined that CDFG's proposal warranted further consideration and, therefore, consulted with the Council. The Council considered the EFP application during its April 2003 meeting and recommended that NMFS issue the EFP. Contingent on review of public comments, NMFS intends to approve the EFP fishing. A copy of the application is available for review from NMFS (see **ADDRESSES**).

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

Dated: August 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1881 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The Office of the Secretary is proposing to alter the existing system of records to add a new category of individuals covered, *i.e.*, Joint Staff Officials.

DATES: The changes will be effective on September 22, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 601–4722, extension 110.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on August 13, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P48

SYSTEM NAME:

Biographies of OSD and WHS Officials (May 11, 2004, 69 FR 26079).

CHANGES:

* * * * *

SYSTEM NAME:

Add 'JS' to entry.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add 'and the Joint Staff (JS)' to entry.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 192, Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense; and 10 U.S.C., Chapter 5, Chiefs of Staff'.

* * * * *

DWHS P48

SYSTEM NAME:

Biographies of OSD, WHS, and JS Officials.

SYSTEM LOCATION:

Office of the Secretary of Defense, Chief Information Office, ATTN: Biographies of OSD, WHS, and JS Officials, 1950 Defense Pentagon, Room BG849, Washington, DC 20301–1950.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel currently occupying professional positions within the offices of the Office of the Secretary of Defense (OSD), Washington Headquarters Services (WHS), and the Joint Staff (JS). A professional position is one occupied by a civilian in the grade of GS 13 and above or a military officer in the grade of major/lieutenant commander and above; employees in developmental programs such as Presidential Management Interns and Defense Fellows; and employees from other organizations serving as detailees and serving under intergovernmental personnel act agreements who are integrated within the OSD, WHS, and JS workforce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Basic biographical information on individual OSD, WHS, and JS staff to include full name of the individual; rank/grade; title; organization/office; current assignments within OSD, WHS, and JS (starting with present and working backwards to cover all periods of assignment within OSD, WHS, and JS) past experiences (a brief history of other related past experiences); and education (optional). A photograph of the individual is optional.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense and 10 U.S.C. 192, Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense; and 10 U.S.C., Chapter 5, Joint Chiefs of Staff.

PURPOSE(S):

To provide the Secretary and Deputy Secretary of Defense, as well as the OSD Principal Staff Assistants (PSA), the Directors, Washington Headquarters Services and the Joint Staff with immediate access to biographical information on the OSD, WHS, and JS staff personnel. PSAs and the Directors of WHS and JS will only have access to those biographies for personnel who are employed, assigned, or detailed to their respective offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices applies to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on electronic media.

RETRIEVABILITY:

Retrieved alphabetically by the individual's full name.

SAFEGUARDS:

Records are maintained in a secure, limited access or monitored area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is limited to those who require the records to perform their official duties. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Records are deleted when the individual concerned departs the OSD, WHS, or JS staff.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Human Resources Directorate, ATTN: Biographies of OSD, WHS, and JS Officials, 2521 Jefferson Davis Highway, Room 3124, Arlington, VA 22202–3903.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Human Resources Directorate, ATTN: Biographies of OSD, WHS, and JS Officials, 2521 Jefferson Davis Highway, Room 3124, Arlington, VA 22202–3903.

Requests for information should contain individual's full name.

RECORDS ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system of records should address written inquiries to the Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Human Resources Directorate, ATTN: Biographies of OSD, WHS, and JS Officials, 2521 Jefferson Davis Highway, Room 3124, Arlington, VA 22202–3903.

Requests for information should contain individual's full name.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source of record is from the individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–19183 Filed 8–20–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent (NOI) To Prepare Environmental Impact Statement(EIS) for F–35 Force Development Evaluation and Weapons SchoolPermanent Beddown at Nellis AFB, NV

AGENCY: Air Combat Command, United States Air Force.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act(NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and AirForce policy and procedures (32 CFR part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of stationing F–35 tactical fighter aircraft at Nellis Air Force Base (AFB), Nevada.

A total of 36 F–35 aircraft would be permanently based at Nellis AFB in support of the Force Development Evaluation (FDE) mission and the United States Air Force Weapons School (USAFWS). The FDE mission is to test and evaluate state-of-the-art weapons systems and develop leading-edge tactics to improve the future combat capability of Air Force aerospace forces. The USAFWS mission

is to teach graduate-level instructor courses, which provide advanced training in weapons and tactics employment to officers of the combat air forces. The beddown would occur in phases between the years 2009 and 2028. The proposed action would also include facility construction on Nellis AFB to be accomplished over a 3-year period, beginning in fiscal year 2007. The AirForce will consider all environmental issues supporting the beddown, however, the Air Force has currently identified air quality and noise as issues requiring detailed analysis.

The Air Force will host a series of scoping meetings to receive public input on alternatives, concerns, and issues to be addressed in the EIS. The schedule and locations of the scoping meetings are as follows:

Monday, September 13, 2004	Carson City Plaza Hotel, 801 S. Carson Street.
Tuesday, September 14, 2004	Alamo,Lincoln County Annex, 100 South First West Street.
Wednesday, September 15, 2004	Pioche,Pioche Town Hall,Hinman and Main Streets.
Thursday, September 16, 2004	Pahrump Bob Ruud Community Center, 150 N. Highway 160—Room B.
Friday, September 17, 2004	Las Vegas,Hollywood Recreation Center 1650, S. Hollywood.

The Air Force will accept comments at any time during the environmental analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl Parker, HQ ACC/CEVP, 129 Andrews St., Suite 102, Langley AFB, VA 23665–2769, (757–764–9334).

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–19198 Filed 8–20–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on September 22, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 13, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AFAPO A

SYSTEM NAME:

Air Force Art Program.

SYSTEM LOCATION:

Air Force Art Program Office, 1720 Air Force Pentagon, Washington, DC 20330–1720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and inactive artists whose work is included in the Air Force Art Collection and individuals donating art.

CATEGORIES OF RECORDS IN THE SYSTEM:

Artist name, mailing address, phone numbers (home, work, and cell), Social Security Number, Passport Number for overseas travel, foreign ID number, birth date, Art Society Affiliation, e-mail address, and biography. Individuals donating art (collectors): name, mailing address, e-mail address and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 84–104, Art Program; and E.O. 9397 (SSN).

PURPOSES(S):

Used by the Air Force Art Program Office to manage all aspects of the Air Force Art Collection, including inventories of artwork; to facilitate the artists' travel in support of the Art Program, to include generation of travel orders, trip coordination, and base access. The information is also used to maintain a current artists' or collector's record for participation in the program for mail-outs, and quarterly updates about the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers, and on computer output and storage products.

RETRIEVABILITY:

Records relating to the artists are retrieved by name or social security number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Destroy when superseded, obsolete or no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Non-Commissioned Officer In Charge, Air Force Art Program Office, 1720 Air

Force Pentagon, Washington, DC 20330–1720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Air Force Art Program Office, 1720 Air Force Pentagon, Washington, DC 20330–1720.

Requests should include the full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to or visit the Air Force Program Office, 1720 Air Force Pentagon, Washington, DC 20330–1720.

Requests should include the full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, source documents such as reports and forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–19184 Filed 8–20–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army is adding a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 22, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Army, Freedom of Information/Privacy Act Office. 7701 Telegraph Road, Alexandria, VA 22315–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6504.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 13, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0350 USEUCOM

SYSTEM NAME:

George C. Marshall European Center for Security Studies Speaker Files.

SYSTEM LOCATION:

George C. Marshall European Center for Security Studies, Unit 24502, ATTN: ECMC–CL, APO AE 09053–0506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who by virtue of their training, education or experience are qualified to make presentations on security and defense related matters to the Marshall Center student population, American and German Federal government military and civilian employees, NATO officers and academics, and university scholars.

CATEGORIES OF RECORDS IN THE SYSTEM:

Candidates' name, nationality, occupation, candidates' list of published articles/books, area of expertise, biographical sketches, institution address, phone number of the speaker, educational and professional qualifications, evaluation forms, and similar or related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; DoD 5200.34, George C. Marshall European Center for Security Studies; and DoD 5010.16, Defense Management Education and Training Program.

PURPOSE(S):

To maintain a consolidated file of specified personnel which will provide a source of qualified speakers who can inform and promote the discussion of and the resolution of complex Atlantic-European-Eurasian national security and civilian-military defense related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETIRING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records and electronic storage medium.

RETRIEVABILITY:

By individual's name and topical subject.

SAFEGUARDS:

Records are maintained within secure building in areas accessible only to persons having official need and who are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Individual records will be maintained by the component for 2 years after the speaker last participates in a Marshall Center speech, presentation, conference or other similar type event. Individual records will be destroyed by the component at that time by a qualified component employee using a method that will prevent inadvertent disclosure of personal information.

SYSTEM MANAGER(S) AND ADDRESS:

Dean, College of International and Security Studies, George C. Marshall European Center for Security Studies, Unit 24502, ATTN: ECMC–CL, APO AE 09053–0506.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Dean, College of International and Security Studies; George C. Marshall European Center for Security Studies, Unit 24502, ATTN: ECMC–CL, APO 09053–0506.

Individual should provide the full name, sufficient details to locate records, current mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Dean, College of International and Security Studies; George C. Marshall European Center for Security Studies, Unit 24502, ATTN: ECMC–CL, APO AE 09053–0506.

Individual should provide the full name, sufficient details to locate records, current mailing address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–19186 Filed 8–20–04; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army is adding a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 22, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Army, Freedom of Information/Privacy Act Office, 7701 Telegraph Road, Alexandria, VA 22315–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6504.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 13, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0055 USEUCOM

SYSTEM NAME:

Europe Command Travel Clearance Records.

SYSTEM LOCATION:

Headquarters, United States European Command, Computer Network Operations Center, Building 2324, P.O. Box 1000, APO AE 09131–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, DoD civilians, and non-DoD personnel traveling under DoD sponsorship (*e.g.*, contractors, foreign nationals and dependents) and includes temporary travelers within the United States European Command's (USEUCOM) area of responsibility as defined by the DoD Foreign Clearance Guide Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel requests, which contain the individual's name; rank/pay grade; Social Security Number; military branch or department; passport number; Visa Number; office address and telephone number, official and personal email address, detailed information on sites to be visited, visitation dates and purpose of visit.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; DoD 4500.54–G, Department of Defense Foreign Clearance Guide; Public Law 99–399, Omnibus Diplomatic Security and Antiterrorism Act of 1986; 22 U.S.C. 4801, 4802, and 4805, Foreign Relations and Intercourse; E.O. 12333, United States Intelligence Activities; Army Regulation 55–46, Travel Overseas; and E.O. 9397 (SSN).

PURPOSE(S):

To provide the DoD with an automated system to clear and audit travel within the United States European Command's area of responsibility and to ensure compliance with the specific clearance requirements outlined in the DoD Foreign Clearance Guide; to provide individual travelers with intelligence and travel warnings; and to provide the Defense Attaché and other DoD authorized officials with information necessary to verify official travel by DoD personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State Regional Security Officer, U.S. Embassy officials, and foreign police for the purpose of coordinating security support for DoD travelers.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETIRING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by individual's surname, Social Security Number and/or passport number.

SAFEGUARDS:

Electronic records are located in the United States European Command's Theater Requirements Automated Clearance System (TRACS) computer database with built in safeguards. Computerized records are maintained in controlled areas accessible only to authorized personnel with an official need to know access. In addition, automated files are password protected and in compliance with the applicable laws and regulations. Another built in safeguard of the system is records access to the data through secure network.

RETENTION AND DISPOSAL:

Records are destroyed 3 months after travel is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant for Security Matters, Headquarters, United States European Command, Unit 30400, P.O. Box 1000, APO AE 091–1000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Special Assistant for Security Matters, Headquarters, United States European Command, Unit 30400, P.O. Box 1000, APO AE 09131–1000.

Requests should contain individual's full name, Social Security Number, and/or passport number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves that is contained in this system of records should address written inquiries to the Special Assistant for Security Matters, Headquarters, United States European Command, Unit 30400, P.O. Box 1000, APO AE 09131–1000.

Requests should contain individual's full name, Social Security Number, and/or passport number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–19187 Filed 8–20–04; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

[CDFA Nos: 84.116A and 84.116B]

Office of Postsecondary Education, Fund for the Improvement of Postsecondary Education

ACTION: Notice Announcing Technical Assistance Workshops for Fiscal Year (FY) 2005 Comprehensive Program.

SUMMARY: This notice provides information about four workshops to assist individuals interested in learning more about the Fiscal Year (FY) 2005 programs of the Fund for the Improvement of Postsecondary Education (FIPSE). Program staff will present program information and answer questions about FIPSE's programs. The workshops will focus primarily on the Comprehensive Program, which provides grants for innovative reform projects that hold promise as models for the resolution of important issues and problems in postsecondary education. Additional information about FIPSE's programs can be found on the Internet at the following site: *http://www.ed.gov/FIPSE.*

Although the Department has not yet announced an application deadline date for its FY 2005 FIPSE grant competitions in the **Federal Register**, the Department is holding these workshops to give potential applicants relevant background information on FIPSE programs for which grant competitions are expected to be held in FY 2005. Specific requirements for grant competitions will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Levenia Ishmell, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006–8544. Telephone: (202) 502–7668 or by e-mail: *levenia.ishmell@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

SUPPLEMENTARY INFORMATION: The technical assistance workshops will be held as follows:

1. Atlanta, Georgia: Monday, September 27, 12:30–3:30 p.m. Hilton Garden Inn Atlanta Airport-Millenium Center, 2301 Sullivan Road, College Park, GA 30337. Phone: 404–766–0303.

2. St. Louis, Missouri: Wednesday, September 29, 12:30–3:30 p.m. Renaissance St. Louis Airport Hotel, 9801 Natural Bridge Road, St. Louis, MO 63134. Phone: 314–429–1100.

3. Los Angeles, California: Thursday, September 30, 12:30–3:30 p.m. Westin Los Angeles Airport Hotel, 5400 West Century Boulevard, Los Angeles, CA 90045. Phone: 310–216–5858.

4. Washington, DC: Tuesday, October 5, 10 a.m. –1 p.m. with optional writing clinic 2–4 p.m. Barnard Auditorium, Education Department, 400 Maryland Avenue, SW., Washington, DC 20202.

Space at the workshops is limited. Interested individuals are invited to register at this site: *http://www.ed.gov/FIPSE.*

Please indicate the location you are requesting. You will receive an e-mail reply confirming the status of your registration along with exact information on workshop locations. All confirmed registrants are asked to bring their printed e-mail confirmation to the workshop.

Assistance to Individuals With Disabilities Attending the Technical Assistance Workshops

The technical assistance workshop sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the workshop (*e.g.*, interpreting service, assistive listening device, or materials in an alternative format) notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled workshop date. Although we will attempt to meet a request received after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at the 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.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1138–1138d.

Dated: August 18, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–19275 Filed 8–20–04; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Overview Information; Fulbright-Hays Faculty Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.019A.

DATES:

Applications Available: August 27, 2004.

Deadline for Transmittal of Applications: October 19, 2004.

Eligible Applicants: Institutions of higher education (IHE). As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

Estimated Available Funds: The Administration has requested $1,395,654 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $20,000–$100,000.

Estimated Average Size of Fellowship Awards: $55,826.

Estimated Number of Fellowship Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning June 1, 2005. Faculty may request funding for 3–12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program offers opportunities to faculty of institutions of higher education to engage in research abroad in modern foreign languages and area studies.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 663.21(d)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99; and (b) The regulations in 34 CFR part 663.

II. Award Information

Type of Award: Discretionary grants redistributed, as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $1,395,654 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $20,000—$100,000.

Estimated Average Size of Fellowship Awards: $55,826.

Estimated Number of Fellowship Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning June 1, 2005. Faculty may request funding for 3–12 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHE). As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Ms. Eliza Washington or Ms. Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7633 or 7689 or by e-mail: *fra@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the narrative to the equivalent of 10 pages and the bibliography to the equivalent of 2 pages using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, you may single space all text in the charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography and captions.
- Use a font that is either 12-point or larger or no smaller than 10-pitch (characters per inch).
- You may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are included as part of the narrative and counted within the 10 page limit.

The page limit only applies to the application narrative and bibliography. However, faculty applicants must include the complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 27, 2004.

Deadline for Transmittal of Applications: October 19, 2004.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information (including dates and times) about how to submit your application electronically through the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV.6. *Procedures for Submitting Applications* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Procedures for Submitting Applications:*

We are requiring that applications for grants under this program be submitted electronically, unless the applicant IHE

requests a waiver of this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Faculty Research Abroad Fellowship Program—CFDA Number 84.019A must be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

• The process for submitting applications electronically under the Fulbright-Hays Faculty Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *fra@ed.gov:* name of university, full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than September 30, 2004, in order to facilitate timely submission of their applications; (2) Faculty complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual faculty complete and submit reference forms for the faculty and submit them to the IHE's project director using e-Application; and (4) The IHE's project director officially submits the IHE's application, which includes all eligible individual faculty applications, reference forms, and other required forms, using e-Application.

Unless a waiver of the electronic submission requirement has been requested by the applicant, IHE in accordance with the procedures in this section *all* portions of the application must be submitted electronically.

If the applicant IHE is unable to submit an application through the e-GRANTS system, the applicant IHE must submit a written request for a waiver of the electronic submission requirement. In its request, the applicant IHE should explain the reason or reasons that prevent it from using the Internet to submit its application. The applicant IHE should address its request to: Ms. Amy Wilson or Ms. Eliza Washington, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Please submit the request no later than two weeks before the application deadline date. The applicant IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, the applicant IHE is unable to submit an application electronically, it must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant IHE from using the Internet to submit its application.

When using e-Application to complete their parts of the application, individual faculty members, persons providing references and the applicant IHE will be entering data online. Do not e-mail an electronic copy of any part of a grant application to us. The data that is entered online will be saved into a database.

If the applicant IHE participates in e-Application, please note the following:

• The applicant IHE must submit its grant application electronically through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m., Washington, DC time, on the application deadline date. The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and after 7 p.m. on Wednesdays for maintenance, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site. We strongly recommend that applicant IHEs do not wait until the application deadline date to initiate an e-Application package.

• An applicant IHE will not receive additional point value because it submits the application in electronic format, nor will we penalize the applicant IHE if it requests a waiver and submits the application in paper format because the applicant IHE was prevented from submitting the application electronically as required.

• The applicant IHE must submit all documents, electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications.

• The e-Application must comply with any page limit requirements described in this notice.

• After the individual faculty applicant electronically submits his/her application to his/her IHE, the faculty member will receive an automatic acknowledgement. In addition, the applicant IHE's Project Director will receive a copy of this acknowledgement by email. After a person submits a reference electronically, he/she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual faculty applications, to the Department, the applicant IHE will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after the applicant IHE submits its electronic application, it must fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant IHE's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that the applicant IHE give us original signatures on other forms at a later date. *Application Deadline Date Extension in Case of System Unavailability:* If the applicant IHE is prevented from submitting its application on the application deadline date because the e-Application system is unavailable, we will grant the applicant IHE an extension of one business day in order to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

1. The applicant IHE's Project Director is a registered user of e-Application and has initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the applicant IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, the applicant IHE may contact either (1) the person listed

elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

Individual faculty, persons providing referrals and applicant IHEs may access the parts of the electronic grant application that they must complete at: *http://e-grants.ed.gov.*

b. *Submission of Paper Applications by Mail.*

If the applicant IHE has requested a waiver of the electronic submission requirement, it may mail (through the U.S. Postal Service or a commercial carrier) its paper application to the Department. The original and two copies of the application must be mailed on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 400 Maryland Avenue, SW., Washington, DC 20202.

The applicant IHE must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service Postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If the applicant IHE mails the application through the U.S. Postal Service, please note that we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If the applicant IHE's application is post marked after the application deadline date, we will notify the applicant IHE that we will not consider the application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If the applicant IHE has requested a waiver of the electronic submission requirement, it (or a courier service) may deliver the paper application to the Department by hand. The original and two copies of the applicant IHE's application must be hand-delivered on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays. A person delivering an application must show identification to enter the building.

Note for Mail or Hand Delivery of Paper Applications: If the applicant IHE mails or hand delivers its application to the Department:

1. It must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which it is submitting the application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to the applicant IHE. If the applicant IHE does not receive the notification of application receipt within 15 days from the mailing of its application, the applicant IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 663.21.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of the project period, the grantee institution must submit a final performance report, including the final reports of all the grantee institution's fellows, and financial information, as directed by the Secretary. The applicant is required to use the electronic data instrument Evaluation of Exchange, Language, International and Area Studies (EELIAS) system to complete the final report.

4. *Performance Measures:* The performance measure that has been developed to evaluate the overall effectiveness of the Fulbright-Hays Faculty Research Abroad Program is the improvement of language proficiency of fellows. All grantees will be expected to provide documentation of the improved language proficiency of the fellows through the EELIAS system.

VII. Agency Contact

For Further Information Contact: Ms. Eliza Washington or Ms. Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7633/7689 or by e-mail: *fra@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/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.gpoaccess.gov/nara/index.html.*

Dated: August 18, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–19276 Filed 8–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information: Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

Dates:

Applications Available: August 27, 2004.

Deadline for Transmittal of Applications: October 19, 2004.

Eligible Applicants: Institutions of higher education (IHE). As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

Estimated Available Funds: The Administration has requested $4,440,379 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $29,603.

Estimated Number of Fellowship Awards: 150.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2005. Students may request funding for 6–12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program provides opportunities to graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 662.

II. Award Information

Type of Award: Discretionary grants redistributed, as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $4,440,379 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $29,603.

Estimated Number of Fellowship Awards: 150.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2005. Students may request funding for 6–12 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHE). As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Ms. Karla Ver Bryck Block or Ms. Sara Starke, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7632 or 7688 or by e-mail: *ddra@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the narrative to the equivalent of 10 pages and the bibliography to the equivalent of 2 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, you may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- You may use a 10-point font in charts, tables, figures, graphs, footnotes and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.

The page limit only applies to the application narrative and bibliography. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 27, 2004.

Deadline for Transmittal of Applications: October 19, 2004.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information (including dates and times) about how to submit your application electronically through the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV. 6. *Procedures for Submitting Applications* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Procedures for Submitting Applications:* We are requiring that applications for grants under this program be submitted electronically, unless the applicant IHE requests a waiver of this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program—CFDA Number 84.022A must be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

• The process for submitting applications electronically under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *ddra@ed.gov*: Name of university, full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than September 30, 2004, in order to facilitate timely submission of their applications; (2) Students complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual students complete and submit reference forms for the students and submit them to the IHE's project director using e-Application; and (4) The IHE's project director officially submits the IHE's application, which includes all eligible individual student applications, reference forms, and other required forms, using e-Application. Student transcripts, however, must be mailed or hand delivered to the Department on or before the application deadline date using the applicable mail or hand delivery instructions for paper applications in this notice.

Unless a waiver of the electronic submission requirement has been requested by the applicant IHE in accordance with the procedures in this section, except for student transcripts, *all* portions of the application must be submitted electronically.

If the applicant IHE is unable to submit an application through the e-GRANTS system, the applicant IHE must submit a written request for a waiver of the electronic submission requirement. In its request, the applicant IHE should explain the reason or reasons that prevent it from using the Internet to submit its application. The applicant IHE should address its request to: Ms. Karla Ver Bryck Block or Ms. Sara Starke, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Please submit the request no later than two weeks before the application deadline date. The applicant IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, the applicant IHE is unable to submit an application electronically, it must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant IHE from using the Internet to submit its application.

When using e-Application to complete their parts of the application, individual students, persons providing references and the applicant IHE will be entering data online. Do not e-mail an electronic copy of any part of a grant application to us. The data that is entered online will be saved into a database.

If the applicant IHE participates in e-Application, please note the following:

• The applicant IHE must submit its grant application electronically through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m., Washington, DC time, on the application deadline date. The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and after 7 p.m. on Wednesdays for maintenance, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site. We strongly recommend that applicant IHEs do not wait until the application deadline date to initiate an e-Application package.

• An applicant IHE will not receive additional point value because it submits the application in electronic format, nor will we penalize the applicant IHE if it requests a waiver and submits the application in paper format because the applicant IHE was prevented from submitting the application electronically as required.

• The applicant IHE must submit all documents, except for student transcripts, electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications.

• Student transcripts must be mailed or hand delivered to the Department on or before the application deadline date in accordance with the applicable mail or hand delivery instructions for paper applications described in this notice.

• The e-Application must comply with any page limit requirements described in this notice.

• After the individual student applicant electronically submits his/her application to his/her IHE, the student will receive an automatic acknowledgement. In addition, the applicant IHE's Project Director will receive a copy of this acknowledgement by e-mail. After a person submits a reference electronically, he/she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after the applicant IHE submits its electronic application, it must fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant IHE's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that the applicant IHE give us original signatures on other forms at a later date. *Application Deadline Date Extension in Case of System Unavailability:* If the applicant IHE is prevented from submitting its application on the application deadline

date because the e-Application system is unavailable, we will grant the applicant IHE an extension of one business day in order to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if:

1. The applicant IHE's Project Director is a registered user of e-Application and has initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the applicant IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, the applicant IHE may contact either (1) The person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

Individual students, persons providing referrals and applicant IHEs may access the parts of the electronic grant application that they must complete at: *http://e-grants.ed.gov.*

b. Submission of Paper Applications by Mail

If the applicant IHE has requested a waiver of the electronic submission requirement, it may mail (through the U.S. Postal Service or a commercial carrier) its paper application to the Department. The original and two copies of the application must be mailed on or before the application deadline date to the following address: U.S. Department of Education,Application Control Center,Attention: (CFDA Number 84.022A),400 Maryland Avenue, SW.,Washington, DC 20202.

The applicant IHE must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service Postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If the applicant IHE mails the application through the U.S. Postal Service, please note that we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If the applicant IHE's application is post marked after the application deadline date, we will notify the applicant IHE that we will not consider the application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

c. Submission of Paper Applications by Hand Delivery

If the applicant IHE has requested a waiver of the electronic submission requirement, it (or a courier service) may deliver the paper application to the Department by hand. The original and two copies of the applicant IHE's application must be hand-delivered on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. A person delivering an application must show identification to enter the building.

Note for Mail or Hand Delivery of Paper Applications: If the applicant IHE mails or hand delivers its application to the Department:

1. It must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which it is submitting the application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to the applicant IHE. If the applicant IHE does not receive the notification of application receipt within 15 days from the mailing of its application, the applicant IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 662.21.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of the project period, the grantee institution must submit a final performance report, including the final reports of all of the grantee institution's fellows, and financial information, as directed by the Secretary. The grantee institution and fellows are required to use the electronic reporting system Evaluation of Exchange, Language, International and Area Studies (EELIAS) system to complete the final report.

4. *Performance Measures:* The following performance measure has been developed to evaluate the overall effectiveness of the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program—The improvement of language proficiency of fellows. All grantees will be expected to provide documentation of the improved language proficiency of the fellows through the EELIAS system.

VII. Agency Contact

For Further Information Contact: Ms. Karla Ver Bryck Block or Ms. Sara Starke, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7632 or 7688 or by e-mail: *ddra@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document

Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/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.gpoaccess.gov/nara/index.html.*

Dated: August 18, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–19277 Filed 8–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to List of Covered Facilities

AGENCY: Department of Energy.

ACTION: Notice of revision of listing of covered facilities.

SUMMARY: Periodically, the Department of Energy ("Department" or "DOE") publishes a list of facilities covered under the Energy Employees Occupational Illness Compensation Program Act of 2000 ("Act"), Title 36 of Public Law 106–398 (66 FR 4003; 66 FR 31218). The Act establishes a program to provide compensation to individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities and at certain federally owned facilities in which radioactive materials were used. This notice revises the previous lists and provides additional information about the covered facilities, atomic weapons employers, and beryllium vendors. The original notice provides detailed background information about this matter. Previous lists were published on July 21, 2003, December 27, 2002, June 11, 2001, and January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Worker Advocacy, 1–877–447–9756.

ADDRESSES: The Department welcomes comments on this list. Individuals who wish to suggest changes should provide information to: Office of Worker Advocacy (EH–8), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail: *worker_advocacy@eh.doe.gov;* toll free: 1–877–447–9756; URL: *http://www.eh.doe.gov/advocacy/.*

SUPPLEMENTARY INFORMATION:

Purpose

The Energy Employees Occupational Illness Compensation Program Act of 2000 ("Act"), Title 36 of Public Law 106–398, establishes a program to provide compensation to individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities and at certain federally owned facilities in which radioactive materials were used. On December 7, 2000, the President issued Executive Order 13179 ("Order") directing the Department of Energy ("Department" or "DOE") to list covered facilities in the **Federal Register.** This notice revises the previous lists and provides additional information about the covered facilities, atomic weapons employers, and beryllium vendors.

Section 2.c.iv of the Order instructs the Department to designate, pursuant to sections 3621(4)(B) and 3622 of the Act, atomic weapons employers (AWE's). In addition, Section 2.c.vii of the Order instructs the Department to list three types of facilities defined in the Act:

(1) Atomic weapons employer facilities, as defined in section 3621(4);

(2) Department of Energy facilities, as defined by section 3621(12); and

(3) Beryllium vendors, as defined by section 3621(6).

Compensation options and mechanisms are defined differently for each of these facility categories. The atomic weapons employer category includes atomic weapons employer facilities in which the primary work was not related to atomic weapons, and consequently these facilities are not commonly known as atomic weapons facilities. Their inclusion in this list is consistent with the Act, and is not intended as a classification for any other purpose.

The list at the end of this notice represents the Department's best efforts to date to compile a list of facilities under these three categories. This listing includes 363 facilities in 46 jurisdictions. Today's publication of the list newly designates General Electric's X-ray Division in Milwaukee, WI as an AWE, and additionally designates the Nevada Site Office as a DOE facility. It also alters slightly the designation for Blockson Chemical (broadens it by saying "building 55 and related activities" which is meant to include the AEC-funded laboratory, pilot plant and oxidation process). Other corrections include: B&T Metals (OH) (the DOE designation was in error and has been removed), Foote Mineral (PA) (the BE designation has been on the program's Web site (noted below) since inception, but was inadvertently missing from the **Federal Register** notice), Swenson Evaporator (is located in Harvey, not Chicago, IL) and C.H. Schnorr, PA (previously Schnoor). This notice also deletes the listing for Ledoux (NY) entirely because it was learned that no radioactivity was used at that location.

In addition to continuing its research efforts, the Department has developed information dissemination mechanisms to make facility-specific data available to the public. Information about each listed facility, including the dates and type of work done there, is available by contacting the Office of Worker Advocacy. These descriptions are available in print form and also electronically (via the World Wide Web at *http://tis.eh.doe.gov/advocacy/*).

The list that follows covers facilities under the three categories of employers defined by the Act: atomic weapons employers ("AWE"), Department of Energy facilities ("DOE"), and beryllium vendors ("BE"). Each of the categories has been defined in the original notice and include:

1. Atomic Weapons Employers and Atomic Weapons Employer Facilities

The lines between research, atomic weapons production, and non-weapons production are often difficult to draw. For the purposes of this notice, and as directed by the Act, only those facilities whose work involved radioactive material that was connected to the atomic weapons production chain are included. This includes facilities that received radioactive material that had been used in the production of an atomic weapon, or the "back end" of the production cycle, such as waste handling or reprocessing operations. For the purposes of this listing, the Department considers commercial nuclear fuel fabrication facilities to be covered facilities for those periods when they either supplied radioactive materials to the Department or received radioactive materials that had been used in the Department's production reactors.

Corporate information regarding many of the listed facilities is often not readily available. The Department welcomes comments or additional information regarding facilities that may have supported atomic weapons production that are not on this list, as well as information that clarifies the work done at facilities named below.

2. Department of Energy Facilities

The listing of Department of Energy facilities is only intended for the context of implementing this Act and does not create or imply any new Departmental obligations or ownership at any of the facilities named on this list.

3. Beryllium Vendors and Beryllium Vendor Facilities

Section 3621(6) of the Act defines beryllium vendor as the following:

"(A) Atomics International.

(B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

(C) General Atomics.

(D) General Electric Company.

(E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.

(F) Nuclear Materials and Equipment Corporation.

(G) StarMet Corporation, and its predecessor, Nuclear Metals, Incorporated.

(H) Wyman Gordan, Incorporated.

(I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of this title under Section 3622."

The list identifies facilities that processed, produced, or provided beryllium metal for the Department, as defined by the Act.

Jurisdiction and facility name	Location	Facility type	State
AL—Southern Research Institute	Birmingham	AWE	Alabama.
AL—Speedring, Inc.	Culman	BE	Alabama.
AL—Tennessee Valley Authority	Muscle Shoals	AWE	Alabama.
AK—Amchitka Nuclear Explosion Site	Amchitka Island	DOE	Alaska.
AK—Project Chariot Site	Cape Thompson	DOE	Alaska.
AZ—Ore Buying Station at Globe	Globe	DOE	Arizona.
CA—Arthur D. Little Co	San Francisco	AWE	California.
CA—Atomics International	Los Angeles County	BE DOE	California.
CA—California Research Corp	Richmond	AWE	California.
CA—Ceradyne, Inc	Costa Mesa	BE	California.
CA—Ceradyne, Inc	Santa Ana	BE	California.
CA—City Tool & Die MFG	Santa Clara	BE	California.
CA—C.L. Hann Industries	San Jose	BE	California.
CA—Dow Chemical Co	Walnut Creek	AWE	California.
CA—EDM Exotics	Hayward	BE	California.
CA—Electro Circuits, Inc	Pasadena	AWE	California.
CA—Electrofusion	Fremont	BE	California.
CA—Energy Technology Engineering Center (ETEC)	Santa Susana, Area IV	DOE	California.
CA—General Atomics	La Jolla	AWE BE DOE	California.
CA—General Electric Vallecitos	Pleasanton	AWE DOE	California.
CA—Hafer Tool	Oakland	BE	California.
CA—Hexcel Products	Berkeley	BE	California.
CA—Hunter Douglas Aluminum Corp	Riverside	AWE	California.
CA—Jerry Carroll Machining	San Carlos	BE	California.
CA—Lab. for Energy-Related Health Research	Davis	DOE	California.
CA—Lab. of Biomedical & Environmental Sciences	Los Angeles	DOE	California.
CA—Lab. of Radiobiology and Environmental Health	San Francisco	DOE	California.
CA—Lawrence Berkeley National Laboratory	Berkeley	DOE	California.
CA—Lawrence Livermore National Laboratory	Livermore	DOE	California.
CA—Lebow	Goleta	BE	California.
CA—Philco-Ford	Newport Beach	BE	California
CA—Pleasanton Tool & Manufacturing	Pleasanton	BE	California.
CA—Poltech Precision	Fremont	BE	California.
CA—Robin Materials	Mountain View	BE	California.
CA—Ron Witherspoon, Inc	Campbell	BE	California.
CA—Sandia Laboratory, Salton Sea Base	Imperial County	DOE	California.
CA—Sandia National Laboratories—Livermore	Livermore	DOE	California.
CA—Stanford Linear Accelerator	Palo Alto	DOE	California.
CA—Stauffer Metals, Inc	Richmond	AWE	California.
CA—Tapemation	Scotts Valley	BE	California.
CA—University of California	Berkeley	AWE DOE	California.
CO—Coors Porcelain	Golden	BE	Colorado.
CO—Grand Junction Operations Office	Grand Junction	DOE	Colorado.
CO—Green Sludge Plant	Uraven	DOE	Colorado.
CO—Project Rio Blanco Nuclear Explosion Site	Rifle	DOE	Colorado.
CO—Project Rulison Nuclear Explosion Site	Grand Valley	DOE	Colorado.
CO—Rocky Flats Plant	Golden	DOE	Colorado.
CO—Shattuck Chemical	Denver	AWE	Colorado.
CO—University of Denver Research Institute	Denver	AWE BE	Colorado.
CO—Uranium Mill in Durango	Durango	DOE	Colorado.
CT—American Chain and Cable Co	Bridgeport	AWE	Connecticut.
CT—Anaconda Co	Waterbury	AWE	Connecticut.
CT—Bridgeport Brass Co., Havens Laboratory	Bridgeport	AWE	Connecticut.
CT—Combustion Engineering	Windsor	AWE	Connecticut.
CT—Connecticut Aircraft Nuclear Engine Laboratory	Middletown	BE DOE	Connecticut.
CT—Dorr Corp.	Stamford	AWE	Connecticut.
CT—Fenn Machinery	Hartford	AWE	Connecticut.
CT—Machlett Laboratories	Springdale	BE	Connecticut.
CT—New England Lime Co	Canaan	AWE	Connecticut.

Jurisdiction and facility name	Location	Facility type	State
CT—Seymour Specialty Wire	Seymour	AWE DOE	Connecticut.
CT—Sperry Products, Inc	Danbury	AWE	Connecticut.
CT—Torrington Co	Torrington	AWE	Connecticut.
DE—Allied Chemical and Dye Corp	North Claymont	AWE	Delaware.
DC—National Bureau of Standards	Washington	AWE	District of Columbia.
DC—Naval Research Laboratory	Washington	AWE DOE	District of Columbia.
FL—American Beryllium Co	Sarasota	BE	Florida.
FL—Armour Fertilizer Works	Bartow	AWE	Florida.
FL—Gardinier, Inc	Tampa	AWE	Florida.
FL—International Minerals and Chemical Corp.	Mulberry	AWE	Florida.
FL—Pinellas Plant	Clearwater	DOE	Florida.
FL—University of Florida	Gainesville	AWE	Florida.
FL—Virginia-Carolina Chemical Corp	Nichols	AWE	Florida.
FL—W.R. Grace Co., Agricultural Chemical Div	Ridgewood	AWE	Florida.
HI—Kauai Test Facility	Kauai	DOE	Hawaii.
ID—Argonne National Laboratory—West	Scoville	DOE	Idaho.
ID—Idaho National Engineering Laboratory	Scoville	DOE	Idaho.
ID—Northwest Machining & Manufacturing	Meridian	BE	Idaho.
IL—Allied Chemical Corp. Plant	Metropolis	AWE	Illinois.
IL—American Machine and Metals, Inc	E. Moline	AWE	Illinois.
IL—Argonne National Laboratory—East	Argonne	DOE	Illinois.
IL—Armour Research Foundation	Chicago	AWE	Illinois.
IL—Blockson Chemical Co. (Building 55 and related activities).	Joliet	AWE	Illinois.
IL—C–B Tool Products Co	Chicago	AWE	Illinois.
IL—Crane Co	Chicago	AWE	Illinois.
IL—Dow Chemical (Madison Site)	Madison	AWE	Illinois.
IL—ERA Tool and Engineering Co	Chicago	AWE	Illinois.
IL—Fansteel Metallurgical Corp	North Chicago	BE	Illinois.
IL—Fermi National Accelerator Laboratory	Batavia	DOE	Illinois.
IL—Granite City Steel	Granite City	AWE DOE	Illinois.
IL—Great Lakes Carbon Corp	Chicago	AWE	Illinois.
IL—GSA 39th Street Warehouse	Chicago	AWE	Illinois.
IL—International Register	Chicago	AWE	Illinois.
IL—Kaiser Aluminum Corp	Dalton	AWE	Illinois.
IL—Lindsay Light and Chemical Co	W. Chicago	AWE	Illinois.
IL—Metallurgical Laboratory	Chicago	AWE BE DOE	Illinois.
IL—Midwest Manufacturing Co	Galesburg	AWE	Illinois.
IL—Museum of Science and Industry	Chicago	AWE	Illinois.
IL—National Guard Armory	Chicago	AWE DOE	Illinois.
IL—Podbeliniac Corp	Chicago	AWE	Illinois.
IL—Precision Extrusion Co	Bensenville	AWE	Illinois.
IL—Quality Hardware and Machine Co	Chicago	AWE	Illinois.
IL—R. Krasburg and Sons Manufacturing Co	Chicago	AWE	Illinois.
IL—Sciaky Brothers, Inc	Chicago	AWE	Illinois.
IL—Swenson Evaporator Co	Harvey	AWE	Illinois.
IL—W.E. Pratt Manufacturing Co	Joliet	AWE	Illinois.
IL—Wyckoff Drawn Steel Co	Chicago	AWE	Illinois.
IN—American Bearing Corp	Indianapolis	AWE	Indiana.
IN—Dana Heavy Water Plant	Dana	DOE	Indiana.
IN—General Electric Plant	Shelbyville	AWE	Indiana.
IN—Joslyn Manufacturing and Supply Co	Ft. Wayne	AWE	Indiana.
IN—Purdue University	Lafayette	AWE	Indiana.
IA—Ames Laboratory	Ames	DOE	Iowa.
IA—Bendix Aviation (Pioneer Division)	Davenport	AWE	Iowa.
IA—Iowa Ordnance Plant	Burlington	DOE	Iowa.
IA—Titus Metals	Waterloo	AWE	Iowa.
KS—Spencer Chemical Co., Jayhawk Works	Pittsburgh	AWE	Kansas.
KY—Paducah Gaseous Diffusion Plant	Paducah	DOE	Kentucky.
LA—Ethyl Corp	Baton Rouge	BE	Louisiana.
MD—Armco-Rustless Iron & Steel	Baltimore	AWE	Maryland.
MD—W.R. Grace and Company	Curtis Bay	AWE	Maryland.
MA—American Potash & Chemical	West Hanover	AWE	Massachusetts.
MA—C.G. Sargent & Sons	Graniteville	AWE	Massachusetts.
MA—Chapman Valve	Indian Orchard	AWE DOE	Massachusetts.
MA—Edgerton Germeshausen & Grier, Inc	Boston	AWE	Massachusetts.
MA—Fenwal, Inc	Ashland	AWE	Massachusetts.
MA—Franklin Institute	Boston	BE	Massachusetts.
MA—Heald Machine Co	Worcester	AWE	Massachusetts.
MA—La Pointe Machine and Tool Co	Hudson	AWE	Massachusetts.
MA—Massachusetts Institute of Technology	Cambridge	AWE BE	Massachusetts.
MA—Metals and Controls Corp	Attleboro	AWE	Massachusetts.
MA—National Research Corp	Cambridge	AWE	Massachusetts.
MA—Norton Co	Worcester	AWE BE	Massachusetts.

Jurisdiction and facility name	Location	Facility type	State
MA—Nuclear Metals, Inc	Concord	AWE BE	Massachusetts.
MA—Reed Rolled Thread Co	Worcester	AWE	Massachusetts.
MA—Shpack Landfill	Norton	AWE	Massachusetts.
MA—Ventron Corporation	Beverly	AWE DOE	Massachusetts.
MA—Watertown Arsenal	Watertown	AWE	Massachusetts.
MA—Winchester Engineering & Analytical Center	Winchester	DOE	Massachusetts.
MA—Woburn Landfill	Woburn	AWE	Massachusetts.
MA—Wyman Gordon Inc	Grayton, North Grafton	BE	Massachusetts.
MI—AC Spark Plug	Flint	AWE BE	Michigan.
MI—Baker-Perkins Co	Saginaw	AWE	Michigan.
MI—Bridgeport Brass Co	Adrian	AWE DOE	Michigan.
MI—Brush Beryllium Co	Detroit	AWE	Michigan.
MI—Carboloy Co	Detroit	AWE	Michigan.
MI—Extruded Metals Co	Grand Rapids	AWE	Michigan.
MI—Gerity-Michigan Corp	Adrian	BE	Michigan.
MI—Mitts & Merrel Co	Saginaw	AWE	Michigan.
MI—Oliver Corp	Battle Creek	AWE	Michigan.
MI—Revere Copper and Brass	Detroit	AWE BE	Michigan.
MI—Speedring Systems, Inc	Detroit	BE	Michigan.
MI—Star Cutter Corp	Farmington	AWE	Michigan.
MI—University of Michigan	Ann Arbor	AWE	Michigan.
MI—Wolverine Tube Division	Detroit	AWE BE	Michigan.
MN—Elk River Reactor	Elk River	DOE	Minnesota.
MS—Salmon Nuclear Explosion Site	Hattiesburg	DOE	Mississippi.
MO—Kansas City Plant	Kansas City	DOE	Missouri.
MO—Latty Avenue Properties	Hazelwood	AWE DOE	Missouri.
MO—Mallinckrodt Chemical Co., Destrehan St. Plant	St. Louis	DOE	Missouri.
MO—Medart Co	St. Louis	AWE	Missouri.
MO—Roger Iron Co	Joplin	AWE	Missouri.
MO—St. Louis Airport Storage Site (SLAPS)	St. Louis	AWE	Missouri.
MO—Tyson Valley Powder Farm	St. Louis	AWE	Missouri.
MO—United Nuclear Corp	Hematite	AWE	Missouri.
MO—Weldon Spring Plant	Weldon Spring	DOE	Missouri.
NE—Hallam Sodium Graphite Reactor	Hallam	DOE	Nebraska.
NV—Nevada Site Office	North Las Vegas	DOE	Nevada.
NV—Nevada Test Site	Mercury	DOE	Nevada.
NV—Project Faultless Nuclear Explosion Site	Central Nevada Test Site	DOE	Nevada.
NV—Project Shoal Nuclear Explosion Site	Fallon	DOE	Nevada.
NV—Tonopah Test Range	Tonopah	DOE	Nevada.
NV—Yucca Mountain Site Characterization Project	Yucca Mountain	DOE	Nevada.
NJ—Aluminum Co. of America (Alcoa)	Garwood	AWE	New Jersey.
NJ—American Peddinghaus Corp	Moonachie	AWE	New Jersey.
NJ—Baker and Williams Co	Newark	AWE	New Jersey.
NJ—Bell Telephone Laboratories	Murray Hill	AWE	New Jersey.
NJ—Bloomfield Tool Co	Bloomfield	AWE	New Jersey.
NJ—Bowen Laboratory	North Branch	AWE	New Jersey.
NJ—Callite Tungsten Co	Union City	AWE	New Jersey.
NJ—Chemical Construction Co	Linden	AWE	New Jersey.
NJ—Du Pont Deepwater Works	Deepwater	AWE DOE	New Jersey.
NJ—International Nickel Co., Bayonne Laboratories	Bayonne	AWE	New Jersey.
NJ—J.T. Baker Chemical Co	Philipsburg	AWE	New Jersey.
NJ—Kellex/Pierpont	Jersey City	AWE DOE	New Jersey.
NJ—Maywood Chemical Works	Maywood	AWE	New Jersey.
NJ—Middlesex Municipal Landfill	Middlesex	AWE DOE	New Jersey.
NJ—Middlesex Sampling Plant	Middlesex	DOE	New Jersey.
NJ—National Beryllia	Haskell	BE	New Jersey.
NJ—New Brunswick Laboratory	New Brunswick	DOE	New Jersey.
NJ—Picatinny Arsenal	Dover	AWE	New Jersey.
NJ—Princeton Plasma Physics Laboratory	Princeton	DOE	New Jersey.
NJ—Rare Earths/W.R. Grace	Wayne	AWE DOE	New Jersey.
NJ—Standard Oil Development Co. of NJ	Linden	AWE	New Jersey.
NJ—Stevens Institute of Technology	Hoboken	BE	New Jersey.
NJ—Tube Reducing Co	Wallington	AWE	New Jersey.
NJ—U.S. Pipe and Foundry	Burlington	BE	New Jersey.
NJ—United Lead Co	Middlesex	AWE BE	New Jersey.
NJ—Vitro Corp. of America (New Jersey)	West Orange	AWE	New Jersey.
NJ—Westinghouse Electric Corp (New Jersey)	Bloomfield	AWE	New Jersey.
NJ—Wykoff Steel Co	Newark	AWE	New Jersey.
NM—Accurate Machine & Tool	Albuquerque	BE	New Mexico.
NM—Albuquerque Operations Office	Albuquerque	DOE	New Mexico.
NM—Chupadera Mesa	Chupadera Mesa	DOE	New Mexico.
NM—Los Alamos Medical Center	Los Alamos	DOE	New Mexico.
NM—Los Alamos National Laboratory	Los Alamos	DOE	New Mexico.
NM—Lovelace Respiratory Research Institute	Albuquerque	DOE	New Mexico.

Jurisdiction and facility name	Location	Facility type	State
NM—Ore Buying Station at Grants	Grants	DOE	New Mexico.
NM—Ore Buying Station at Shiprock	Shiprock	DOE	New Mexico.
NM—Project Gasbuggy Nuclear Explosion Site	Farmington	DOE	New Mexico.
NM—Project Gnome Nuclear Explosion Site	Carlsbad	DOE	New Mexico.
NM—Sandia National Laboratories	Albuquerque	DOE	New Mexico.
NM—South Albuquerque Works	Albuquerque	DOE	New Mexico.
NM—Trinity Nuclear Explosion Site	White Sands Missile Range	DOE	New Mexico.
NM—Waste Isolation Pilot Plant	Carlsbad	DOE	New Mexico.
NY—Allegheny-Ludlum Steel	Watervliet	AWE	New York.
NY—American Machine and Foundry	Brooklyn	AWE	New York.
NY—Ashland Oil	Tonawanda	AWE	New York.
NY—Baker and Williams Warehouses	New York	AWE DOE	New York.
NY—Bethlehem Steel	Lackawanna	AWE	New York.
NY—Bliss & Laughlin Steel	Buffalo	AWE	New York.
NY—Brookhaven National Laboratory	Upton	DOE	New York.
NY—Burns & Roe, Inc	Maspeth	BE	New York.
NY—Carborundum Company	Niagara Falls	AWE	New York.
NY—Colonie Site (National Lead)	Colonie (Albany)	AWE DOE	New York.
NY—Crucible Steel Co	Syracuse	AWE	New York.
NY—Electro Metallurgical	Niagara Falls	DOE	New York.
NY—Environmental Measurements Laboratory	New York	DOE	New York.
NY—Fairchild Hiller Corporation	Farmingdale	BE	New York.
NY—General Astrometals	Yonkers	BE	New York.
NY—Hooker Electrochemical	Niagara Falls	AWE	New York.
NY—International Rare Metals Refinery, Inc	Mt. Kisco	AWE	New York.
NY—Ithaca Gun Co	Ithaca	AWE	New York.
NY—Lake Ontario Ordnance Works	Niagara Falls	DOE	New York.
NY—Linde Air Products	Buffalo	AWE	New York.
NY—Linde Ceramics Plant	Tonawanda	AWE DOE	New York.
NY—New York University	New York	AWE	New York.
NY—Peek Street Facility[1]	Schenectady	DOE	New York.
NY—Radium Chemical Co	New York	AWE BE	New York
NY—Rensselaer Polytechnic Institute	Troy	BE	New York.
NY—Sacandaga Facility[1]	Glenville	DOE	New York.
NY—SAM Laboratories, Columbia University	New York	DOE	New York.
NY—Seaway Industrial Park	Tonawanda	AWE	New York.
NY—Seneca Army Depot	Romulus	AWE	New York.
NY—Separations Process Research Unit (at Knolls Lab.)[1].	Schenectady	DOE	New York.
NY—Simonds Saw and Steel Co	Lockport	AWE	New York.
NY—Staten Island Warehouse	New York	AWE	New York.
NY—Sylvania Corning Nuclear Corp.—Bayside Lab	Bayside	AWE BE	New York.
NY—Sylvania Corning Nuclear Corp.—Hicksville Plant	Hicksville	AWE	New York.
NY—Titanium Alloys Manufacturing	Niagara Falls	AWE	New York.
NY—Trudeau Foundation	Saranac Lake	BE	New York.
NY—University of Rochester Atomic Energy Project	Rochester	DOE	New York.
NY—Utica St. Warehouse	Buffalo	AWE	New York.
NY—West Valley Demonstration Project	West Valley	AWE DOE	New York.
NY—Wolff-Alport Chemical Corp	Brooklyn	AWE	New York.
NC—Beryllium Metals and Chemical Corp	Bessemer City	BE	North Carolina.
NC—University of North Carolina	Chapel Hill	BE	North Carolina.
OH—Ajax Magnethermic Corp	Youngstown	AWE	Ohio.
OH—Alba Craft	Oxford	AWE DOE	Ohio.
OH—Associated Aircraft Tool and Manufacturing Co	Fairfield	AWE DOE	Ohio.
OH—B & T Metals	Columbus	AWE	Ohio.
OH—Baker Brothers	Toledo	AWE DOE	Ohio.
OH—Battelle Laboratories—King Avenue	Columbus	AWE BE DOE	Ohio.
OH—Battelle Laboratories—West Jefferson	Columbus	AWE DOE	Ohio.
OH—Beryllium Production Plant (Brush Luckey Plant)	Luckey	BE DOE	Ohio.
OH—Brush Beryllium Co. (Cleveland)	Cleveland	AWE BE	Ohio.
OH—Brush Beryllium Co. (Elmore)	Elmore	BE	Ohio.
OH—Brush Beryllium Co. (Lorain)	Lorain	BE	Ohio.
OH—Cincinnati Milling Machine Co	Cincinnati	AWE	Ohio.
OH—Clifton Products Co	Painesville	BE	Ohio.
OH—Copperweld Steel	Warren	AWE	Ohio.
OH—Du Pont-Grasselli Research Laboratory	Cleveland	AWE	Ohio.
OH—Extrusion Plant (Reactive Metals Inc.)	Ashtabula	DOE	Ohio.
OH—Feed Materials Production Center (FMPC)	Fernald	DOE	Ohio.
OH—General Electric Company (Ohio)	Cincinnati/Evendale	AWE BE DOE	Ohio.
OH—Gruen Watch	Norwood	AWE	Ohio.
OH—Harshaw Chemical Co	Cleveland	AWE	Ohio.
OH—Herring-Hall Marvin Safe Co.	Hamilton	AWE DOE	Ohio.
OH—Horizons, Inc	Cleveland	AWE	Ohio.
OH—Kettering Laboratory, University of Cincinnati	Cincinnati	BE	Ohio.

Jurisdiction and facility name	Location	Facility type	State
OH—Magnus Brass Co	Cincinnati	AWE	Ohio.
OH—McKinney Tool and Manufacturing Co	Cleveland	AWE	Ohio.
OH—Mitchell Steel Co	Cincinnati	AWE	Ohio.
OH—Monsanto Chemical Co	Dayton	AWE	Ohio.
OH—Mound Plant	Miamisburg	DOE	Ohio.
OH—Painesville Site (Diamond Magnesium Co.)	Painesville	AWE	Ohio.
OH—Piqua Organic Moderated Reactor	Piqua	DOE	Ohio.
OH—Portsmouth Gaseous Diffusion Plant	Piketon	DOE	Ohio.
OH—R. W. Leblond Machine Tool Co	Cincinnati	AWE	Ohio.
OH—Tech-Art, Inc	Milford	AWE	Ohio.
OH—Tocco Induction Heating Div	Cleveland	AWE	Ohio.
OH—Vulcan Tool Co	Dayton	AWE	Ohio.
OK—Eagle Picher	Quapaw	BE	Oklahoma.
OK—Kerr-McGee	Guthrie	AWE	Oklahoma.
OR—Albany Research Center	Albany	AWE DOE	Oregon.
OR—Wah Chang	Albany	AWE	Oregon.
PA—Aeroprojects, Inc	West Chester	AWE BE	Pennsylvania.
PA—Aliquippa Forge	Aliquippa	AWE DOE	Pennsylvania.
PA—Aluminum Co. of America (Alcoa) (Pennsylvania)	New Kensington	AWE	Pennsylvania.
PA—Beryllium Corp. of America (Hazleton)	Hazleton	BE	Pennsylvania.
PA—Beryllium Corp. of America (Reading)	Reading	BE	Pennsylvania.
PA—Birdsboro Steel & Foundry	Birdsboro	AWE	Pennsylvania.
PA—C.H. Schnorr	Springdale	AWE DOE	Pennsylvania.
PA—Carnegie Institute of Technology	Pittsburgh	AWE	Pennsylvania.
PA—Carpenter Steel Co	Reading	AWE	Pennsylvania.
PA—Chambersburg Engineering Co	Chambersburg	AWE	Pennsylvania.
PA—Foote Mineral Co	East Whiteland Twp	AWE/BE	Pennsylvania.
PA—Frankford Arsenal	Philadelphia	AWE	Pennsylvania.
PA—Heppenstall Co	Pittsburgh	AWE	Pennsylvania.
PA—Jessop Steel Co	Washington	AWE	Pennsylvania.
PA—Koppers Co., Inc	Verona	AWE	Pennsylvania.
PA—Landis Machine Tool Co	Waynesboro	AWE	Pennsylvania.
PA—McDanel Refractory Co	Beaver Falls	BE	Pennsylvania.
PA—Nuclear Materials and Equipment Corp. (NUMEC)	Apollo	AWE BE	Pennsylvania.
PA—Nuclear Materials and Equipment Corp. (NUMEC)	Parks Township	AWE BE	Pennsylvania.
PA—Penn Salt Co	Philadelphia/Wyndmoor	AWE	Pennsylvania.
PA—Philadelphia Naval Yard	Philadelphia	AWE	Pennsylvania.
PA—Shippingport Atomic Power Plant [1]	Shippingport	DOE	Pennsylvania.
PA—Superior Steel Co	Carnegie	AWE	Pennsylvania.
PA—U.S. Steel Co., National Tube Division	McKeesport	AWE	Pennsylvania.
PA—Vitro Manufacturing (Canonsburg)	Canonsburg	AWE BE	Pennsylvania.
PA—Westinghouse Atomic Power Dev. Plant	East Pittsburgh	AWE	Pennsylvania.
PA—Westinghouse Nuclear Fuels Division	Cheswick	AWE	Pennsylvania.
PR—BONUS Reactor Plant	Punta Higuera	DOE	Puerto Rico.
PR—Puerto Rico Nuclear Center	Mayaguez	DOE	Puerto Rico.
RI—C.I. Hayes, Inc	Cranston	AWE	Rhode Island.
SC—Savannah River Site	Aiken	DOE	South Carolina.
SD—Ore Buying Station at Edgemont	Edgemont	DOE	South Dakota.
TN—Clarksville Facility	Clarksville	DOE	Tennessee.
TN—Manufacturing Sciences Corp	Oak Ridge	BE	Tennessee.
TN—Oak Ridge Gaseous Diffusion Plant (K–25)	Oak Ridge	DOE	Tennessee.
TN—Oak Ridge Hospital	Oak Ridge	DOE	Tennessee.
TN—Oak Ridge Institute for Science Education	Oak Ridge	DOE	Tennessee.
TN—Oak Ridge National Laboratory (X–10)	Oak Ridge	DOE	Tennessee.
TN—S–50 Oak Ridge Thermal Diffusion Plant	Oak Ridge	DOE	Tennessee.
TN—Vitro Corporation of America (Tennessee)	Oak Ridge	AWE BE	Tennessee.
TN—W.R. Grace (Tennessee)	Erwin	AWE	Tennessee.
TN—Y–12 Plant	Oak Ridge	DOE	Tennessee.
TX—AMCOT	Ft. Worth	AWE	Texas.
TX—Mathieson Chemical Co	Pasadena	AWE	Texas.
TX—Medina Facility	San Antonio	DOE	Texas.
TX—Pantex Plant	Amarillo	DOE	Texas.
TX—Sutton, Steele and Steele Co	Dallas	AWE	Texas.
TX—Texas City Chemicals, Inc	Texas City	AWE	Texas.
UT—Ore Buying Station at Marysvale	Marysvale	DOE	Utah.
UT—Ore Buying Station at Moab	Moab	DOE	Utah.
UT—Ore Buying Station at Monticello	Monticello	DOE	Utah.
UT—Ore Buying Station at White Canyon	White Canyon	DOE	Utah.
UT—Uranium Mill in Monticello	Monticello	DOE	Utah.
VA—BWXT	Lynchburg	AWE BE	Virginia
VA—Thomas Jefferson National Accelerator Facility	Newport News	DOE	Virginia.
VA—University of Virginia	Charlottesville	AWE	Virginia.
WA—Hanford	Richland	DOE	Washington.
WA—Pacific Northwest National Laboratory	Richland	DOE	Washington.

Jurisdiction and facility name	Location	Facility type	State
WV—Huntington Pilot Plant	Huntington	DOE	West Virginia.
WI—Allis-Chalmers Co	West Allis, Milwaukee	AWE	Wisconsin.
WI—A.O. Smith	Milwaukee	BE	Wisconsin.
WI—Besley-Wells	South Beloit	AWE	Wisconsin.
WI—General Electric (X-Ray Division)	Milwaukee	AWE	Wisconsin.
WI—LaCrosse Boiling Water Reactor	LaCrosse	DOE	Wisconsin.
WI—Ladish Co	Cudahy	BE	Wisconsin.
WY—Ore Buying Station at Crooks Gap	Crooks Gap	DOE	Wyoming.
WY—Ore Buying Station at Riverton	Riverton	DOE	Wyoming.
MR—Pacific Proving Ground[2]	Marshall Islands	DOE	Marshall Islands.

[1] Consistent with the Act, coverage is limited to activities not performed under the responsibility of the Naval Nuclear Propulsion program.
[2] Pacific Proving Ground includes Bikini Atoll, Enewetak Atoll, Johnston (U.S. nuclear weapons testing activities only), and Christmas Island (U.S. nuclear weapons testing activities only).

Issued in Washington, DC, August 17, 2004.

T.A. Rollow,

Director, Office of Worker Advocacy, Office of Environment, Safety and Health.

[FR Doc. 04–19228 Filed 8–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 8, 2004, 6 p.m.–8:30 p.m.

ADDRESSES: Bob Ruud Community Center, 150 North Highway 160,Pahrump, NV.

FOR FURTHER INFORMATION CONTACT: Kay Planamento, Navarro Research and Engineering, Inc., 2721 Losee Road, North Las Vegas, Nevada 89130, phone: 702–657–9088, fax: 702–295–5300, e-mail: *NTSCAB@aol.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Members of the CAB's Underground Test Area Committee will provide a briefing to update stakeholders on their work related to groundwater issues at the Nevada Test Site.
- CAB members will discuss technical committee focus areas and activities completed in fiscal year 2004.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kay Planamento at the address listed above.

Issued at Washington, DC, on August 18, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–19227 Filed 8–20–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0228, FRL–7801–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Activities Associated With EPA's PFC Reduction/Climate Partnership for the Semiconductor Industry, EPA ICR Number 1823.03, OMB Control Number 2060–0382

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on 11/30/2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 22, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0228, to EPA online using EDOCKET (our preferred method), by e-mail to a-and-r-*Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, MC 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Scott Bartos, Office of Atmospheric Programs, 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202 343–9167; fax number: 202 343–2208; e-mail address: *bartos.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0228, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are those which produce semiconductor devices in the United States.

Title: Reporting and Recordkeeping Activities Associated With EPA's PFC Reduction/Climate Partnership for the Semiconductor Industry.

Abstract: The U.S. EPA's Office of Atmospheric Programs launched the PFC Reduction/Climate Partnership for the Semiconductor Industry in 1996. Perfluorinated compounds (PFCs) are the most potent greenhouse gases known with atmospheric lifetimes of up to 50,000 years. These unique chemical compounds are required during two critical semiconductor manufacturing steps, plasma etching and CVD chamber cleaning. This important voluntary program contributes to the country's overall reduction in greenhouse gas emissions. The program uses a pollution prevention approach to reduce emissions and tracks progress by annually collecting PFC emissions estimates from partners.

EPA's semiconductor industry partners share information on technically feasible emission reduction strategies and EPA recognizes companies for their success in reducing PFC emissions through certificates, awards, and assistance in communicating their achievements with the public. In 2003, EPA's semiconductor industry partners were recognized for their commitment and ongoing efforts to protect the climate as participants in the White House's Climate VISION initiative. All semiconductor manufacturers operating in the U.S. are invited to join the partnership. Participation in the program begins by completing a Memorandum of Understanding that defines a voluntary agreement between the company and EPA. By joining the partnership, a company agrees to track and report an estimate of its PFC emissions to EPA annually. A designated third party assembles the reported data and protects any confidential or sensitive information prior to EPA review. The partner companies' annual reports will provide an estimate of total PFC emissions and a description of the estimating method. The partnership will track progress as a group using the aggregate annual PFC emissions estimate.

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 in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: In estimating the expected burden, EPA assumes 21 companies will participate during the three years covered by this proposed ICR.

Average annual reporting burden hours=11,426.

Average burden hours/response=247.

Frequency of response=1/year.

Estimated number of respondents=21.

Estimated total annual cost burden=$839,464.

Total capital and start-up costs=$0.

Total operation and maintenance costs=$116,319.

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.

Dated: August 3, 2004.

Paul Gunning,

Acting Chief, Non-CO_2 Programs Branch.

[FR Doc. 04–19149 Filed 8–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0098; FRL–7365–4]

National Pesticide Information Center & National Pesticide Medical Monitoring Program; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Pesticide Programs (OPP) is soliciting proposals from universities and colleges to develop or continue the National Pesticide Information Center (NPIC) and the National Pesticide Medical Monitoring Program (NPMMP). NPIC is a toll-free telephone service that provides science-based information about a wide variety of pesticide-related subjects to anyone within in the Unites States, Puerto Rico, or the Virgin Islands. Medical emergency cases involving humans and domestic animals are provided diagnostic and crisis management assistance. NPMMP is a service that provides a rapid response in the form of skilled technical assistance to persons suspected of being adversely affected by pesticide exposures to all inquiries from within the United States. OPP will award two separate cooperative agreements to run these projects. It is anticipated that an annual budget of about $1,475,000 would be available in fiscal year (FY) 2005 to support NPIC's overall objectives and maintain the services at a level currently offered. The annual funding for the NPMMP project is anticipated to be approximately $158,000 in FY 2005. These will be 5–year cooperative agreements with annual periods of performance and funding depending on the Agency budget in outlying years.

DATES: Applications must be received by EPA on or beforeOctober 7, 2004.

ADDRESSES: Applications may be submitted by mail, fax, or electronically. Please follow the detailed instructions provided in Unit III.H.1. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Frank L. Davido, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7576; fax number: (703) 305–4646; e-mail address: *davido.frank@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview Information

The following listing provides certain key information concerning the funding opportunity.

- *Federal agency name*: Environmental Protection Agency (EPA).
- *Funding opportunity title*: National Pesticide Information Center (NPIC) & National Pesticide Medical Monitoring Program (NPMMP).
- *Announcement type*: The initial announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFDA) number*: Research Grants No. 66.500.

II. General Information

A. Does this Action Apply to Me?

This action may be of particular interest to universities and colleges who have experience and expertise in pesticide toxicology; environmental chemistry; environmental fate; human and animal medical diagnostic and crisis management assistance; workings with health care providers; quantitative analyses of environmental and biological samples pertaining to pesticides; pesticide poisonings; integrated pest management (IPM); information technology and information management (IT/IM); telecommunication networks; outreach and marketing; and the Federal statutes involved within the Office of Pesticide Programs (OPP), e.g., Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Federal Food, Drug, and Cosmetic Act (FFDCA), and Food Quality Protection Act (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0098. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at*http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at*http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

III. Introduction

A. NPIC

Since the 1980's OPP has provided funding for the National Pesticide Information Center (NPIC) formerly called the National Pesticide Telecommunications Network (NPTN).

FIFRA, as amended, authorizes EPA to monitor incidental exposure to man, animals and the environment, and to identify pesticide pollution, secular trends (continuing trends) and sources of contamination and their relationship to human and environmental effects. FIFRA also calls for a National Monitoring Plan; a national plan for monitoring pesticides in cooperation with other Federal, state or local agencies.

Since the inception of EPA, the Agency has attempted in many ways to conduct specific monitoring projects. NPIC is a part of that effort and is included in the National Monitoring Plan. The idea of a toll free telephone service was initiated in 1978 for exclusive use by health professionals in the recognition and management of pesticide poisonings. Later the telephone service was extended to include the general public and expanded to provide a variety of other pesticide information. Over the years, the number of telephone calls handled has fluctuated annually from about 2,000 to a high of 53,598 in 1990, whereas in the last couple years the annual calls taken range from 23,000–24,500. In the last several years, inquiries have been received from all states plus Puerto Rico, the Virgin Islands, Canada, Mexico, Argentina, Germany, and numerous other foreign countries. Calls are received from hundreds of organizations; however, the general public constitutes the largest percent calling group, generally ranging from 84% to 88% annually.

The peak call load periods are from April through September each year. However, the NPIC has experienced numerous peaks developed from external causes; whereby, adjustments had to be made to adequately handle the workload, e.g. rebalancing staffing.

The NPIC telephone number has been promoted through family and women's magazines, EPA publications, TV and radio public announcements, general

news media, and word of mouth. Additionally, attendance of NPIC personnel at professional meetings, e.g., American Academy of Occupational Medicine, National Professional Lawn Care Association, American College of Emergency Physicians, and Annual Pest Control Operators, has increased the visibility of NPIC services. NPIC also devotes considerable resources to its wide range outreach program and is continually addressing under served audiences.

With the formation of an EPA NPIC Oversight and Monitoring Committee (OMC) in the early 1990's and meetings presently continuing, helps information sources used by NPIC to remain accurate, current, and impartial. NPIC operates 10 hours a day, 6:30 a.m. to 4:30 p.m., Monday through Sunday, providing toll free telephone service in the United States, Puerto Rico, and the Virgin Islands. NPIC maintains a library of up-to-date information on a wide variety of pesticide subjects, providing the caller with:

- Pesticide product information.
- Information on recognition and management of pesticide poisonings.
- Toxicology and symptomatic reviews.
- Environmental chemistry.
- Referrals for laboratory analyses, investigation of pesticide incidents, and emergency treatment information.
- Safety information.
- Health and environmental effects.
- Clean-up and disposal procedures.

In emergency situations where additional expertise is needed, human and animal poisonings are referred via a telephone switching system to either the Oregon Poison Center or the National Animal Poison Control Center. Both organizations, being under retainer to NPIC, provide extensive experience in handling pesticide poisonings.

NPIC has continually evolved to better serve its users. It currently provides its callers information in real time by furnishing requested information via the telephone, through e-mail, and fax. Individuals can report pesticide incidents toll free, acquire extensive pesticide-related information via their Web site, and receive current periodic EPA information. Also, OPP can refer a variety of calls received directly to NPIC for reply. NPIC acts as a "sounding board" from the general public as to their awareness and concerns about pesticides.

In addition, the NPIC provides information assistance directly to the OPP's Pesticide Incident Response Officer (PIRO) in order to promote an on-going rapid response to unanticipated, major incidents which may require immediate evaluation and action in emergency situations to persons suspected of being adversely exposed to pesticides. The NPIC possesses expertise to provide highly skilled consultants, diagnostic treatment, and laboratory assistance to the general public via the PIRO.

B. NPMMP

Since the 1980's OPP has provided funding for the National Pesticide Medical Monitoring Program (NPMMP).

FIFRA, as amended, authorizes EPA to monitor incidental exposure to man, animals and the environment, and to identify pesticide pollution, secular trends and sources of contamination and their relationship to human and environmental effects. FIFRA also calls for a National Monitoring Plan; a national plan for monitoring pesticides in cooperation with other Federal, state or local agencies.

Since the inception of EPA, the Agency has attempted in many ways to conduct specific monitoring projects. NPMMP is a part of that effort and is included in the National Monitoring Plan.

In the past 10 years, the NPMMP has received nearly 6,000 referrals from a variety of sources including: State public health departments, health care providers, government agencies, the general public, as well as NPIC. NPMMP is an invaluable resource for many organizations that need to refer inquiries of a complex medical nature to an expert in the field. It is not unusual for an individual to have contacted numerous agencies in search for assistance relating to a suspected pesticide exposure. Callers referred to NPMMP are frequently frustrated or confused, given some of the uncertainties with respect to pesticide exposures, as well as the vast amount of information (sometimes conflicting) that is available to the general public. NPMMP presents an empathetic yet science-based approach to responding to these inquiries. The project offers field investigations, medical toxicological consultations, and laboratory analyses of both biological and environmental samples.

The NPMMP is recognized by many state agencies and health care providers as a national "one of a kind" reliable source for medical consultation for individuals exposed to pesticides. The availability of a laboratory that can analyze various biological samples, i.e., human blood and urine and environment also adds to the uniqueness of the project.

C. NPIC and NPMMP

To continue the NPIC and the NPMMP projects, EPA is soliciting applications from universities and colleges with expertise and working knowledge in the following areas:

1. *NPIC.* Pesticide toxicology; environmental chemistry; environmental fate; human and animal medical diagnostic and crisis management assistance; emergency medicine; integrated pest management (IPM); extension service; risk communication; conventional pesticides including antimicrobials and products of biotechnology; communication skills with the public; IT/IM; telecommunication networks; outreach and marketing; and the Federal statutes involved within the Office of Pesticide Programs (OPP), e.g., FIFRA, FFDCA, and FQPA.

2. *NPMMP.* Emergency medicine; pesticide clinical toxicology; environmental chemistry; environmental fate; human and animal medical diagnostic and crisis management assistance; risk communication; workings with health care providers; conventional pesticides including antimicrobials and products of biotechnology; quantitative analyses of environmental and biological samples pertaining to pesticides; pesticide poisonings; extension service; IPM; IT/IM; telecommunication networks; outreach and marketing; and the Federal statutes involved within OPP, e.g., FIFRA, FFDCA, and FQPA.

This document outlines the application requirements and procedures for the NPIC and the NPMMP projects.

III. Program Description

A. Purpose and Scope

1. *NPIC.* It is well established that the public has difficulty in obtaining accurate, unbiased pesticide information and NPIC fills that void. The mere numbers of telephone calls received yearly (23,000–25,000) by NPIC and over 780,000 hits on its World Wide Web site clearly illustrates the interest the public has concerning pesticide issues. The financial assistance provided under this project will support the delivery to the public of objective, science-based information, on a wide variety of pesticide-related subjects, in real time. In part, on-line pesticide specialist should be capable of providing information in a user-friendly manner and be adept at communicating scientific information to the lay person which in turn promotes informed decision-making on the part of the

caller. NPIC is a direct service to the public.

It is also well noted that most health care providers are not well acquainted with the recognition, management, and prevention of health effects from pesticide exposures. Unique to NPIC is that one of the toxicologists is also a physician trained in clinical toxicology and emergency medicine and board certified in the specialties of Public Health and General Preventive Medicine. With a strong background in pesticide toxicology, this physician adds additional depth to the NPIC project in being able to communicate not only with state public health departments and health care providers but also with the general public.

The most tangible and direct interface between NPIC and its clientele is the telephone. This is via a toll-free telephone system. NPIC should provide quality user-friendly service to callers. NPIC must have well qualified pesticide specialists, with the technical expertise to address a variety of types of inquiries ranging from simple to very complex and often controversial. In addition to delivery of information by a toll-free telephone system, fax, mail, and e-mail, the Internet must be made available. Current and accurate information on a wide variety of pesticide subjects must be readily available to the public. This project must be on the cutting edge of, IT/IM, extremely knowledgeable in the world of pesticides, promote an aggressive marketing and outreach program with emphasis on the under-served populations, and sustain excellent customer service.

NPIC must strive to integrate the values of professionalism, teamwork, integrity, accountability, and a strong commitment to the public, as well as, the professional and medical communities, in order to help fulfill their mission and provide exceptional and respectful customer service. Part of this is best accomplished by funding in the form of a cooperative agreement. This allows the university the flexibility to quickly react to new needs for pesticide-related information as initiated by pesticide incidents; new regulations; public interests; IT/IM technology; and specific needs by either the project or EPA. Further, this flexibility encourages involvement of and makes available to NPIC and thus to the public, the full capabilities of the university community with respect to access to: Pesticide specialists from a number of disciplines, e.g., IPM experts, biotechnology, and entomology. In addition, the specialist have opportunities to advance their education through on the job-training; advanced classroom work; exposure at national meetings and symposiums; and numerous interactions with many individuals in OPP. A cooperative agreement at a university setting allows creative thinking and scholarship.

The continual success of NPIC will promote a better understanding into the world of pesticides for all communities (general public, professional, and medical) and help reduce pesticide poisonings. These programs are included in the Catalog of Federal Domestic Assistance under number 66.500 at*http://www.cfda.gov/public/whole.pdf.*

2. *NPMMP.* It is widely known that a high percent of the health care providers in the United States are not properly prepared to identify, diagnose, treat, or provide advice to individuals suspected of pesticide exposure. It is also evident that the general public finds it difficult to locate a physician that fully understands pesticide exposure scenarios and who is also capable of discussing the many issues that may be involved and relating this information in a way that is understandable to the lay person. The financial assistance provided under this project will support the delivery to the general public, health care providers, and government agencies information pertaining to both the clinical and basic toxicology of pesticides. NPMMP will provide immediate information and assistance to health care providers, regulatory officials, and other agencies involved in the investigation and management of suspected human illnesses associated with pesticide exposures. The information provided will benefit inquiries by providing unique expertise in pesticide toxicology, and informational assistance relating to the recognition, management, and prevention of pesticide exposures. Thus, this project provides information in real time on suspected pesticide-related illness in both acute and chronic scenarios. Information provided benefits inquiries by answering questions as well as, in some cases, providing assistance in the investigation of suspected illnesses or in an ancillary role in the treatment of acute or chronic disease. NPMMP communicates to the public on a variety of issues relating to pesticides, and directs individuals towards appropriate resources in cases where additional assistance is needed. This assistance is provided by a physician through his/her professional knowledge and experience, and from the added ability of utilizing a laboratory that is capable of analyzing environmental samples and biological (human blood and urine). This physician is trained in clinical toxicology and emergency medicine and board certified in the specialties of Public Health and General Preventive Medicine.

NPMMP provides medical histories and environmental analysis of suspected pesticide illnesses that relate to the current use of pesticides in structural, agricultural, or other environmental situations. It brings attention to the possibility of human illnesses which may not have been suspected by basic toxicology screens but which may exist and require more extensive clinical or basic scientific testing. Some scenarios may relate to specific formulations or based upon the nature of the inquiries received, may indicate that there are problems existing with the exact active ingredients used regardless of formulation. NPMMP will also bring attention to potential cases of illness which may not have been suspected or identified through the regulatory review process for pesticides, as well as cases developing through the misapplication of pesticides.

The NPMMP library of pesticide information that has been assembled by current and previous investigators is being expanded to incorporate new publications from the scientific literature, as well as regulatory decisions relating to pesticides. The library is being electronically scanned in order to enable investigators to have immediate access to important documents, and to facilitate the electronic transfer of information to inquirers in situations where such information is requested or immediately necessary.

Information must be collected from all callers with inquiries to the NPMMP. Data should include basic demographic information, the circumstances surrounding the exposure incident or informational inquiry, the pesticide that is the subject of inquiry, and a certainty and severity index rating. No direct patient care should be provided, since this project is information in nature. However in some cases, medical records may be provided to the investigators in the process of responding to inquiries. The NPMMP investigators must complete training for the implementation of the Health Insurance Portability and Accounting Act (HIPAA). The protocol for the NPMMP should undergo review and approval by the Institutional Review Board of the university or college selected.

The continual success of NPMMP provides immediate assistance to both the general public and health care providers involved in pesticide incidents/exposures. This project brings attention to potential cases of illness

which may not have been suspected or identified through the regulatory review process for pesticides, as well as cases developed through the misapplication of pesticides. These programs are included in the Catalog of Federal Domestic Assistance under number 66.500 at*http://www.cfda.gov/public/whole.pdf.*

B. Goal and Objectives

Through the proposals sought under these projects, EPA intends to work with universities and colleges to develop or continue the NPIC and the NPMMP.

1. *NPIC.* NPIC is to serve as a source of objective, science-based information, on a wide variety of pesticide-related subjects, in real time. These subjects include: Pesticide products; recognition and management of pesticide poisonings; toxicology; environmental chemistry; safety practices; health and environmental effects; clean-up and disposal; emergency treatment for humans and animals; pesticide regulations and corresponding Federal statutes; and laboratory analyses and pesticide incident investigation assistance.

The objectives of NPIC are to develop or continue to:

- Operate a toll-free telephone service providing a variety of accurate, impartial pesticide information to callers in the United States, Puerto Rico, and the Virgin Islands, in real time. The project will operate Monday through Sunday, 10 hours daily. A recording device will be provided to capture off-hour calls.
- Provide access to NPIC and pesticide-related information through a state of the art World Wide Web site and e-mail.
- Serve as a source of factual unbiased information on pesticide chemistry, toxicology, and environmental fate to all inquiries, including industry, government, medical, agricultural sector, news media, as well as the general public.
- Provide the medical community with diagnostic and crisis management assistance involving pesticide incidents in situations pertaining to both human and animal patients.
- Acquire accurate and complete information on all inquiries considered to be pesticide incidents.
- Computerize all inquiry information as well as pesticide incident data for easy retrieval.

2. *NPMMP.* NPMMP provides a rapid response in the form of skilled technical assistance to persons suspected of being adversely affected by pesticide exposures. The project will consist of field investigations, medical toxicological consultations, and laboratory analyses of both biological and environmental samples.

The objectives of the NPMMP are to develop or continue to:

- Make information pertaining to both the clinical and basic toxicology of pesticides available to all inquiries from the United States.
- Provide written information on pesticide toxicology, when available and requested, to respond to inquiries.
- Provide quantitative laboratory measurements of pesticides in environmental samples, as well as in select cases, in biological samples of exposed human beings.
- Define inquiries and incidents relating to human pesticide exposures.
- Develop and maintain computer access to toxicology databases including Toxline (National Library of Medicine), Poisindex (Micromedex), SciFinder Scholar, etc.
- Expand the library of basic and clinical toxicology journals, reports of industry and government, textbooks, and other paper and electronic resources pertaining to pesticides and their impact on human health.

C. Eligibility

1. *Applicants.* Grant funds are available to universities and colleges who have experience and expertise in pesticide toxicology; environmental chemistry; environmental fate; human and animal medical diagnostic and crisis management assistance; extension service; pesticide poisonings; emergency medicine; quantitative analyses of environmental and biological samples; conventional pesticides including antimicrobials and products of biotechnology; IPM; IT/IM; telecommunication networks; outreach and marketing; and the Federal statutes involved within OPP, e.g., FIFRA, FFDCA, and FQPA.

To be eligible for consideration, applicants must meet all of the following criteria. Failure to meet the following criteria will result in the automatic disqualification for consideration of the proposal for funding:

- Be an applicant who is eligible to receive funding under this announcement.
- The proposal must address all of the high priority areas for consideration.
- The proposal must meet all format and content requirements contained in this notice.
- The proposal must comply with the directions for submittal contained in this notice.

There is a 5% cost share requirement for these projects.

2. *Qualifications.* Applicants must demonstrate experience and expertise in the following high priority areas for consideration to serve as the source that is to provide objective science-based information, on a wide variety of pesticide-related subjects, in real-time and to fulfill the objectives of this program. Applicants will be evaluated on the following criteria:

i. National Pesticide Information Center (NPIC):

a. *Academic experience requirements:*

- A university containing one or more of the following: School of Medicine; School of Public Health; School of Veterinary Medicine; and/or College of Allied Sciences.
- Documented experience and expertise in four or more of the following disciplines: Epidemiology; occupational health; industrial hygiene; environmental health; agricultural health; pesticide toxicology; animal toxicology; risk assessment; and health education.
- Documented experience and expertise in three or more of the following: Environmental biology; agricultural ecology; fish/wildlife biology; agronomy; horticulture; environmental chemistry; extension service; IPM; genetic engineering; gene research; water quality; and food safety.
- Documented experience and expertise in survey design and biostatistics.
- Documented experience and expertise in marketing; outreach; communications; and IT/IM.
- Documented experience and expertise in basic toxicology; clinical toxicology; and clinical laboratory analyses.
- Knowledge of the Pesticide Registration Improvement Act, specifically section 33(c)(B), Worker Protection.

b. *Technical experience requirements:*

- Documented experience of the proposed staff to establish and maintain a large-scale telecommunications network, including telephone, fax, e-mail, and Web site.
- Demonstrated expertise and experience with creation of an up-to-date, modern Web site for posting and delivery of NPIC information and for links to objective or otherwise relevant pesticide information on the World Wide Web.
- Demonstrated expertise and experience in the establishment of an information management retrieval system which can be used to "mine" objective pesticide-related information from selected sites on the World Wide

Web and/or hard copy resources. The information should be indexed and made searchable and selectively retrievable by the general public through a user-friendly web browser-based interface.

- Documented experience and expertise in the creation and management of a computer system, including a computer network, with workstations for pesticide specialists and a UNIX server for housing the NPIC web site, information base (repository of electronic pesticide information), and related software (e.g., Apache Web server, Oracle data base) capable of supporting the needs of NPIC. Also, including the implementation and management of a firewall to provide a high-level of security for NPIC computers, data, and information.
- Broad, multidisciplinary experience in knowledge of pesticide, uses, formulations, toxicity, health and environmental effects, and disposal and considerable experience and knowledge in the Federal statutes, e.g., FIFRA, FFDCA, and FQPA, involving OPP, including risk assessment, water quality, food safety, and OPP's entire regulatory process.
- Demonstrated experience and expertise with all pesticides (including antimicrobials and biopesticides), pesticide-related issues and pesticide regulations.
- Experience with the medical community, health care providers, poison control centers and others including all levels of government that are involved in the diagnostic and crisis management concerning human and domestic animal poisonings.

c. *Staffing requirements*:

- The university/college will consist of a project director; co-principal investigators; a project coordinator; and core staff.
- The university/college must have a physician with extensive knowledge in medical/clinical toxicology and pesticides. This individual must be able to demonstrate the ability to handle pesticide cases of clinical importance or unexpected outcome and also be able to interpret human health information in the context of the regulatory risk assessment process. This physician must be well-versed in the major federal/state statutes governing the use of pesticides in the United States. Also, it is strongly preferred this physician be physically located on the same campus as NPIC.
- The university/college must have the ability to adequately handle spanish speaking inquiries; therefore, they must demonstrate an ability to present and provide all pertinent pesticide information in spanish.

ii. *National Pesticide Medical Monitoring Program (NPMMP)*:

a. *Academic experience requirements*:

- A university containing one or more of the following: School of Medicine; School of Public Health; School of Veterinary Medicine; and/or College of Allied Sciences.
- Documented experience and expertise in four or more of the following disciplines: Epidemiology; occupational health; emergency medicine; industrial hygiene; environmental health; agricultural health; pesticide toxicology; animal toxicology; risk assessment; and health education.
- Documented experience and expertise in three or more of the following: Environmental biology; agricultural ecology; agronomy; horticulture; environmental chemistry; extension service; IPM; genetic engineering; gene research; water quality; and food safety.
- Documented experience and expertise in survey design and bio-statistics.
- Documented experience and expertise in marketing; outreach; communications; and IT/IM.
- Documented experience and expertise in basic toxicology; clinical toxicology; and clinical laboratory analyses.

b. *Technical experience requirements*:

- Broad, multidisciplinary experience in knowledge of pesticide, uses, formulations, toxicity, health and environmental effects, and disposal and considerable experience and knowledge in the Federal statutes, e.g., FIFRA, FFDCA, FQPA, involving OPP, including risk assessment, water quality, food safety, and OPP's entire regulatory process.
- Demonstrated experience and expertise with all pesticides(including antimicrobials and biopesticides), pesticide-related issues and pesticide regulations.
- Experience with the medical community, health care providers, poison control centers and others including all levels of government that are involved in the diagnostic and crisis management concerning human and domestic animal pesticide poisonings.
- Has published on the topic of pesticide poisonings and other pesticide-related issues.
- Experience with the migrant worker health problems, especially as it relates to pesticides, as well as, other under served occupational populations.

c. *Staffing requirements*:

- The university/college will consist of a principal investigator and appropriate staff.
- The university/college must have a physician with extensive knowledge in medical/clinical toxicology and pesticides. This individual must be able to demonstrate the ability to handle pesticide cases of clinical importance or unexpected outcome and also be able to interpret human health information in the context of the regulatory risk assessment process. This physician must be well-versed in the major federal/state statutes governing the use of pesticides in the United States. Also, it is strongly preferred this physician be physically located on the same campus as NPIC and have a working knowledge of the overall mission and objectives of NPIC.

D. Authority

EPA expects to enter into cooperative agreements under the authority provided in FIFRA section 20 which authorizes the Agency to issue grants or cooperative agreements for research, public education, training, monitoring, demonstration, and studies. Regulations governing these cooperative agreements are found at 40 CFR part 30 for institutions of higher education, colleges and universities, and non-profit organizations; and 40 CFR part 31 for states and local governments. In addition, the provisions in 40 CFR part 32, governing government wide debarment and suspension; and the provisions in 40 CFR part 40, regarding restrictions on lobbying apply. All costs incurred under this program must be allowable under the applicable OMB Cost Circulars: A–87 (states and local governments), A–122 (nonprofit organizations), or A–21 (universities). Copies of these circulars can be found at*http://www.whitehouse.gov/omb/circulars/*. In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (e.g., lobbying members of Congress or lobbying for other Federal grants, cooperative agreements, or contracts). See 40 CFR part 40.

E. Activities to be Funded

The cooperative agreements will fund activities that fulfill the objectives of the NPIC and NPMMP.

1. *NPIC.* The objectives of the NPIC are as follows:

- To operate a toll-free telephone service providing a variety of accurate, impartial pesticide information to callers in the United States, Puerto Rico, and the Virgin Islands, in real time. The

project will operate Monday through Sunday, 10 hours daily. A recording device will be provided to capture off-hour calls.

- To provide access to NPIC and pesticide-related information through a state of the art World Wide Web site and e-mail.
- To serve as a source of factual unbiased information on pesticide chemistry, toxicology, and environmental fate to all inquiries, including industry, government, medical, agricultural sector, news media, as well as the general public.
- To provide the medical community with diagnostic and crisis management assistance involving pesticide incidents in situations pertaining to both human and animal patients.
- To acquire accurate and complete information on all inquiries considered to be pesticide incidents.
- To computerize all inquiry information as well as pesticide incident data for easy retrieval.

2. *NPMMP.* The objectives of the NPMMP are as follows:

- To make information pertaining to both the clinical and basic toxicology of pesticides available to all inquiries from the United States.
- To provide written information on pesticide toxicology, when available and requested, to respond to inquiries.
- To provide quantitative laboratory measurements of pesticides in environmental samples, as well as in select cases, in biological samples of exposed human beings.
- To define inquiries and incidents relating to human pesticide exposures.
- To develop and maintain computer access to toxicology databases including Toxline (National Library of Medicine), Poisindex (Micromedex), SciFinder Scholar, etc.
- To expand the library of basic and clinical toxicology journals, reports of industry and government, textbooks, and other paper and electronic resources pertaining to pesticides and their impact on human health.

F. Technical Proposals

1. *NPIC.* The technical proposal should fully describe an approach to fulfilling the objectives of NPIC. It should include but not be limited to:

- Administrative and operational infrastructure that will support NPIC' s goal and objectives.
- The establishment of quality assurance/quality control procedures for, training of pesticide specialists; information materials created and distributed by NPIC; information collected on all calls; and information acquired for use in answering inquiries from the public.
- Training of specialists in all areas of pesticide information, regulations, pesticide toxicology, risk assessment, etc., and especially relating this information to the public.
- Total estimated budget by cost category, e g., personnel, travel, equipment, supplies, contractual services, and most important—indirect rate and costs.
- Other management techniques and procedures necessary to ensure the quality and timeliness of all objectives.
- A complete description of the qualifications of each selected NPIC staff member.

Sample tasks

Prepare a description of the optimal approach to each task, including a working definition of anticipated problems, a description of specific features of the approach to the task, specific staff personnel involved, timing and logistical considerations, estimated resource requirements, and expected work products. Avoid generalized statements, e.g., following established procedures.

- *Task 1*: Develop a plan to handle calls/inquiries from the general public and medical community involving pesticide incidents, e.g., alleged pesticide-related health concerns, pesticide exposures, whereby expertise in medicine and pesticide toxicology is required. Include all benefits realized by NPIC.
- *Task 2*: Develop a written and schematic plan that illustrates a comprehensive computer infrastructure and state of the art World Wide Web site that will adequately meet the requirements of NPIC presently and in the future.
- *Task 3.* Develop a plan to respond to the activities funded by the Pesticide Registration Improvement Act, (Section 33(c)(3)(B)), Worker Protection, that will enhance current scientific and regulatory activities related to worker protection. This plan should include, but not be limited to staffed positions that:

-- Respond to calls received from around the country during the agricultural work day, as well as during evening and weekend hours.

-- Have the ability to respond to calls in English and in Spanish.

-- Have access to translation services to handle calls in Haitian, Creole, and Asian languages.

-- Have the ability to make referrals to relevant health services, when appropriate.

-- Have the ability to make referrals to state enforcement agencies, when appropriate.

-- Have the ability to aggregate call and referral information/data into reports which may be distributed to various organizations involved in the overall Worker Protection effort.

2. *NPMMP.* The technical proposal should fully describe an approach to fulfilling the objectives of NPMMP. It should include but not be limited to:

- Administrative and operational infrastructure that will support NPMMP's goal and objectives..
- The establishment of quality assurance/quality control procedures for information materials created and distributed by NPMMP; information collected on all calls; and information acquired for use in answering inquiries from the public.
- Total estimated budget by cost category, e g., personnel, travel, equipment, supplies, contractual services, and specifics on how laboratory dollars should be allocated.
- Other management techniques and procedures necessary to ensure the quality and timeliness of all objectives.
- A complete description of the qualifications of each selected NPMMP staff member.

Sample tasks

Prepare a description of the optimal approach to each task, including a working definition of anticipated problems, a description of specific features of the approach to the task, specific staff personnel involved, timing and logistical considerations, estimated resource requirements, and expected work products. Avoid generalized statements, e.g., following established procedures.

- *Task 1.* Develop a detailed plan on how to handle a call received from an individual reporting the following information: A private pesticide company treated the individuals home for ants and crickets and applied an organophosphate pesticide which the applicator said was extremely safe and could be applied while the family and pet cat was present. When questioned about the product being applied, the applicator refused to provide any additional information except that he had being using these products for years and was never ill from them. The caller explained that the application was made throughout the entire house and some carpets and furniture were actually soaked with the material. The caller also reported that within 24 hours she and her and two children were all complaining of headaches and dizziness, and that the 2–year child appeared to show an overall weakness.

In addition, her cat was acting lethargic. The caller did not know whether they could all be getting the flu or whether it was really related to the pesticide treatment.

- *Task 2*: Develop a plan that will provide an efficient outreach method in order to better reach health care providers and other public health professionals in the services and findings provided by the NPMMP including the cost for such a project.

G. Award and Distribution of Funds

1. *Available funding*—i. *NPIC.* The funding for the selected award project is in the form of a cooperative agreement awarded under FIFRA section 20. The total funding available for award for NPIC in FY 2005 is expected to be approximately $1,475,000. At the conclusion of the first 1 year period of performance, incremental funding of up to $1,500,000 may be made available for each year allowing the project to continue for a total of 5 years and totaling up to $8,000,000 to $9,000,000 for the 5–year period, depending on the Agency budget in outlying years.

ii. *NPMMP.* The funding for the selected award project is in the form of a cooperative agreement awarded under FIFRA section 20. The total funding available for award for the Medical Monitoring project in FY 2005 is expected to be approximately $150,000. At the conclusion of the first 1 year period of performance, incremental funding of up to $150,000 may be available for each year allowing the project to continue for a total of 5 years and totaling up to $750,000 for the 5–year period, depending on the Agency's budget in outlying years.

Should additional funding become available for award, the Agency may make available additional funds under the cooperative agreements based on the solicitation and in accordance with the final selection process, without further notice of competition.

2. *Evaluation process and criteria*—i.*NPIC.* Applicants will be screened to ensure that they meet all eligibility criteria and will be disqualified if they do not meet all eligibility criteria. All eligible proposals will be reviewed, evaluated, and ranked by a selected panel of EPA reviewers based on the following evaluation criteria and weights (Total: 100 points):

Technical proposal(see Unit III.F.1. for details)----(Weighting: 30 points)

Academic experience(see Unit III.C.2.i.a. for details)----(Weighting: 15 points)

Technical experience(see Unit III.C.2.i.b. for details)----(Weighting: 25 points)

Sample Tasks(see Unit III.F.1. details)----(Weighting: 30 points, each task is worth 10 points)

ii. *NPMMP.* Applicants will be screened to ensure that they meet all eligibility criteria and will be disqualified if they do not meet all eligibility criteria. All proposals will be reviewed, evaluated, and ranked by a selected panel of EPA reviewers based on the following evaluation criteria and weights (Total: 100 points):

- *Technical proposal*(see Unit III.F.2. for details)----(Weighting: 30 points)
- *Academic experience* (see III.C.2.ii.a. for details)----(Weighting: 15 points)
- *Technical experience*(see III.C.2.iii.b. for details)----(Weighting: 25 points)
- *Sample tasks*(see Unit III.F.2. for details)----(Weighting: 30 points, each task is worth 15 points)

3. *Selection official.* For both NPIC and NPMMP, the funding decision will be made from the group of top rated proposals by the Division Director of the Information Resources and Services Division, Office of Pesticide Programs. The Agency reserves the right to reject all proposals and make no awards.

4. *Dispute resolution process.* The procedures for dispute resolution at 40 CFR 30.63 and 40 CFR 31.70 apply.

H. Application Requirements

The following application requirements apply for both NPIC and NPMMP projects.

1. *Content requirements.* Proposals must be typewritten, double spaced in 12 point or larger print using 8.5 x 11 inch paper with minimum 1 inch horizontal and vertical margins. Pages must be numbered in order starting with the cover page and continuing through the appendices. One original and one electronic copy (e-mail or disk) is required.

All proposals must include:

- Completed Standard Form SF 424*, Application for Federal Assistance. Please include organization fax number and e-mail address. The application forms are available on line at*http://www.epa.gov/ogd/grants/how_to_apply.htm.*
- Completed Section B--Budget Categories, on page 1 of Standard Form SF 424A* (see allowable costs discussion below). Blank forms may be located at*http://www.epa.gov/ogd/grants/how_to_apply.htm.*
- Detailed itemization of the amounts budgeted by individual Object Class Categories (see allowable costs discussion below).
- Statement regarding whether this proposal is a continuation of a previously funded project. If so, please provide the assistance number and status of the current grant/cooperative agreement.
- *Executive Summary.* The Executive Summary shall be a stand alone document, not to exceed one page, containing the specifics of what is proposed and what you expect to accomplish regarding measuring or movement toward achieving project goals. This summary should identify the measurable environmental results you expect including potential human health and ecological benefits.
- *Table of contents.* A one page table listing the different parts of your proposal and the page number on which each part begins.
- *Proposal narrative.* Includes Parts I–V as identified below (not to exceed 10 pages).
- *Part I--Project title.* Self explanatory.
- *Part II--Objectives.* A numbered list (1, 2, etc.) of concisely written project objectives, in most cases, each objective can be stated in a single sentence.
- *Part III--Justification.* For each objective listed in Part II, discuss the potential outcome in terms of human health, environmental and/or pesticide risk reduction.
- *Part IV--Approach and methods.* Describe in detail how the program will be carried out. Describe how the system or approach will support the program goals.
- *Part V--Impact assessment.* Please state how you will evaluate the success of the program in terms of measurable results. How and with what measures will humans be better protected as a result of the program.

2. *Appendices.* These appendices must be included in the cooperative agreement proposal. Additional appendices are not permitted.

3. *Timetable.* A timetable that includes what will be accomplished under each of the objectives during the project and when completion of each objective is anticipated.

4. *Major participants.* List all affiliates or other organizations, educators, trainers and others having a major role in the proposal. Provide name, organizational affiliation or occupation and a description of the role each will play in the project. A brief resume (not to exceed two pages) should be submitted for each major project manager, educator, support staff, or other major participant.

5. *Allowable costs.* EPA grant funds may only be used for the purposes set forth in the cooperative agreement, and

must be consistent with the statutory authority for the award. Cooperative agreement funds may not be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other governmental entity. All costs identified in the budget must conform to applicable Federal Cost Principles contained in OMB Circular A-87; A-122; and A-21, as appropriate.

4. *Federal requirements for recipients.* All applicants should be aware that formal requests for assistance (i.e., SF 424 and associated documentation) may be subject to intergovernmental review under Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants should contact their state's single point of contact (SPOC) for further information. There is a list of these contacts at the following web site:*http:/whitehouse.gov/omb/grants/spoc.html.*

I. Application Procedures

1. *Submission instructions.* You may submit an application through the mail, by fax, or electronically. Regardless of submission method, all applications must be received by EPA on or before September 22, 2004.

As indicated above, each application must include the original paper copy of the submission, along with one electronic copy. The electronic copy of your application package, should be consolidated into a single file, and that you use Word Perfect WP8/9 for Windows, or Adobe pdf 4/5. Please check your electronic submissions to ensure that it does not contain any computer viruses.

Submit your application using one of the following methods:

By mail to: Frank L. Davido, Office of Pesticide Programs, Information Resources and Services Division, Mail code 7502C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

By fax to: Frank Davido at fax number: (703) 305–4646.

By e-mail to: *davido.frank@epa.gov.*

2. *Notification process.* The NPIC/NPMMP Project Officer, Frank L. Davido, Public Information and Records Integrity Branch, Information Resources and Services Division, in OPP will mail an acknowledgment to applicants upon receipt of the application. Once all of the applications have been reviewed, evaluated, and ranked, applicants will be notified of the outcome of the two competitions. A listing of the successful proposals will be posted on the *www.epa.gov/pesticides* website at the conclusion of the competition. The website may also contain additional information about this announcement including information concerning deadline extensions or other modifications.

J. Recipient Reporting Requirements

1. *NPIC.* The recipient will submit monthly, quarterly, an annual reports to the EPA Project Officer. The monthly and quarterly reports are due within 30 days after each reporting period. The monthly reports will include:

- A summary of number of calls for the month by major call group.
- A summary of pesticides from a certainty index classification, only those considered as definite/probable (certainty index classification and procedures will be provided to the recipient).
- Detailed summaries of those calls classified as definite and probable.
- A listing of the top 10 active ingredients involved in NPIC calls, including the incident calls.
- Issues of concern (possible trends/issues).
- Unusual events.

The quarterly reports should include: Work status; work progress; difficulties encountered; preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report should also include any changes of key personnel concerned with the project. The annual report will be of high quality and submitted within 3 months after the reporting period. At minium, it should include an executive summary; project mission statement; NPIC update (inquiry update, achievements, personnel up date, facilities); and traffic report (details will be provided to the recipient). In addition, a separate financial report is required annually. It will include an annual accounting, a quarter, and monthly expenditures by budget categories, e.g., personnel, travel, and supplies. Financial reports/accounting can also be requested at any time.

The Project Officer may request additional information relative to the scope of work in the cooperative agreement which may be useful for Agency reporting under the Government Performance and Results Act.

2. *NPMMP.* The recipient will submit quarterly and an annual reports to the EPA Project Officer. The quarterly reports are due within 30 days after each reporting period. The quarterly reports should include: Work status; work progress; a description of inquiries and incidents relating to human pesticide incidents/exposures; unusual exposure scenarios cases and misapplications; difficulties encountered; preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report should also include any changes of key personnel concerned with the project. The annual report will be of high quality and submitted within 3 months after the reporting period. At minium, it should include an executive summary; project mission statement; NPMMP update (inquiry update, achievements, personnel up date, facilities); and traffic report (details will be provided to the recipient). In addition, a separate financial report is required annually. It will include an annual accounting, a quarter, and monthly expenditures by budget categories, e.g., personnel, travel, and supplies. Financial reports/accounting can also be requested at any time.

The Project Officer may request additional information relative to the scope of work in the cooperative agreement which may be useful for Agency reporting under the Government Performance and Results Act.

IV. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The CRA 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 grant solicitation 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 its publication in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants, Pesticides, Training.

Dated: August 12, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–19232 Filed 8–20–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0284; FRL–7675–8]

Pesticide Program Dialogue Committee, Pesticide Registration Improvement Act Process Improvement Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Pesticide Program Dialogue Committee (PPDC), Pesticide Registration Improvement Act (PRIA) Process Improvement Workgroup will hold a public meeting on August 25, 2004. An agenda for this meeting is being developed and will be posted on EPA's website. The workgroup is developing advice and recommendations on topics related to EPA's registration process.

DATES: The meeting will be held on Wednesday, August 25, 2004, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at EPA's Offices, 1801 S. Bell St., Crystal Mall #2, Rm. 311, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7618; fax number: (703) 308–4776; e-mail address: *keigwin.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who are concerned about implementation of PRIA; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Federal Food, Drug, and Cosmetic Act (FFDCA). Other potentially affected entities may include but are not limited to agricultural workers and farmers; pesticide industry trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0284. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with the responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995 for a 2-year term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations. Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 12, 2004.

Martha Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. 04–19339 Filed 8–19–04; 1:30 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7804–6]

Air Quality Criteria for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft of Particulate Matter Criteria Document Chapter for Public Review and Comment.

SUMMARY: On or about August 27, 2004, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, will make available for public review and comment a revised draft of Chapter 9 (integrative synthesis) of EPA's draft Air Quality Criteria for Particulate Matter (EPA/600/P–99/002bD). The revised draft chapter incorporates revisions made in response to earlier public external and Clean Air Act Scientific Advisory Committee (CASAC) reviews of the draft document. Under sections 108 and 109 of the Clean Air

Act, the purpose of the Air Quality Criteria for Particulate Matter is to provide an assessment of the latest scientific information on the effects of airborne particulate matter (PM) on the public health and welfare for use in EPA's current review of the National Ambient Air Quality Standards (NAAQS) for PM.

DATES: Comments on the revised draft Chapter 9 (dated August, 2004) must be submitted in writing no later than September 30, 2004. Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment-RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

ADDRESSES: The revised draft Chapter 9 of the Air Quality Criteria for Particulate Matter will be available on CD ROM from NCEA–RTP. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request the chapter. Please provide the document's title, Air Quality Criteria for Particulate Matter, and the EPA number for the revised chapter (EPA/600/P–99/002bD, August 2004 Draft), as well as your name and address, to properly process your request. Internet users will be able to download a copy from the NCEA home page. The URL is *http://www.epa.gov/ncea/*. Hard copies of the revised chapter can also be made available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Elias, National Center for Environmental Assessment-RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4167; fax: 919–541–1818; e-mail: *elias.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: The revised draft Chapter 9 will be reviewed by CASAC on September 20, 2004, via a publically accessible teleconference. The arrangements for the CASAC meeting will be announced in a separate **Federal Register** notice.

Dated: August 18, 2004.

Charles Ris,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 04–19323 Filed 8–20–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that, at 8:57 a.m. on Monday, August 16, 2004, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's enforcement, corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Chairman Donald E. Powell, seconded by Vice Chairman John M. Reich, concurred in by Director Thomas J. Curry, and Director James E. Gilleran (Director, Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 16, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–1880 Filed 8–20–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. William Samuel Carnes, Paul Richard Carnes, Constance Swift Carnes, Blair Madison Carnes, William Hunter Carnes, John William Carnes, Wyndi Roberson Carnes, Chloe Alden Carnes, Mackenzie Elizabeth Carnes, Mark Wendell Carnes, Jr., Teri Carnes Pruitt, Thomas William Pruitt, Braxton Carnes Pruitt, Austin Elizabeth Pruitt, and Joan Seate Ellis, all of Midlothian, Virginia, as a group to control voting shares of Peoples Bank of Virginia, Richmond, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. James Stephen Turner control group, which consists of James Stephen Turner, the James Stephen Turner 1994 trust, James Stephen Turner as trustee, and Judith Turner, all of Nashville, Tennessee, to retain control of FNB Financial Corporation, Scottsville, Kentucky, and thereby indirectly retain voting shares of The Farmers National Bank of Scottsville, Bowling Green, Kentucky.

Board of Governors of the Federal Reserve System, August 17, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–19202 Filed 8–20–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging; Notice of Policy Committee Listening Session for Presentations by individuals Attending the Florida Conference on Aging

Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the following listening session. The listening session will be open to the public, with attendance limited to space available.

Summary: As the Baby Boom generation approaches retirement age, it is essential that we develop policies to ensure that this national resource remains a vital part of society. The 2005 White House Conference on Aging is conducting its first listening session outside Washington, DC, and needs

your input as we develop an agenda for the 2005 Conference. How can we enable seniors to continue actively participating in and contributing to community and national well-being? Looking forward over the next decade and beyond, how can we, as individuals, businesses, private organizations, and government, in partnership, harness the vast potential that exists within an aging America?

We are particularly interested in the following key issue areas: planning along the lifespan, employment, our environment, health and long-term living, social engagement, and the marketplace. This listening session is open to everyone (no registration fee required). Priority will be given to speakers from the Florida Conference on Aging, and if time permits, the general public will be offered the opportunity to speak. Speakers may register either in advance of the listening session or onsite prior to the beginning of the session. Speakers will be limited to five minutes maximum although there may be follow-up questions from members of the panel; there will be no questions taken from the audience. Accompanying written statements will be limited to five pages. Speakers will be called to the podium in the order they register. If time is available after all registered speakers are finished, non-registered speakers will be recognized. Selected speakers may be contacted by Conference staff and asked to elaborate on their presentations, or asked to provide additional written materials.

Contact Person: To register in advance, send an e-mail not later than August 25 to Nora Andrews at *nora.andrews@aoa.gov,* stating name, organization, very brief description of the organization's purpose, mailing address, e-mail address, telephone number, subject to be presented, and whether or not you will be providing a written statement with your presentation. It is recommended that written statements be submitted with your registration by August 25. For further information call (202) 357–0149.

Meeting Date: Monday, August 30, 2004, from 12:30 p.m. to 2:30 p.m.

Addresses: InterContinental Hotels, Windsor Room; 100 Chopin Plaza, Miami, FL 33131.

Dated: August 17, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–19209 Filed 8–20–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging; Notice of Policy Committee Listening Sessions for Presentations by Members of the Leadership Council of Aging Organizations

Pursuant to section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The listening sessions will be open to the public, with attendance limited to space available. Due to building security requirements, please call Nora Andrews, 202–357–0149 to register your intent to attend.

The first of the three listening sessions falls under the 15-day notification requirement due to scheduling requirements; however, participants may choose to attend any one of the three listening sessions.

Summary: As the Baby Boom generation approaches retirement age, it is essential that we develop policies to ensure that this national resource remains a vital part of society. The 2005 White House Conference on Aging needs input as we develop an agenda for the 2005 Conference. How can we enable seniors to continue actively participating in and contributing to community and national well-being? Looking forward over the next decade and beyond, how can we, as individuals, businesses, private organizations and government in partnership, harness the vast potential that exists within an aging America?

We are particularly interested in the following key issue areas: planning along the lifespan, employment, our environment, health and long-term living, social engagement, and the marketplace. Speakers from the Leadership Council of Aging Organizations will be limited to five minutes maximum although there may be follow-up questions from members of the panel; there will be no questions taken from the audience. Accompanying written statements from speakers are encouraged and will be limited to a maximum of five pages. Selected speakers may be contacted by Conference staff and asked to elaborate on their presentations, or asked to or provide additional written materials.

Contact Person: Members to the Leadership Council are requested to register as soon as possible, but not later than one week before the session, by e-mail to *nora.andrews@aoa.gov,* stating name, organization, very brief description of the organization's purpose, mailing address, e-mail address, telephone number, subject to be presented, and whether or not you will be providing a written statement with your presentation. It is recommended that written statements be submitted electronically 2 business days before the session. Speakers will be called in the order they register. For further information call (202) 357–0149.

Meeting Dates and Times: Wednesday, August 18, 2004, from 2 p.m. to 5 p.m. EDST; Thursday, September 9, 2004, from 9:30 a.m. to 12:30 p.m., and from 2 p.m. to 5 p.m. EDST; Friday, September 10, 2004, from 9:30 a.m. to 12:30 p.m., and from 2 p.m. to 5 p.m. EDST.

Addresses: The Administration on Aging, One Massachusetts Avenue, NW, Room 4101, Washington, DC 20001.

Dated: August 17, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–19210 Filed 8–20–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04KA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, or to send comments contact Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.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. Written comments should be received within 60 days of this notice.

Proposed Project

Process Evaluation of CDC's Youth Media Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background: In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations language said, "The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages." CDC's response to this mandate was to design and implement a mass media campaign based on social marketing principles that is focused on increasing physical activity levels in children ages 9 to 13. The Campaign is based on principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; and enlisting the involvement and support of parents and other influencers. Evaluation of the campaign is occurring through various process and outcome measures.

Part of the campaign strategy is to develop materials for influencers and stakeholders. Influencers include teachers, coaches, and youth-serving organizations. Stakeholders include community leaders, corporate partners, and non-governmental organizations. Campaign planners are interested in understanding how effective the Campaign is in delivering the supporting message of regular youth physical activity to these multiple groups. This understanding will facilitate any strategy changes that may be necessary to increase the effectiveness of tools and resources to facilitate sustainability of the campaign.

The Youth Media Campaign plans to conduct a process evaluation with convenience samples drawn from Campaign promotional requests, Campaign Web site/inquiries and listservs. This process evaluation will examine the implementation of Campaign strategies, promotions, and tools through community partners that directly work with youth and adult influencers. This process includes gathering information from influencers and stakeholders through: in-person and telephone interviews; mail surveys; focus groups; Internet online surveys; bounce-back Web surveys with users of Web site; and feedback forms included in promotional kits. Surveys will be administered beginning in the winter of 2005 to adult influencers, community stakeholders, and partners.

The overall purpose of this process evaluation is to determine the extent to which the VERB campaign was implemented as planned, the challenges that occurred, and solutions to specific challenges. Data collected will assist campaign planners in refining campaign strategies and in developing materials. Additionally, the process evaluation will examine to what extent partnerships were formed and the effectiveness of the partnership activities. There are no costs to the respondents.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Adult Influencers	5,000	1	15/60	1,250
Community Stakeholders	1,000	1	15/60	250
Focus Groups: Adult influencers	100	1	1	100
Focus Groups: Community Stakeholders	100	1	1	100
Total				1,700

Dated: August 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19215 Filed 8–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04JZ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, or to send comments contact Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.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. Written comments should be received within 60 days of this notice.

Proposed Project

Heart Health Matters for Duchenne Muscular Dystrophy (DMD) Carriers Too—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: Duchenne Muscular Dystrophy (DMD) is the most common form of fatal muscular dystrophy in children. It

affects about 1 in 3,500 boys. Although almost all cases of DMD are diagnosed in young males, the genetic condition that causes DMD is carried by females. Today, there are about 40,000 female DMD carriers in the United States. Females who carry this genetic condition generally do not have symptoms, but some may experience muscle weakness and fatigue. Sometimes, they may also develop heart problems that are characterized by shortness of breath or an inability to do moderate exercise. The chance that a female carrier will develop heart problems is unknown, but these heart problems are serious and can be life threatening. To learn more about the heart health behaviors of adult female DMD carriers, CDC, National Center on Birth Defects and Developmental Disabilities proposes to conduct a national survey.

A large sample of adult female carriers of DMD will be recruited for the study from the mailing lists of local, regional, and national organizations that work with DMD families. Approximately 1,500 individuals who agree to participate in the study will complete a confidential, one-time, self-administered questionnaire that will be mailed to their homes and will take approximately 30 minutes to complete. Respondents will also be given the option of responding to an electronic version of the survey accessed via the World Wide Web. Survey participants will be asked about social and psychological aspects of their genetic carrier status, their sources of social support, their awareness and knowledge of the link between genetic carrier status and heart health, issues about access to specialized cardiac health care, and sources of health information that they find trustworthy, accessible, and understandable.

There will be no costs to the respondent. Postage and a return envelope will be provided for participants who choose to complete and return their survey by mail.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Complete Questionnaire	1,500	1	30/60	750
Total				750

Dated: August 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19216 Filed 8–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–04EE]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Pregnancy Risk Assessment Monitoring System (PRAMS) Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The Pregnancy Risk Assessment Monitoring System (PRAMS) is a surveillance project of CDC, National Center for Chronic Disease Prevention and Health Promotion and state health departments. PRAMS collects state-specific, population-based data on maternal attitudes and experiences prior to, during, and immediately following pregnancy.

The goal of the PRAMS project is to improve the health of mothers and infants by reducing adverse outcomes such as low birth weight, infant mortality and morbidity, and maternal morbidity. PRAMS provides state-specific data for planning and assessing health programs and for describing maternal experiences that may contribute to maternal and infant health.

PRAMS collects data that are unavailable through other surveillance systems; and it has become a critical mechanism for identifying and monitoring trends, informing program evaluations and policy decisions, and tracking progress toward Healthy People 2010 objectives that are related to maternal and child health (MCH). Currently 31 states and New York City administer PRAMS, representing 62% of all U.S. births. The objectives of the program evaluation are threefold:

1. To inform the operational, analytic, translation, and capacity building functions of the current PRAMS system and make them more efficient, effective and capable of meeting future needs.

2. To provide information that will guide the expansion and support of additional state PRAMS programs.

3. To provide information that will enable the PRAMS system to be more responsive to changes in public health priorities and policies, including the needs of the state programs and the wider MCH community.

A key component of the PRAMS evaluation is a semi-structured mail survey of all 32 PRAMS program directors. The focus of the mail-in survey will be to examine ways to make PRAMS data accessible for analysis, factors promoting capacity and utilization, costs, indicators of success, and additional resources needed to improve quality and responsiveness.

Prior to fielding the survey, a research contractor will conduct one- to two-hour interviews with 3 to 4 program representatives. These interviews will help to reduce overall respondent burden by assessing whether the survey is comprehensible and relevant, whether the terms and phrases are understood as intended, and whether it is easy to read.

The information obtained from this data collection will help the CDC meet its evaluation objectives as described above. Responses are voluntary. No proprietary items or sensitive information will be collected. The annualized burden hours are estimated to be 32.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Mail-in Survey	32	1	1

Dated: August 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19217 Filed 8–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–04JM]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

HIV Prevention Capacity-Building Assistance (CBA) Information Collection: Reporting and Monitoring System—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background

CDC is requesting a 3-year clearance for information collection forms to monitor the HIV prevention activities of CBA provider grantees funded by CDC from 2004 to 2009. These forms will be used to collect information that assists in monitoring CBA services and activities. CDC is responsible for monitoring and evaluating HIV prevention activities conducted under these cooperative agreements. This requires that CDC have current information regarding the progress of CBA activities and services supported through these cooperative agreements. Therefore, forms such as the Trimester Interim Progress Report, CBA Notification Form, CBA Completion Form, and CBA Training Events Report are considered a critical component of the monitoring and evaluation process. Since, this program will encompass approximately 36 CBA provider organizations, there is a need for a standardized system for reporting individual episodes of CBA delivered by all CBA provider grantees. The collection of data will help CDC discern and refine national goals and objectives in the prevention of HIV.

CBA providers will be required to submit CBA Trimester Progress Reports (form A). The purpose of the CBA Trimester Progress Report is to describe CBA undertaken during the previous four months. The Trimester Progress Report will be a narrative on the programs' successes and barriers; process and outcome monitoring data; collaborative and cooperative activities with other organizations; and plans for future activities.

To effectively track and monitor all requests for capacity building assistance, CBA providers will be required to submit a CBA Notification Form (form B) following each contact with a community based organization (CBO) or HIV prevention stakeholder for CBA services. The purpose of this form is to track all requests for services from CBOs, health departments, and stakeholders. Requests for CBA from these CBOs and stakeholders are received by CBA providers on an on-going basis.

CBA providers will also be required to submit a CBA Completion Form (form C) following each episode of CBA service delivered to all CBOs and stakeholders. The purpose of this form is to provide feedback and follow-up information to CDC Project Officers on the types of CBA services and quality of services that were delivered to all CBOs by CBA Providers. CBA requests from CBOs, health departments, and stakeholders are received by CBA providers on an on-going basis. Information collection will be on-going throughout the duration of the cooperative agreements.

In addition, CBA providers will be required to submit pre-planned CBA training events for a CBA Training Events Report (form D). The CBA Training Events Report is used to disseminate planned capacity building assistance activities delivered by CBA providers, the CDC, and other organizations providing training and technical assistance.

It is estimated that Form A will require 4 hours of preparation by the respondent, Form B will require 15 minutes of preparation by the respondent, Form C will require 30 minutes of preparation by the respondent, and Form D will require 2 hours of preparation by the respondent. The annualized burden is estimated to be 2,196 hours.

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Form A: CBA Trimester Report	36 Grantees	3	4
Form B: CBA Notification Form	36 CBA Provider Grantees.	50	15/60
Form C: CBA Completion Form	36 CBA Provider Grantees.	25	30/60

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Form D: CBA Training Events Report	36 CBA Provider Grantees.	12	2

Dated:

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19218 Filed 8–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ADAPT: Adopting and Demonstrating the Adaptation of Prevention Techniques

Announcement Type: Competitive Supplement.

Funding Opportunity Number: PA 04064 (Supplemental).

Catalog of Federal Domestic Assistance Number: 93.944.

Dates: Letter of Intent Deadline: None.

Application Deadline: September 22, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301 and 317(k) of the Public Health Service Act, (42 U.S.C. 241 and 247b(k)), as amended.

Purpose

The purpose of this program is to improve understanding of the processes needed for adapting evidence-based interventions to fit new conditions or populations and to pilot CDC-developed draft guidance for adaptation.

The ADAPT project responds to concerns from the field that existing interventions do not address the HIV prevention needs of their specific population. This project seeks to develop guidance for agencies to engage in evidence-based adaptation of interventions previously shown to be effective in research settings for use in real world applications. If data from this project is published, it will be published as case studies and not as generalizable research data.

Activities

Supplemental funds are intended to support 3–5 eligible grantees that are currently participating in Community-Based Organizations (CBO) PA 04064. The funds will support additional activities that involve adapting an HIV prevention intervention listed in the Procedural Guidance for Selected Strategies and Interventions for Community-Based Organizations Funded Under Program Announcement 04064 (Procedural Guidance) for use in an HIV seropositive population of men of color who have sex with other men (MSM of color). CDC is especially interested in supporting projects that use the Many Men, Many Voices (MMMV) intervention listed in the Procedural Guidance. Contingent upon the quality of proposals, CDC anticipates that at least one of the applicants funded under the ADAPT supplement will adapt and implement MMMV. However, applicants are not limited to this particular intervention and may propose work using any one of the other interventions listed in the Procedural Guidance. Funded applicants will further evaluate the intervention they select to adapt. Preference will be given to those applicants that have limited or no previous experience with the adaptation and implementation of the intervention they were funded to implement under CBO PA 04064. Funded applicants will be required to conduct two evaluation components for this award: (1) To monitor and evaluate the adaptation process; and (2) to monitor and evaluate the intervention.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- CDC will provide to funded applicants the draft adaptation guidance developed by CDC with input from internal and external researchers, HIV prevention intervention implementers, and community advocates.
- CDC will provide process and outcome indicators and work with funded applicants in the evaluation processes for this award. The evaluation methods could include, but are not limited to: timelines; qualitative summaries; focus group summaries; unstructured key informant interviews; case studies; checklists; progress reports; and perhaps information on costs. Note that evaluation activities will include unstructured interviews with key stakeholders before and after the implementation of the adapted intervention(s). Outcome measures could include, but are not limited to, behavioral outcomes such as condom use or frequency of unprotected sex, or biological outcomes such as sexually transmitted disease (STD) incidence as collected with the Program Evaluation and Monitoring System (PEMS).

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004—2006.

Approximate Total Funding: The estimated total cost is $5,000,000 with approximately $2,000,000 awarded during the first fiscal year.

Approximate Number of Awards: 3–5.

Approximate Average Award: $575,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: $200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 2 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may only be submitted by grantees currently funded under CBO PA 04064 who are eligible to apply for supplemental funding.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Eligibility Criteria:

Eligibility criteria are briefly outlined below. When writing the proposal narrative, applicants should refer to the scoring criteria section for additional details.

a. Only grantees currently funded under CBO PA 04064 are eligible to apply for supplemental funding.

b. The applicant must demonstrate access to an adequate population of HIV seropositive MSM of color who are currently not receiving other prevention interventions. The applicant must demonstrate ability to obtain a sample size comparable to that found in the original research study.

c. The applicant must demonstrate adequate personnel for conducting ADAPT activities in addition to CBO PA 04064 activities. Personnel assigned to ADAPT activities should include, but are not limited to, an onsite, full-time person with expertise in development and adaptation of interventions based on behavioral theory (adaptation specialist) who works collaboratively with the CBO PA 04064 project coordinator to take the lead on ADAPT activities; a full-time data manager; a full-time data entry position; and a part-time administrator.

d. The applicant must demonstrate ability to accomplish ADAPT activities within a 2-year project period.

e. The applicant must adequately address all sections of the description of work in the narrative of the proposal.

(1) *Approach.* The applicant must demonstrate that plans for adapting, implementing, and monitoring and evaluating the selected intervention are adequately developed, well-integrated, and appropriate to the aims of the project.

(2) *Significance.* The applicant must demonstrate understanding of the intent and purpose of ADAPT.

(3) *Personnel.* The applicant must demonstrate adequate personnel for conducting ADAPT activities in addition to CBO PA 04064 activities (*i.e.*, adaptation specialist, data manager, data entry, part-time administrator).

(4) *Environment.* The applicant should demonstrate how levels of administrative support, community involvement, facilities, and other resources at the CBO in which the work will be done contribute to the probability of success.

Note: Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25 (not including budget justification and appendices). If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- MS WORD format.
- Cover page—the program announcement number and title.
- Table of contents—with the major sections and page numbering including each attachment.
- Consecutive page numbering throughout the document, including the attachments.
  - Beginning with the first page of text, number all pages clearly and sequentially, including each page in the appendices.
  - Replace double-sided article reprints with a one-sided copy.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed below.

A. Specific Aims

Applications must include a one-page, double-spaced executive summary as a cover page.

- Maximum number of pages: 1.
- Font size: 12-point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

A complete table of contents to the application and its appendices, and text addressing each required element is required.

B. Background and Significance

- An explanation of how the applicant identified, gained access to, and assessed the prevention needs of the selected target population.
- The rationale for selection of proposed target population and intervention match.

C. Preliminary Studies/Progress Report

- Provide evidence of the applicant's previous experience in conducting process evaluation, quality assurance, and evaluation.
- An outline of personnel roles and responsibilities related to conducting ADAPT project activities.

The remaining sections of the proposal narrative should correspond with sections of the scoring criteria. The applicant must adequately address all relevant items in each section of the scoring criteria.

D. Approach

The applicant must demonstrate that plans for adapting, implementing, and monitoring and evaluating the selected intervention are adequately developed, well-integrated, and appropriate to the aims of the project.

The applicant must submit a copy of their CBO PA 04064 application packet and award letter.

E. Significance

The applicant must demonstrate understanding of the intent and purpose of ADAPT.

F. Personnel

The applicant must demonstrate adequate personnel for conducting ADAPT activities in addition to CBO PA 04064 activities (*i.e.*, adaptation specialist, data manager, data entry, part-time administrator).

G. Environment

The applicant should demonstrate how levels of administrative support, community involvement, facilities, and other resources at the CBO in which the work will be done contribute to the probability of success.

H. Budget and Justification (Not Included in Page Limit)

I. Additional Information

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes: Curriculum Vitae, Resumes, Organizational Charts, and Letters of Support. Applications must include Letters of Support (LOS) from institutions that will play a role in conducting ADAPT activities. Each LOS should include a description of the past relationship with the applicant and the role(s) the local partner will play in conducting ADAPT activities (*e.g.*, accessing the target population, implementing the selected intervention, staff involved). The LOS must be written in the following format:

- Maximum number of pages: 1.
- Font size: 12-point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: September 22, 2004.

Explanation of Deadline: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- No furniture should be purchased with ADAPT funds.
- No rent should be paid for with ADAPT funds unless the amount is prorated to cover space occupied solely by ADAPT staff.
- Travel costs must conform to government rates.
- No construction should be paid for with ADAPT funds.
- Awards will not allow reimbursement of pre-award costs.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management–PA #04064, CDC Procurement and Grants Office,2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The reviewers will consider each of the following criteria in assigning the overall score, weighting them as appropriate for each proposal. Your application will be evaluated against the scoring criteria as follows:

A. Approach (35 percent)

- Has applicant included a brief abstract summarizing their ADAPT project proposal?
- Has the applicant submitted a copy of their CBO PA 04064 application packet and award letter?
- Are the plans for adapting, implementing, and monitoring and evaluating the selected intervention adequately developed, well-integrated, and appropriate to the aims of the project?
- Has the applicant provided strong evidence of experience with process evaluation, quality assurance, and evaluation with other related projects?
- Has the applicant provided a quality assurance plan (QASP) that addresses all phases of adaptation, implementation, and monitoring and evaluation and includes proposed process and outcome measures and personnel responsible for ensuring quality?
- Has the applicant included a timeline including dates that tasks are to be implemented and completed; costs; development of materials (*e.g.*, adapted training curriculum, evaluation tools, and checklists); and quarterly progress report dates?
- Does the applicant acknowledge potential problem areas and consider

alternative tactics (*i.e.*, recruitment, competing priorities, staffing, and coordinating ADAPT & CBO PA 04064 activities and PEMS)?

• Has the applicant included how they identified, gained access to, and rapidly assessed the target population (*e.g.*, via community planning groups [CPGs], community advisory boards [CABs], and focus groups)?

• Has the applicant demonstrated access to an adequate population of HIV seropositive MSM of color who are currently not receiving other prevention interventions? Can applicant obtain a sample size comparable to that found in the original research study of the chosen intervention?

• Is the target population of HIV seropositive MSM of color population not targeted by the original intervention?

• Has the applicant provided a plan for training staff on the implementation of the adapted intervention?

• Has the applicant provided a plan and protocol for timely adaptation, implementation, and evaluation of the intervention?

• Does the applicant's proposed budget for ADAPT activities include, but is not limited to, personnel (*i.e.*, adaptation specialist, data manager, data entry, part-time administrator), travel (2 trips to Atlanta for the adaptation specialist), and supplies?

B. Significance (30 Percent)

• Does the applicant demonstrate understanding of the intent and purpose of ADAPT?

• Is the target population HIV seropositive MSM of color?

• Is the selection of the target population justified in terms of risk, service level, and HIV incidence?

• Did the applicant provide the rationale for appropriateness of agency, target population, and intervention match?

• Are the agency, target population, and intervention realistically matched in terms of agency resources and experience, behavioral determinants, and risk behaviors of the target population, and maintaining fidelity to the core elements of the intervention?

• Did the applicant document adequate capacity to implement the chosen intervention?

C. Personnel (20 Percent)

• Has the applicant demonstrated adequate personnel for conducting ADAPT activities in addition to CBO PA 04064 activities (*i.e.*, adaptation specialist, data manager, data entry, part-time administrator)?

• Does the applicant demonstrate adequate capacity and skills necessary to identify at-risk populations, use local data, and collaborate with partners (if applicable)?

• Is the applicant staff appropriately trained and well suited to carry out this work?

• Is the work proposed appropriate to the experience level of the applicant staff?

• Does the applicant demonstrate previous experience in managing HIV prevention efforts?

D. Environment (15 percent)

• Are the levels of administrative support, community involvement, facilities, and other resources at the CBO in which the work will be done sufficient to contribute to a high probability of success?

• Has the applicant demonstrated how they established and maintain collaboration with local partners, if relevant (*e.g.*, local health departments, universities, CBOs, ASOs, and research entities)?

• Has the applicant demonstrated adequate support for ADAPT activities (*e.g.*, commitment of resources such as personnel and time; commitment from management; commitment from community partners).

• Has the applicant provided a plan for separate budgeting of ADAPT and CBO PA 04064 funds?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by National Center for HIV/AIDS, STD, TB Prevention. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision:

Executive Summary

Letters of Support

Selected Intervention. CDC is especially interested in supporting projects that use the MMMV intervention listed in the Procedural Guidance. Contingent upon the quality of proposals, CDC anticipates that at least one of the applicants funded under the ADAPT supplement will adapt and implement MMMV. However, applicants are not limited to this particular intervention and may propose work using any one of the other interventions listed in the Procedural Guidance.

V.3. Anticipated Announcement and Award Dates

Award date: September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact:

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact:

Vel McKleroy, Extramural Co-Project Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–37, Atlanta Georgia, 30333, Telephone: (404) 639–2982, E-mail: *vmckleroy@cdc.gov.*

OR

Jennifer Galbraith, Extramural Co-Project Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–37, Atlanta Georgia, 30333, Telephone: (404) 639–8649, E-mail: *jgalbraith@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Brenda Hayes, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2741, E-mail: *bkh4@cdc.gov.*

Dated: August 17, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19225 Filed 8–20–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Computerized Support Enforcement Systems.

OMB No: 0980–0271.

Description: The information being collected is mandated by Section 454(16) of the Social Security Act (the Act) which provides for the establishment and operation by the state agency, in accordance with an initial and annually updated advance planning document (APD) approved under section 452(d) of the Act, of a statewide system meeting the requirements of Section 454A. In addition, 454A(e)(1) requires that states create a State Case Registry (SCR) within their statewide automated child support systems to include information on IV–D cases and non–IV–D orders established or modified in the state on or after October 1, 1998. Section 454A(e)(5) of the Act requires states to regularly update their cases in the SCR.

The data being collected for the APD are a combination of narratives, budgets and schedules which are used to provide funding approvals on an annual basis and to monitor and oversee system development. Child support has separate regulations under 45 CFR 307.15 related to submittal of APDs because the program had supplemental authority for enhanced funding for systems development, and has substantial penalties for non-compliance with the statutory deadline of October 1, 2000. This information collection reflects the fact that 49 states and territories are now certified under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) leaving only five states that are not yet PRWORA systems certified, including one state that has not submitted an implementation APD for compliance with PRWORA automation. States and territories that opted to keep their Annual Planning Documents for child support systems are covered under a separate information collection, OMB No. 0992–0005, for 45 CFR Part 95 Subpart F.

The data being collected for the State Case Registry is used to transmit mandatory data elements to the Federal Case Registry (FCR) where it is used for matching against other data bases for the purposes of location of individuals, assets, employment and other child support related activities.

Respondents: The respondents are 54 state and territorial child support agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
307.15 (APD)	1	1	240	240
307.15 (APD Update)	5	1	60	300
307.11(e)(1)(ii) Collection of non-IV–D data for SCR states	54	25,200	.046	62,597
307.11(e)(1)(ii) Collection of non-IV–D data for SCR courts	3,045	447	.029	39,472
307.11(e)(3)(v) Collection of child data for IV–D cases for SCR courts	3,045	213	.083	53,833
307.11(f)(1) Case data transmitted from SCR to FCR new cases and case updates	54	52	2.82	7,918
Estimated Total Annual Burden Hours:				164,360

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 17, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–19256 Filed 8–20–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0346]

Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Antidiarrheal Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of eligibility; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following condition as part of FDA's ongoing review of over-the-counter (OTC) drug products: *Saccharomyces boulardii* (*S. boulardii*), 250 milligrams (mg) (4.5×10^9 lyophilized, viable yeast cells) taken 1 to 2 times daily with a maximum daily dose of 500 mg (9.0×10^9 yeast cells), in capsule form as an antidiarrheal ingredient. FDA has reviewed a time and extent application (TEA) for this condition and determined that it is eligible for consideration in its OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether this condition can be generally recognized as safe and effective (GRAS/E) for its proposed OTC use.

DATES: Submit data, information, and general comments by November 22, 2004.

ADDRESSES: Submit written comments, data, and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit electronic comments, data, and information to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term "condition" means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14(a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEA that FDA reviewed (Ref. 1) and FDA's evaluation of the TEA (Ref. 2) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j) was deleted from the TEA before it was placed on public display.

II. Request for Data and Information

FDA intends to evaluate the condition *S. boulardii*, 250 mg (4.5×10^9 lyophilized, viable yeast cells) taken 1 to 2 times daily with a maximum daily dose of 500 mg (9.0×10^9 yeast cells), in capsule form for inclusion in the monograph for OTC antidiarrheal drug products (21 CFR part 335). Accordingly, FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of this active ingredient for FDA to determine whether it can be GRAS/E and not misbranded under recommended conditions of OTC use. The TEA did not include an official or proposed United States Pharmacopeia-National Formulary (USP–NF) drug monograph for *S. boulardii*. According to § 330.14(i), an official or proposed USP–NF monograph for *S. boulardii* must be included as part of the safety and effectiveness data for this ingredient. Interested parties should provide an official or proposed USP–NF monograph for evaluation by FDA.

Interested persons should submit comments, data, and information to the Division of Dockets Management. Three copies of all comments, data, and information are to be submitted. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

III. Marketing Policy

Under § 330.14(h), any product containing the condition for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. TEA and addendum for *S. boulardii* as an antidiarrheal active ingredient submitted by Parexel.

2. FDA's evaluation and comments on the TEA for *S. boulardii*.

Dated: August 11, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19180 Filed 8–20–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0330]

Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the PediatricAdvisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of the joint meeting of the Psychopharmacologic Drugs Advisory Committee and the Pediatric Advisory Committee. This meeting was announced in the **Federal Register** of August 4, 2004 (69 FR 47157). The amendment is being made to reflect changes in the *Addresses* and *Procedure* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *patelA@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512544. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 2004, FDA announced that a joint meeting of the Psychopharmacologic Drugs Advisory Committee and the Pediatric Advisory Committee would be held on September 13 and 14, 2004. On page 47157, in the third column, the *Addresses* and on page 47158, in the second column, the *Procedure* portions are amended to read as follows:

Addresses: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select "2004N–0330—Suicidality in Clinical Trials for Antidepressant Drugs in Pediatric Patients" and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments received by August 23, 2004, will be provided to the committee before the meeting. Comments received after August 23, 2004, will be reviewed by FDA's decision makers.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the Division of Dockets Management as stated in the *Addresses* section of this document. Oral presentations from the public will be scheduled between approximately 2 p.m. to 6 p.m. on September 13, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before 4:30 p.m. on August 27, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Docket "2004N–0330—Suicidality in Clinical Trials for Antidepressant Drugs in Pediatric Patients" will remain open for public submissions until July 29, 2005.

This notice is given under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR Part 14, relating to advisory committees.

Dated: August 13, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning..

[FR Doc. 04–19224 Filed 8–18–04; 12:34 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0352]

Global Harmonization Task Force, Study Groups 1 and 2; New Proposed Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two proposed documents that have been prepared by Study Groups 1 and 2 of the Global Harmonization Task Force (GHTF). These documents are intended to provide information only and represent a harmonized proposal and recommendation from the GHTF Study Groups that may be used by governments developing and updating their regulatory requirements for medical devices. These documents are intended to provide information only and do not describe current regulatory requirements; elements of these documents may not be consistent with current U.S. regulatory requirements. FDA is requesting comments on these documents.

DATES: Submit written or electronic comments on any of the documents by November 22, 2004. After the close of the comment period, written comments may be submitted at any time to the contact persons listed in this document.

ADDRESSES: Submit written comments on the documents to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the docket number found in brackets in the heading of this document. If you do not have access to the Internet, submit written requests for single copies on a 3.5″ diskette of the document to the Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. See the **ELECTRONIC ACCESS** section for information on electronic access to these documents.

FOR FURTHER INFORMATION CONTACT:

For Study Group 1: Ginette Michaud, GHTF, Study Group 1, Office of In Vitro Diagnostic Devices (HFZ–440), Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, ext. 157;

For Study Group 2: Stephen Sykes, GHTF, Study Group 2, Office of Surveillance and Biometrics (HFZ–500), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3673.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has participated in a number of activities to promote the international harmonization of regulatory requirements. In September 1992, a meeting was held in Nice, France by senior regulatory officials to evaluate international harmonization. At this time it was decided to form a GHTF to facilitate harmonization. Subsequent meetings have been held on a yearly basis in various locations throughout the world.

The objective of the GHTF is to encourage convergence at the global level of regulatory systems of medical devices in order to facilitate trade while preserving the right of participating members to address the protection of public health by regulatory means considered most suitable. One of the ways this objective is achieved is by identifying and developing areas of international cooperation in order to facilitate progressive reduction of technical and regulatory differences in systems established to regulate medical devices. In an effort to accomplish these objectives, the GHTF has formed four study groups to draft documents and carry on other activities designed to facilitate global harmonization. This notice is a result of documents that have been developed by two of the Study Groups (1 and 2).

Study Group 1 was initially tasked with the responsibility of identifying differences between various regulatory systems. In 1995, the group was asked to propose areas of potential harmonization for premarket device regulations and possible guidance that could help lead to harmonization. As a result of their efforts, this group has developed SG1(PD)/N043R6. The purpose of SG1(PD)/N043R6 (proposed document) "Labelling (sic) for Medical Devices (revised)" is to describe harmonized requirements for the labeling of medical devices. It applies to all products that fall within the definition of a medical device that appears within the GHTF document SG1/N029 "Information Document Concerning the Definition of the Term 'Medical Device,' " including those products used for the in vitro examination of specimens derived from the human body. This document is a revised version of previously published guidance on the subject. The new version includes, in addition to the original medical device labeling guidance, guidance on requirements for labeling of in vitro diagnostic medical devices. The new guidance is intended to supersede the previous version of the guidance.

Study Group 2 was initially tasked with the responsibility of developing guidance documents that will be used for the exchange of adverse event reports. As a result of their efforts, this group has developed SG2(PD)/N38R14. SG2(PD)/N38R14 (proposed document) "Application Requirements for Participation in the GHTF National Competent Authority Report Exchange Program" that provides information to authorized representatives on prerequisites and commitments required from an organization before they can participate in the National Competent Authority Report exchange program founded by GHTF SG2.

These documents represent recommendations from the GHTF Study Groups and do not describe regulatory requirements. FDA is making these documents available so that industry and other members of the public may express their views and opinions.

II. Electronic Access

Persons interested in obtaining copies of these draft documents may also do so using the Internet. Updated on a regular basis, the CDRH home page includes device safety alerts, lists of approved applications and manufacturers' addresses, small manufacturers' assistance, information on video-oriented conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*. Information on the GHTF may be accessed at *http://www.ghtf.org*.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding any of these documents. 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 and with the full title of these documents. The draft documents and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19181 Filed 8–20–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0391]

Draft Guidances for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Dental Noble Metal Alloys and Class II Special Controls Guidance Document: Dental Base Metal Alloys; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance documents entitled "Class II Special Controls Guidance Document: Dental Noble Metal Alloys" and "Class II Special Controls Guidance Document: Dental Base Metal Alloys." These draft guidance documents describe means by which noble metal alloy and base metal alloy devices may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to amend the identification and classification regulations of gold-based alloys and precious metal alloys for clinical use and base metal alloy devices presently classified in class II. FDA is also exempting these devices from premarket notification requirements.

DATES: Submit written or electronic comments on the draft guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance documents entitled "Class II Special Controls Guidance Document: Dental Noble Metal Alloys" and "Class II Special Controls Guidance Document: Dental Base Metal Alloys" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidances.

Submit written comments concerning these draft guidances to the Division of Dockets Management (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: Michael E. Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 123, e-mail: *mea@cdrh.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued a final rule classifying gold-based alloys and precious metal alloys for clinical use and base metal alloy devices in the **Federal Register** of August 12, 1987 (52 FR 30082). These devices were classified before the provisions of the Safe Medical Devices Act of 1990 (SMDA) broadened the definition of class II devices to establish special controls beyond performance standards. FDA published a proposed rule in the **Federal Register** of December 1, 2003 (68 FR 67097) to amend the classification regulation of these class II devices. FDA received three comments.

FDA received one comment from a consumer and one (in duplicate) from a trade association. Both comments were in support of the proposed reclassification with minor modifications suggested. The consumer comment states that the name of the regulation "gold based alloys and precious metal alloys for clinical use" is unscientific because gold is, by definition, a precious metal. FDA agrees with this comment and has amended § 872.3060 (21 CFR 827.3060) to read "noble metal alloy" and deleted "for clinical use."

The subject of the trade association comment was that the scope of the dental base metal alloys guidance is not clear as to what alloys are subject to the guidance. FDA agrees with this comment and has modified the scope of the guidance to define the devices not clearly addressed by the guidance.

The trade association comment also recommended that FDA's recommendation that the labeling for nickel-containing alloys contain a contraindication for hypersensitive individuals is unnecessary because nickel has been demonstrated to be biocompatible. FDA disagrees that the labeling should not contain a contraindication for nickel hypersensitive individuals. FDA believes that this warning is needed to minimize the potential for adverse events associated with improper use of this device.

Following the effective date of the final rule exempting the device, manufacturers of these devices will need to address the issues covered in this special control guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. If manufacturers cannot comply with these recommendations or equivalent measures, they will not be exempt from the requirements of premarket notification and will need to submit a premarket notification and receive clearance for their device prior to marketing.

II. Significance of Guidance

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidances represent the agency's current thinking on base metal alloy and noble metal alloy devices. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

These guidances contain 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 PRA). The collections of information addressed in the guidance documents have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidances have been approved by OMB under the PRA under OMB control number 0910–0485.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments *http://www.fda.gov/dockets/ecomments* or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Copies of the draft guidance documents and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive "Class II Special Controls Guidance Document: Dental Noble Metal Alloys" by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the voice prompt, press 1 to order a document. Enter the document number 1415 followed by the pound sign (#). Follow the remaining voice prompts to complete you request. To receive "Class II Special Controls Guidance Document: Dental Base Metal Alloys" by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1416 followed by the pound sign (#). Follow the remaining voice prompts to complete your request. Persons interested in obtaining a copy of these draft guidances may also do so using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh.* A search capability for all CDRH documents is available at *http://www.fda.gov/cdrh/guidances.html.* Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets.*

Dated: August 11, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–19179 Filed 8–20–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Dates and Times: September 13, 2004, 8:30 a.m.–5:30 p.m.; September 14, 2004, 8:30 a.m.–5:30 p.m.; September 15, 2004, 8:30 a.m.–2 p.m.

Place: The Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Status: The meeting will be open to the public.

Agenda: Agenda items will include, but not be limited to: Welcome; plenary session on healthcare workforce issues as they relate to the grant programs under the purview of the Committee with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. The following topics will be addressed at the meeting: What is being done to encourage children to consider health professions careers, including what programs are in existence and what are best practices; and, what is the role of faculty development in the healthcare professions pipeline.

Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comment will be permitted at the end of the Committee meeting on September 13, 2004, and before lunch on September 14, 2004. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel, Rockville, MD, on September 13, 2004. These persons will be allocated time as the Committee meeting agenda permits.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–8044.

Dated: August 17, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–19242 Filed 8–20–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that the following committee will convene its forty-seventh meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: September 12, 2004, 1:30 p.m.–4:30 p.m.; September 13, 2004, 9 a.m.–4:30 p.m.; September 14, 2004, 8 a.m.–10:30 a.m.

Place: Executive Inn, 1011 N. Gloster St., Tupelo, MS 38804. Phone: 662–841–2222.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Sunday afternoon, September 12, 2004, at 1:30 p.m., the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Committee business and updates by Federal staff. This will be followed by an overview of Tupelo, MS. The Committee will then break into Subcommittee format to discuss the 2005 Report and reconvene at 4 p.m. The Sunday session will close at 4:30 p.m.

Monday morning, September 13, 2004, at 9 a.m. the Committee will break into Subcommittees and conduct site visits to local health and human services facilities. Transportation to these facilities will not be provided to the public. The Collaboration Subcommittee will visit the CREATE Foundation, the Commission on the Future of Northeast Mississippi in Tupelo, MS; the Temporary Assistance for Needy Families Subcommittee will visit Project Lift in Monroe County, MS; the Obesity Subcommittee will visit West Point in Clay County, MS; and the Obstetrics Subcommittee will visit Gilmore, MS. The Committee will reconvene at 2:00 in Tupelo, MS for a presentation by Dr. Edwin Hill, President Elect of the American Medical Association. The Committee will have an overview of the site visits and break into Subcommittees to work on the 2005 report. The Monday meeting will adjourn at 4:30 p.m.

The final session will be convened Tuesday morning, September 14, 2004, at 8:30 a.m. The Committee will summarize the Subcommittees discussions and discuss the timeline for the completion of the report. The meeting will conclude with a discussion of the letter to the Secretary. The meeting will be adjourned at 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Tom Morris, M.P.A., Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Dated: August 16, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–19241 Filed 8–20–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center (FLETC)

Notice of Meeting

AGENCY: Federal Law Enforcement Training Center, Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee to the National Center for State and Local Law Enforcement Training (National Center) at the Federal Law Enforcement Training Center will meet on September 14, 2004, beginning at 8:30 a.m.

ADDRESS: Federal Law Enforcement Training Center, 1131 Chapel Crossing Road, Glynco, GA 31524.

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, (912) 267–2343, *reba.fischer@dhs.gov.*

SUPPLEMENTARY INFORMATION: The agenda for this meeting includes remarks by the Committee Co-Chairs, Randy Beardsworth, Director of Operations, Border and Transportation Security, Department of Homeland Security, and Deborah Daniels, Assistant Attorney General, Office of Justice Programs, Department of Justice; an update on current training initiatives of the National Center; and planning of strategic goals. This meeting is open to the public. Anyone desiring to attend

must contact Reba Fischer, the Designated Federal Officer, no later than September 1, 2004, at (912) 267–2343, to arrange clearance.

Dated: August 13, 2004.

Stanley Moran,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 04–19211 Filed 8–20–04; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 revised information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning eligibility into The Executive Fire Officer Program for senior level Firefighting Officers or individuals who are responsible for a major functional area within a fire service organization.

SUPPLEMENTARY INFORMATION: Public Law 93–498, Fire Prevention and Control Act of 1974, as amended (the Act), created the National Fire Academy (NFA) to advance the professional development of fire service personnel and allied professionals. The Act provides the conduct of courses and programs of training and education, to train fire services personnel with skills and knowledge that may be useful to advance their ability to prevent and control fires, including tactics and command of firefighting for fire chiefs, commanders, and administration and management of fire services.

Collection of Information

Title: National Fire Academy Executive Fire Officer Program Application Form.

Type of Information Collection: Revision.

OMB Number: 1660–0021.

Form Numbers: FEMA Forms 95–22, Application for Admission, 75–5, General Admissions Application and 75–5 automated.

Abstract: The United States Fire Administration, National Fire Academy has an Executive Fire Officer Program to which senior level fire officers (such as Fire Department Chiefs, Assistant Chiefs, or individuals who are responsible for a major functional area within a fire service organization) may apply. Applicants must complete FEMA Form 95–22, National Fire Academy—Executive Fire Officer Program Application for Admission in conjunction with FEMA Form 75–5, General Admissions Application (which is already under OMB approval number 1660–0007). In addition, the following information should also be submitted:

- A letter from the applicant requesting admission to the program and specifying the applicant's qualifications; commitment to complete the entire program, including the applied research; and the applicant's perceived expectation(s) of the program.
- A resume.
- A letter of recommendation and support from the applicant's immediate supervisor indicating the organization's commitment to allow the applicant to complete the required courses and research.
- A photocopy of the applicant's terminal academic diploma or transcript.
- An organizational chart that depicts the applicant's position.

FEMA uses the application forms and supporting documentation to effectively screen and select applicants for the program.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours:

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
75–5	100	1	[1] 9	15
75–5 automated	200	1	[1] 10	33
95–22	300	1	[2] 1	300
Gathering additional items	300	1	[2] 1	300
Total				648

[1] Minutes.
[2] Hours.

Estimated Cost: There are no startup or operational/maintenance costs to respondents since there is no reporting or record keeping requirements associated with this information collection. The only cost to respondents is the one incurred as a direct result of the burden hours.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Charles Burkell, Training Specialist, at (301) 447–1072 for additional information. You may

contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections@dhs.gov*.

Dated: August 13, 2004.

Deborah Moradi,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–19204 Filed 8–20–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1539–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1539–DR), datedAugust 13, 2004, and related determinations.

EFFECTIVE DATE: August 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 13, 2004:

The counties of Collier, DeSoto, Dixie, Duval, Hardee, Highlands, Lake, Levy, Monroe, Orange, Osceola, Pasco, Polk, St. Johns, Seminole, and Volusia for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–19206 Filed 8–20–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1539–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1539–DR), dated August 13, 2004, and related determinations.

EFFECTIVE DATE: August 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 13, 2004:

The counties of Brevard, Glades, Hendry, Indian River, and Okeechobee for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–19207 Filed 8–20–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1535–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1535–DR), dated August 3, 2004, and related determinations.

EFFECTIVE DATE: July 25, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 25, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–19208 Filed 8–20–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1527–DR]

Michigan; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan (FEMA–1527–DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: August 10, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened. The incident period for this declared disaster is now May 20, 2004, through and including June 8, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–19205 Filed 8–20–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaskan Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the availability of environmental documents.

SUMMARY: The Minerals Management Service, in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Categorical Exclusion Reviews (CERs)/Environmental Assessments (EAs) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Alaskan OCS.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Alaska OCS Region, Attention: Ms. Nikki Lewis, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska, telephone (907) 271–6438 or 1–800–764–2627.

SUPPLEMENTARY INFORMATION: MMS prepares CERs/EAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Alaskan OCS. These CERs/EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. CERs/EAs are used as a basis for determining whether or not approvals of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the CER.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Alaska OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Veritas DGC for Conoco/Phillips Alaska, winter over-ice 3–D vibrosis (winter seismic survey); CER review of OCS G&G Permit Application No. 04–01.	Between Eskimo Islands and the Nechelik Channel of the Colville River and southern Harrison Bay (100–200 sq. miles overall, but only 5–10 sq. miles on the Federal OCS).	03/31/04

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about CERs/EAs and FONSIs prepared for activities on the Alaska OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: July 16, 2004.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 04–19226 Filed 8–20–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1069 (Final)]

Outboard Engines From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1069 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value (LTFV) imports from Japan of outboard engines, provided for in subheading 8407.21.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "outboard engines (also referred to as outboard motors), whether assembled or unassembled; and powerheads, whether assembled or unassembled. The subject engines are gasoline-powered spark-ignition, internal combustion engines designed and used principally for marine propulsion for all types of light recreational and commercial boats, including, but not limited to, canoes, rafts, inflatable, sail and pontoon boats. Specifically included in this scope are two-stroke, direct injection two-stroke, and four-stroke outboard engines.

Outboard engines are comprised of (1) a powerhead assembly, or an internal combustion engine, (2) a midsection assembly, by which the outboard engine is attached to the vehicle it

Continued

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 12, 2004.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that outboard engines from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 8, 2004, by Mercury Marine, a division of Brunswick Corp., Fond du Lac, WS.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 2, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on December 14, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 8, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 10, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 9, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 21, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 21, 2004. On January 19, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 21, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

propels, and (3) a gearcase assembly, which typically includes a transmission and propeller shaft, and may or may not include a propeller. To the extent that these components are imported together, but unassembled, they collectively are covered within the scope of this investigation. An "unassembled" outboard engine consists of a powerhead as defined below, and any other parts imported with the powerhead that may be used in the assembly of an outboard engine.

Powerheads are comprised of, at a minimum, (1) a cylinder block, (2) pistons, (3) connecting rods, and (4) a crankshaft. Importation of these four components together, whether assembled or unassembled, and whether or not accompanied by additional components, constitute a powerhead for purposes of this investigation. An "unassembled" powerhead consists of, at a minimum, the four powerhead components listed above, and any other parts imported with it that may be used in the assembly of a powerhead.

The scope does not include parts or components (other than powerheads) imported separately."

Issued: August 17, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19248 Filed 8–20–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision Not To Review Two Initial Determinations Terminating the Investigation as to Respondents Old World Industries, Inc., Splitfire International, Inc., Blitz Co., Ltd., and Blitz North America, Inc. on the Basis of Settlement Agreements and Consent Orders; Issuance of Consent Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations ("IDs") issued by the presiding administrative law judge ("ALJ") terminating the above-captioned investigation as to respondents Old World Industries, Inc. and SplitFire International, Inc. (collectively, "OldWorld/Splitfire"), and Blitz Co., Ltd. and Blitz North America, Inc. (collectively, "Blitz") on the basis of consent orders.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission issued a notice of investigation dated June 16, 2003, naming Auto Meter Products, Inc. ("Auto Meter") of Sycamore, Illinois, as the complainant and several companies as respondents. On June 20, 2003, the notice of investigation was published in the **Federal Register**. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903908, and infringement of the complainant's trade dress. Subsequently, seven more firms were added as respondents based on two separate motions filed by complainant Auto Meter. The investigation was terminated as to five respondents on the basis of consent orders.

On July 14, 2004, the ALJ issued two IDs (Orders Nos. 34 and 35) terminating the investigation as to respondents OldWorld/Splitfire and Blitz on the basis of settlement agreements and consent orders. The Commission investigative attorney filed responses in support of each of the joint motions. No petitions for review of the IDs were filed.

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 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: August 17, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19201 Filed 8–20–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 13, 2004.

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 this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), 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.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Regulation Relating to Loans to Plan Participants and Beneficiaries Who are Parties in Interest with Respect to the Plan.

OMB Number: 1210–0076.

Frequency: On occasion.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 1,700.

Number of Annual Responses: 1,700.

Estimated Time Per Response: 3 hours.

Total Burden Hours: 1.[1]

[1] Generally, because of the specialized knowledge required, attorneys and professional administrators acting as service providers to plans are most likely to draft amendments that would describe or modify a loan program. Therefore, the burden for the information collected is accounted for as a cost burden.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $428,400.

Description: The Employee Retirement Income Security Act of 1974 (ERISA) prohibits a fiduciary with respect to a plan from causing the plan to engage in the direct or indirect lending of money or other extension of credit between the plan and a party in interest. ERISA section 408(b)(1) exempts loans made by a plan to parties in interest who are participants and beneficiaries of the plan from this prohibition provided that certain requirements are satisfied. The regulation at 29 CFR 2550.408b–1 provides additional guidance on section 408(b)(1)(C), which requires that loans must be made in accordance with specific provisions set forth in the plan. This ICR relates to the specific provisions that must be included in plan documents for those plans that permit loans to participants.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–19196 Filed 8–20–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,695]

C–Cor Corporation, Repair Services Department, Meriden, Connecticut; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked June 17, 2004, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of C–Cor Corporation, Repair Services Department, Meriden, Connecticut was signed on May 25, 2004, and published in the **Federal Register** on June 17, 2004 (69 FR 33941).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at C–Cor Corporation, Repair Services Department, Meriden, Connecticut engaged in activities related to the repair of broadband communication products. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

In the request for reconsideration, petitioners allege that the workers supported production of C–Cor products, namely electronic broadband equipment. They further state that the subject firm outsourced repair of its products to Mexico through the third party.

A company official was contacted to clarify the work performed by the Repair Services Department. It was revealed that the subject group of workers did not support any production at the subject facility but performed repair services of the equipment produced by C–Cor Corporation in Meriden, Connecticut.

The official further confirmed the fact established during the original investigation that C–Cor Corporation, Meriden, Connecticut outsourced its repair services to a non-affiliated domestic company in California, which was the cause of the job eliminations of the subject group of workers.

Repair of products already purchased does not constitute production within the context of eligibility requirements for trade adjustment assistance.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 12th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19099 Filed 8–20–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mississippi Lime Company

[Docket No. M–2004–008–M]

Mississippi Lime Company, 16147 Highway 61, Ste. Genevieve, Missouri 63670 has filed a petition to modify the application of 30 CFR 56.15005 (Safety belts and lines) to its Peerless Mine and Mill (MSHA I.D. No. 23–00542) located in Ste. Genevieve County, Missouri. The petitioner proposes to facilitate non-entry full body harness and lifeline whenever an entrant enters a tank, bin or other dangerous areas, to facilitate non-entry rescue, unless the retrieval equipment would increase the overall risk of entry or not contribute to the rescue of the entrant. When a lifeline is used, the petitioner proposes to have a second person attending the lifeline. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. American Engineering & Construction Company

[Docket No. M–2004–035–C]

American Engineering & Construction Company, 735 St. Rt. 857, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (Weekly examination) to its Baker Mine (MSHA I.D. No. 15–14992) located in Webster County, Kentucky. Due to deteriorating roof conditions in the 13 seam seals at the 2nd and 3rd North Main Entries No. 1 Set of Seals, (affected Seals are No.'s 9, 10, 11, 12, and 13), the petitioner proposes to use an alternative method for examinations of the seals in the return air courses of the affected areas. The petitioner proposes to conduct examinations at evaluation points No. 1 and No. 2, and monitor upstream (with respect to air flow) and downstream of the seal locations that cannot be examined. The petitioner states that monitoring at these evaluation points will evaluate the atmosphere going into and coming out from the seals. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Warrior Coal, LLC

[Docket No. M–2004–036–C]

Warrior Coal, LLC, 57 J.E. Ellis Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray) to its Cardinal Mine (MSHA I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for the use of blow-off dust covers for deluge-type water spray nozzles. The petitioner proposes to train a person on testing procedures specific to the deluge-type water spray fire suppression system that will be utilized once a week at each belt drive; conduct a visual examination of each deluge-type water spray fire suppression system; conduct a functional test of the deluge-type water spray fire suppression system by actuating the system and observing its performance; and record results of the examination and test in a book maintained on the surface and made available to interested parties. The petitioner states that any malfunction or clogged nozzle detected as a result of the weekly examination or test will be corrected immediately, and the procedure used to perform the functional test will be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, by fax at (202) 693–9441, or by regular mail to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 22, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 17th day of August 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–19191 Filed 8–20–04; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 7, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001

E-mail: records.mgt@nara.gov.

Fax: (301) 837–3698

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of Agriculture, Food and Nutrition Service (N1–462–04–3, 59

items, 56 temporary items). Electronic data, documentation, and paper and electronic outputs associated with the Regional Office Administered Program database, an electronic system used for payments related to grant programs, such as the national school lunch program. Also included are records relating to the web site that pertains to these programs. Proposed for permanent retention are selected paper outputs, including claims summaries and earnings and payments reports.

2. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–7, 7 items, 7 temporary items). Inputs, master files, outputs, and documentation associated with an electronic system used to manage testing of samples at laboratories. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–8, 7 items, 7 temporary items). Inputs, master files, outputs, and documentation associated with an electronic system used to test for antibiotic residues at slaughter establishments. Electronic copies of records created using electronic mail and word processing are also included.

4. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–9, 7 items, 7 temporary items). Inputs, master files, outputs, and documentation associated with an electronic system containing information on microbiological, chemical, and pathological analyses of domestic and imported meat, poultry, and processed products. Electronic copies of records created using electronic mail and word processing are also included.

5. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–13, 7 items, 7 temporary items). Inputs, master files, outputs, and documentation associated with an electronic system containing data used to alert agency managers that a facility may warrant investigation. Electronic copies of records created using electronic mail and word processing are also included.

6. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–15, 7 items, 7 temporary items). Inputs, master files, outputs, and documentation associated with an electronic system containing information concerning reviews of businesses engaged in the transportation, storage, and distribution of meat and poultry products after they leave Federally-inspected establishments. Electronic copies of records created using electronic mail and word processing are also included.

7. Department of the Army, Agency-wide (N1–AU–04–6, 2 items, 2 temporary items). Records of the Army Family Building Program which is used to meet the educational needs of Army spouses and family members. Included are plans, surveys, reviews, training materials, reports, and related records. Also included are electronic copies of records created using electronic mail and word processing.

8. Department of Transportation, Federal Highway Administration (N1–406–04–4, 1 item, 1 temporary item). Reference files consisting of copies of news clippings, journal and magazine articles, academic papers, newsletters, brochures, press releases, memorandums, correspondence, and other items. Records relate to the history of the agency and its predecessor, the Bureau of Public Roads. Before disposal, records will be offered for donation to a non-Federal archival institution.

9. Department of the Treasury, Financial Management Service (N1–425–04–3, 5 items, 5 temporary items). Inputs, outputs, system documentation, and master files of the Surety Information Management System. This system supports qualification reviews of companies proposing to do surety bonding business with the Federal Government.

10. Dayton Aviation Heritage Commission, Agency-wide (N1–220–04–10, 16 items, 9 temporary items). Committee working files, photographs that lack captions, financial management files, budget files, contract files, administrative records, and reference files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of Commission meeting files, including agendas, minutes, and reports, policy files, cooperative agreements and institutional relations files, project subject files, publicity materials, reports, and photographs of flight activities.

11. Environmental Protection Agency, Office of Enforcement and Compliance Assurance (N1–412–04–10, 2 items, 2 temporary items). Records relating to the environmental impact of non-governmental activities, including tourism, on Antarctica. Also included are electronic copies of documents created using electronic mail and word processing.

12. Environmental Protection Agency, Office of Environmental Information (N1–412–04–11, 8 items, 5 temporary items). Electronic and paper inputs and software programs associated with the Toxic Chemical Release Inventory, which contains information on toxic chemical releases and other waste management activities. Also included are the trade secret claims tracking system and electronic copies of records created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of trade secret claims, the electronic data contained in the Toxic Chemical Release Inventory, and the associated documentation.

Dated: August 16, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–19222 Filed 8–20–04; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specifications Improvement Regarding Revision to the Control Rod Scram Time Testing Frequency in STS 3.1.4, "Control Rod Scram Times" for General Electric Boiling Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE), a model no significant hazards consideration (NSHC) determination, and a model license amendment application relating to a change in the Technical Specifications (TS) to extend the interval for the surveillance requirement (SR) in Standard Technical Specifications (STS) 3.1.4, "Control Rod Scram Times." The purpose of these models is to permit the NRC to efficiently process amendments that propose to incorporate this change into plant-specific TS. Licensees of nuclear power reactors to which the models apply may request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (69 FR 30339) on May 27, 2004, which proposed a model SE and a model NSHC determination related to changing plant TS to extend the control rod scram time testing interval from "120 days cumulative operation in MODE 1" to "200 days cumulative operation in MODE 1." The

NRC staff hereby announces that the enclosed model SE and NSHC determination may be referenced in plant-specific applications. The NRC staff has posted a model application on the NRC web site to assist licensees in using the consolidated line item improvement process (CLIIP) to incorporate this change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Bhalchandra Vaidya, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3308, or William Reckley at (301) 415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specifications Changes for Power Reactors," was issued on March 20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves changes to plant TS to extend the control rod scram time testing interval from "120 days cumulative operation in MODE 1" to "200 days cumulative operation in MODE 1." This proposed change was proposed for incorporation into the STS by the industry's TS Task Force as TSTF–460, "Control Rod Scram Time Testing Frequency."

Applicability

This proposed change to extend the surveillance interval for control rod scram time testing is applicable to boiling water reactors (BWRs).

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without referencing the model SE and the NSHC. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

In a notice in the **Federal Register** dated May 27, 2004 (69 FR 30339), the NRC staff requested comment on the use of the CLIIP for proposed changes to extend the control rod scram time testing interval as proposed in TSTF–460.

TSTF–460, as well as the NRC staff's SE and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

The NRC staff received no formal comments from the request published in the **Federal Register**. Several editorial changes were identified to the staff and are reflected in the model safety evaluation included in this notice.

To efficiently process the incoming license amendment applications, the NRC staff requests each licensee applying for the changes addressed by TSTF–460 using the CLIIP to address the plant-specific information identified in the model SE. Namely, each licensee submitting amendments to extend the surveillance frequency should demonstrate the reliability of the control rod insertion system based on historical control rod scram time test data, and by the more restrictive acceptance criterion for the number of slow rods allowed during at-power surveillance testing.

Model Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement

Technical Specification Task Force (TSTF) Change Traveler TSTF–460, "Control Rod Scram Time Testing Frequency"

1.0 Introduction

By application dated [Date], [Licensee] (the licensee) requested changes to the Technical Specifications (TS) for [facility]. The proposed changes would revise TS testing frequency for the surveillance requirement (SR) in TS 3.1.4, "Control Rod Scram Times."

These changes are based on TS Task Force (TSTF) change traveler TSTF–460 (Revision 0) that has been approved generically for the boiling water reactor (BWR) Standard TS, NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) by revising the frequency of SR 3.1.4.2, control rod scram time testing, from "120 days cumulative operation in MODE 1" to "200 days cumulative operation in MODE 1." A notice announcing the availability of this proposed TS change using the consolidated line item improvement process was published in the **Federal Register** on [DATE] (XX FR XXXXXX).

2.0 Regulatory Evaluation

The TS governing the control rod scram time surveillance is intended to assure proper function of control rod insertion. Following each refueling outage, all control rod scram times are verified. In addition, periodically during power operation, a representative sample of control rods is selected to be inserted to verify the insertion speed. A representative sample is defined as a sample containing at least 10 percent of the total number of control rods. The current TS stipulates that no more than 20 percent of the control rods in this representative sample can be "slow" during the post outage testing. With more than 20 percent of the sample declared to be "slow" per the criteria in Table 3.1.4–1, additional control rods are tested until this 20 percent criterion (*e.g.*, 20 percent of the entire sample size) is satisfied, or until the total number of "slow" control rods (throughout the core, from all surveillances) exceeds the Limiting Condition for Operation limit. For planned testing, the control rods selected for the sample should be different for each test. The acceptance criterion for at-power surveillance testing has been redefined from 20 percent to 7.5 percent. This tightened acceptance criterion for at-power surveillance aligns with the TS 3.1.4 requirement for the total control rods allowed to have scram times exceeding the specified limit.

The proposed change does not affect any current operability requirements and the test frequency being revised is not specified in regulations. As a result, no regulatory requirements or criteria are affected.

3.0 Technical Evaluation

3.1 Statement of Proposed Changes

NUREG–1433, SR 3.1.4.2 states, "Verify, for a representative sample, each tested control rod scram time is within the limits of Table 3.1.4–1 with reactor steam dome pressure ≥[800] psig." NUREG–1434, SR 3.1.4.2 states, "Verify, for a representative sample, each tested control rod scram time is within the limits of Table 3.1.4–1 with reactor steam dome pressure ≥[950] psig." Both SRs have a frequency of "120 days cumulative operation in MODE 1." The proposed change revises the frequency to "200 days cumulative operation in MODE 1." The Bases are revised to reference the new frequency and to reduce the percentage of the tested rods which can be "slow" from 20 percent to 7.5 percent.

3.2 Evaluation of Proposed Change

The control rod insertion time test results at [Plant Name] have shown the control rod scram rates to be highly reliable. During the most recent [XXX] years of operation, out of [XXX] control rod insertion tests, only [XXX] control rods have been slower than the insertion time limit. The extensive historical database substantiates the claim of high reliability of the [Plant Name] control rod drive system. The current TS requires that 10 percent of the [XXX] control rods, or [XXX] rods, be tested via sampling every 120 cumulative days of operation in Mode 1.

The current TS states that the acceptance criteria have been met if 20 percent or fewer of the sample control rods that are tested are found to be slow. The acceptance criterion has been re-defined for at-power surveillance testing from 20 percent to 7.5 percent when the surveillance period is extended to 200 cumulative days of operation in Mode 1. This tightened acceptance criterion for at-power surveillance aligns with the TS 3.1.4 requirement for the total control rods allowed to have scram times exceeding the specified limit.

The licensee will incorporate the revised acceptance criterion value of 7.5 percent into the TS Bases in accordance with their Bases Control Program and as a condition of this license amendment.[1]

The NRC staff considers the extended surveillance interval to be justified by the demonstrated reliability of the control rod insertion system, based on historical control rod scram time test data, and by the more restrictive acceptance criterion for the number of slow rods allowed during at-power surveillance testing. The NRC staff finds the proposed TS change acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [State] State official was notified of the proposed issuance of the amendments. The State official had [choose one: (1) No comments, or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and changes surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (XX FR XXXXX). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by the operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Model Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment changes the Technical Specification (TS) testing frequency for the surveillance requirement (SR) in TS 3.1.4, "Control Rod Scram Times." The proposed change revises the test frequency of SR 3.1.4.2, control rod scram time testing, from "120 days cumulative operation in MODE 1" to "200 days cumulative operation in Mode 1."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change presents no significant hazards consideration under the standards set

[1] Conditioning of the license amendment is accomplished by including wording similar to the following in the implementation language (typically included as item 3) in the Amendment of Facility Operating License: This license amendment is effective as of its date of issuance and shall be implemented within [XX] days from the date of issuance. The licensee shall incorporate during the next periodic update into the TS Bases Section the changes described in its application dated [Date].

forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

Dated at Rockville, Maryland, this 16th day of August 2004.

For the Nuclear Regulatory Commission.

William D. Reckley,

Chief (Acting), Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–19203 Filed 8–20–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103(b).

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Penn, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–2671.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between July 1, 2004, and July 31, 2004. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

U.S. Department of Health and Human Services

HHS may use this Schedule A Authority under 5 CFR 213.3102(i)(3) for positions that directly respond to declared public health emergencies. HHS may use this hiring authority only when the urgency of filling positions prohibits examining through the competitive process. HHS will apply veterans preference using procedures in 5 CFR 302. Appointments under this Schedule A authority will be temporary and may not exceed the service limits in 5 CFR 213.104 or the duration of the emergency, which ever occurs first. Effective July 9, 2004.

Schedule B

No Schedule B appointments for July 2004.

Schedule C

The following Schedule C appointments were approved for July 2004:

Executive Office of the President

Section 213.3303 Office of Science and Technology Policy

TSGS60033 Confidential Assistant to Chief of Staff and General Counsel. Effective July 02, 2004

TSGS60034 Assistant to the Director for Communications and Public Relations to the Chief of Staff and General Counsel. Effective July 02, 2004

Section 213.3304 Department of State

DSGS60778 Foreign Affairs Officer to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective July 02, 2004

DSGS60773 Special Assistant to the Assistant Secretary, Bureau of Verification and Compliance. Effective July 08, 2004

DSGS60779 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs. Effective July 08, 2004

DSGS60781 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective July 08, 2004

DSGS60782 Special Assistant to the Assistant Secretary for African Affairs. Effective July 26, 2004

Section 213.3305 Department of the Treasury

DYGS00423 Special Assistant to the Secretary to the Chief of Staff. Effective July 02, 2004

DYGS00433 Director of Public and Legislative Affairs to the Director, Community Development Financial Institutions. Effective July 22, 2004

Section 213.3306 Department of the Defense

DDGS16821 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective July 16, 2004

DDGS16823 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning). Effective July 16, 2004

DDGS16827 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective July 16, 2004

DDGS16829 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective July 26, 2004

DDGS16830 Personal and Confidential Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict). Effective July 28, 2004

DDGS16826 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs). Effective July 30, 2004

DDGS16828 Protocol Officer to the Special Assistant to the Secretary of Defense for Protocol. Effective July 30, 2004

Section 213.3307 Department of the Army

DWGS60008 Special Assistant to the Assistant Secretary of the Army (Installations and Environment). Effective July 02, 2004

Section 213.3310 Department of Justice

DJGS00029 Special Assistant to the Chairman, Foreign Claims Settlement Commission. Effective July 27, 2004

Section 213.3311 Department of Homeland Security

DMGS00245 Executive Assistant to the Executive Secretary. Effective July 02, 2004

DMGS00248 Senior Advisor to the Assistant Secretary for Infrastructure Protection. Effective July 08, 2004

DMGS00250 Public Outreach Specialist to the Director of Special Projects. Effective July 08, 2004

DMGS00249 Press Assistant to the Deputy Assistant Secretary for Public Affairs. Effective July 12, 2004

DMGS00247 Senior Editor and Correspondence Analyst to the Executive Secretary. Effective July 16, 2004

DMGS00252 Confidential Assistant to the Under Secretary for Information Analysis and Infrastructure Protection. Effective July 16, 2004

DMGS00258 Advance Representative to the Director of Scheduling and Advance. Effective July 16, 2004

DMGS00261 Writer Editor (Speechwriter) to the Director of Speechwriting. Effective July 26, 2004

DMGS00280 Confidential Assistant to the Chief of Staff. Effective July 26, 2004

DMGS00254 Executive Assistant to the Assistant Secretary for Plans, Programs and Budgets. Effective July 27, 2004

DMGS00253 Assistant Director of Legislative Affairs for Secretarial Offices to the Director of Legislative Affairs for Secretarial Offices. Effective July 29, 2004

Section 213.3312 Department of the Interior

DIGS61022 Deputy Press Secretary to the Director, Office of Communications. Effective July 26, 2004

DIGS61020 Speechwriter to the Director, Office of Communications. Effective July 27, 2004

Section 213.3313 Department of Agriculture

DAGS60111 Confidential Assistant to the Under Secretary for Marketing and

Regulatory Programs. Effective July 02, 2004
DAGS00721 Confidential Assistant to the Administrator for Risk Management. Effective July 08, 2004
DAGS00722 Speech Writer to the Director, Office of Communications. Effective July 16, 2004
DAGS60422 Confidential Assistant to the Administrator, Farm Service Agency. Effective July 16, 2004
DAGS00723 Special Assistant to the Administrator, Farm Service Agency. Effective July 23, 2004
Section 213.3314 Department of Commerce
DCGS00257 Confidential Assistant to the Deputy Assistant Secretary for Europe. Effective July 02, 2004
DCGS60393 Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective July 02, 2004
DCGS00419 Confidential Assistant to the Director of Global Trade Programs. Effective July 08, 2004
DCGS00344 Deputy Press Secretary to the Director of Public Affairs. Effective July 09, 2004
DCGS00400 Deputy Press Secretary to the Director of Public Affairs. Effective July 09, 2004
DCGS00666 Confidential Assistant to the Director, Office of Legislative Affairs. Effective July 16, 2004
DCGS60004 Deputy Director to the Director, Executive Secretariat. Effective July 16, 2004
DCGS00685 Deputy Director, Office of Policy and Strategic Planning to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective July 22, 2004
Section 213.3315 Department of Labor
DLGS60114 Special Assistant to the Assistant Secretary for Public Affairs. Effective July 06, 2004
DLGS60084 Staff Assistant to the Executive Secretary. Effective July 12, 2004
DLGS60170 Special Assistant to the Secretary of Labor. Effective July 16, 2004
Section 213.3316 Department of Health and Human Services
DHGS60688 Associate Director for Legislative Policy to the Director, Office of Legislation. Effective July 09, 2004
DHGS60690 Senior Advisor to the Assistant Secretary for Health. Effective July 16, 2004
DHGS60692 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislative (Congressional Liaison). Effective July 16, 2004
Section 213.3317 Department of Education
DBGS00338 Confidential Assistant to the Deputy Secretary of Education. Effective July 02, 2004
DBGS00339 Special Assistant to the Deputy Secretary of Education. Effective July 02, 2004
DBGS00342 Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services. Effective July 02, 2004
DBGS00343 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective July 09, 2004
DBGS00344 Special Assistant to the Deputy Assistant Secretary. Effective July 22, 2004
DBGS00345 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective July 22, 2004
DBGS00347 Confidential Assistant to the Deputy Secretary of Education. Effective July 22, 2004
DBGS00340 Confidential Assistant to the Deputy Assistant Secretary. Effective July 28, 2004
Section 213.3318 Environmental Protection Agency
EPGS04015 Lead Advance Representative to the Associate Assistant Administrator for Public Affairs. Effective July 02, 2004
EPGS04014 Public Liaison Specialist to the Assistant Administrator for Enforcement and Compliance Assurance. Effective July 16, 2004
EPGS04023 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations. Effective July 30, 2004
Section 213.3325 United States Tax Court
JCGS60069 Trial Clerk to the Chief Judge. Effective July 22, 2004
JCGS60073 Trial Clerk to the Chief Judge. Effective July 22, 2004
Section 213.3331 Department of Energy
DEGS00423 Legislative Specialist to the Deputy Assistant Secretary for Intergovernmental and External Affairs. Effective July 16, 2004
DEGS00424 Senior Policy Advisor to the Associate Deputy Secretary. Effective July 16, 2004
DEGS00425 Senior Policy Advisor to the Director, Nuclear Energy. Effective July 30, 2004
Section 213.3332 Small Business Administration
SBGS00555 Legislative Assistant to the Associate Administrator for Congressional and Legislative Affairs. Effective July 06, 2004
SBGS00553 Associate Administrator for International Trade to the Associate Deputy Administrator for Capital Access. Effective July 16, 2004
SBGS60193 Director of Scheduling to the Chief of Staff and Chief Operations Officer. Effective July 30, 2003
SBGS60183 Press Secretary to the Assistant Administrator for Communications and Public Liaison. Effective July 30, 2003
Section 213.3343 Farm Credit Administration
FLOT00054 Chief of Staff to the Chairman, Farm Credit Administration Board. Effective July 16, 2004
Section 213.3348 National Aeronautics and Space Administration
NNGS00044 Legislative Affairs Specialist to the Assistant Administrator for Legislative Affairs. Effective July 08, 2004
Section 213.3370 Millennium Challenge Corporation
MCGS00001 Executive Assistant to the Chief Executive Officer. Effective July 2, 2004
Section 213.3384 Department of Housing and Urban Development
DUGS00032 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Public and Indian Housing. Effective July 22, 2004
DUGS60151 Staff Assistant to the Assistant Secretary for Public Affairs. Effective July 22, 2004
DUGS60598 Special Counselor to the Secretary. Effective July 22, 2004
DUGS00044 Special Assistant to the Deputy Secretary. Effective July 23, 2004
DUGS60610 Staff Assistant to the President, Government National Mortgage Association. Effective July 29, 2004
Section 213.3394 Department of Transportation
DTGS60017 Assistant to the Secretary for Policy. Effective July 22, 2004
DTGS60351 Counselor to the Deputy Secretary. Effective July 23, 2004
Section 213.3396 National Transportation Safety Board
TBGS60105 Confidential Assistant to the Vice Chairman. Effective July 02, 2004

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–19250 Filed 8–20–04; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50205; File No. SR–CBOE–2003–39]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc. Relating to Quote Sizes

August 17, 2004.

On September 12, 2003, 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 establish a one-year pilot program that would allow market makers on CBOE's Hybrid Trading System ("Hybrid") to disseminate a quotation with a size of less than ten contracts under certain limited circumstances. On October 29, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] On June 10, 2004, the CBOE filed Amendment No. 2 to the proposed rule change.[4] On June 28, 2004, the CBOE filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 15, 2004.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, on a pilot basis through August 17, 2005.

CBOE Rules 8.7(d)(i)(B) and (d)(ii)(B), which only apply to classes trading on Hybrid, impose a ten contract ("10-up") minimum quotation size requirement for CBOE market makers when such market makers quote electronically. Similarly, Interpretation .05 to CBOE Rule 8.7 imposes a 10-up minimum quotation size requirement for a CBOE market maker's initial bid or offer in classes in which Hybrid is operational.

The Exchange proposes, on a one-year pilot basis, an exception to CBOE Rules 8.7(d)(i)(B) and (d)(ii)(B) to allow market makers on Hybrid to disseminate a quotation with a size of less than ten contracts whenever the underlying primary market for the option (or ETF option) disseminates a 1-up market (*i.e.*, a market that reflects a quotation for 100 shares of the underlying security).

In order to participate in the pilot program, a CBOE market maker (or the vendor that provides handheld quoting devices for the market maker) would be required to demonstrate to the Exchange that it has automated the process for adjusting the market maker's quotations to reflect sizes of less than ten contracts in the event the underlying primary market disseminates a 1-up market and to reflect sizes of at least ten contracts when the underlying primary market no longer disseminates a 1-up market. CBOE market makers that have not automated this process would not be permitted to avail themselves of the exception provided by the proposed rule change, as amended. In addition, the Exchange represents that it would provide to the Commission a report detailing the effectiveness of the program, along with a request either to eliminate or make permanent the pilot program.[7]

The Exchange also proposes to delete the language that imposes a 10-up minimum quotation size requirement for a CBOE market maker's initial bid or offer in Interpretation .05 to CBOE Rule 8.7, because that language is duplicative of what is already contained in CBOE Rule 8.7(d).

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that CBOE Rules 8.7(d)(i)(B) and (d)(ii)(B), which currently provide for a ten-contract minimum quotation size requirement, impose a reasonable obligation on CBOE market makers, who, in turn for satisfying this and other obligations, are entitled to receive good faith margin treatment. The Commission also believes that it may be reasonable for the Exchange to reduce to one contract, on a one-year pilot basis, the minimum quotation size requirement for market makers, in event that the underlying primary market disseminates a 1-up market, because (1) specialists in the underlying stock are allowed to disseminate 1-up markets and (2) the amount of liquidity available for CBOE market makers to hedge their options positions by purchasing or selling shares in the underlying market may be reduced when the underlying market disseminates a 1-up quote.

The Commission notes that the process for adjusting the size of a market maker's quotations in the event the underlying primary market disseminates a 1-up market must be automated and that this automated process should reduce any delays in re-adjusting the quotations to reflect a 10-up market when the underlying primary market no longer disseminates a 1-up market. In addition, the Commission believes that the approval of the proposal on a one-year pilot basis should provide the CBOE and the Commission with an opportunity to review the operation of the proposal and to address any potential concerns that may arise. Further, the Commission notes that the CBOE agreed to provide the Commission with a report detailing the effectiveness of the pilot program. In order to efficiently evaluate the effectiveness of the pilot program, the Commission expects the CBOE to provide its report by June 17, 2005.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2003–39) and Amendments No. 1, 2, and 3 are approved, as a pilot program until August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19246 Filed 8–20–04; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 28, 2003 ("Amendment No. 1").

[4] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated June 9, 2003 ("Amendment No. 2"). In Amendment No. 2, CBOE replaced the original rule filing in its entirety.

[5] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated June 25, 2003 ("Amendment No. 3"). In Amendment No. 3, CBOE made technical corrections to the proposed rule text.

[6] *See* Securities Exchange Act Release No. 49990 (July 8, 2004), 69 FR 42473 ("Notice").

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50201; File No. SR–CHX–2004–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Transfer of CHX Memberships

August 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The CHX filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to add Interpretation and Policy .03 to CHX Article I, Rule 10, "Transfers of Memberships," which would effectively prohibit the transfer of CHX memberships until uniform disclosure regarding a proposed demutualization transaction that has been approved by the Exchange's Board of Governors is disseminated to owners of CHX seats. The text of the proposed rule change appears below. Proposed new language is *italicized.*

* * * * *

ARTICLE I Membership

Transfers of Memberships

RULE 10. A membership is a privilege which cannot be transferred until the transferee shall have been elected a member or member organization. All bids for, and offerings of, memberships shall be submitted to and will be processed by the Exchange in accordance with procedures that shall from time to time be established by the Executive Committee. All contracts for the sale of memberships shall be approved by the Exchange. A sale or transfer of a membership without Exchange approval shall confer no rights on the purchaser or transferee to become a member, to exercise any rights of membership or otherwise to deal on or with the Exchange on a basis other than that of a non-member. Transference pursuant to Article IA, whereby the transferor retains the right to reacquire the membership, must be in accordance with the requirements of the Exchange and the terms of all such arrangements must be approved by the Exchange. A sale or transfer of a membership, including transfers pursuant to Article IA, shall not be approved by the Exchange if the transferee (or the Lessor in the case of transfers pursuant to Article IA), together with any person who directly or indirectly controls or is controlled by, or is under common control with, the transferee or Lessor, as the case may be, owns or has the voting power of 10% or more of the outstanding memberships of the Exchange, unless this requirement is waived by the Board for good cause shown.

* * * Interpretations and Policies

.01 The Executive Committee has adopted the following procedure for processing transfers of memberships:

All bids for, and offerings of, memberships will be submitted to, and processed by, the Exchange's Membership Department. No private negotiations and/or sales of memberships will be allowed without the written approval of the Exchange, and any sale contracts resulting from such private negotiations may be nullified by the Exchange.

Applicants for membership will not be permitted to enter a bid for a membership until the staff has determined from the application submitted that no statutory bar to membership exists or, in the case of Approved Lessors, that they have complied with all prerequisites to becoming an Approved Lessor as set forth in the Rules.

Any contract for the sale of a membership, which contract has been made by the Exchange on behalf of the buyer and seller, will remain in force for the ten business days next following the date on which the contract was executed. Such contract will be extended beyond the original termination date only if both parties agree in writing to such an extension and to a new termination date.

.02 Transfers, pursuant to Article IA, whereby the transferor retains the right to reacquire the membership, will not be processed by the Exchange's Membership Department unless the transferor is current in all filings and payments of dues, fees and charges relating to that membership, including filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation.

.03 Suspension of Membership Market. Effective August 5, 2004, the Exchange will not approve the transfer of a membership by any member or approved lessor. This prohibition shall remain in effect until the earlier of (a) the date of issuance (to CHX members and approved lessors) of disclosure documents relating to a proposed demutualization transaction or (b) the Exchange's determination that it will not seek approval of a demutualization transaction.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 5, 2004, the Exchange's Board of Governors voted unanimously to present a demutualization plan to the Exchange's members for approval.[5] A

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] As with other similar demutualization transaction approved previously by the Commission, the Exchange's proposed demutualization transactions contemplate a change in the Exchange's organizational structure. In this demutualization transaction, the CHX will change from a not-for-profit, non-stock corporation owned by its members to become a wholly-owned subsidiary of a holding company, CHX Holdings, Inc., which is to be organized as a for-profit, stock corporation owned by its stockholders. Members of the CHX at the time of the demutualization transaction will receive shares of common stock of the new holding company in exchange for their CHX memberships, and thus will become the stockholders of the new holding company. Members who are qualified to trade on the Exchange will receive trading permits that give

CHX member vote on the demutualization plan will be scheduled for October 2004. If the Exchange's members vote in favor of demutualization, the Exchange anticipates that it will then formally seek the Commission's approval of the Exchange's demutualization plan, including related changes to the Exchange's constitution, bylaws and rules.

The Exchange plans to distribute to its members, sufficiently in advance of the October demutualization vote, a comprehensive information memorandum and other materials (collectively, the "Disclosure Documents") that will apprise Exchange members of their respective rights and obligations before and after demutualization. The Exchange currently is preparing the Disclosure Documents but will not be in a position to circulate these materials to CHX members until early to mid-September.

The Exchange believes that, in the interim, certain CHX members may have (or may be perceived to have) access to varying levels of information (with varying degrees of accuracy) regarding the proposed demutualization transaction. Accordingly, to preclude any inequity that could arise as a result of potentially disparate access to accurate information, the Exchange believes that it is appropriate to suspend its membership market (also referred to as the CHX "seat" market) immediately. The Exchange believes that suspension of the seat market will help ensure that members are not purchasing or selling memberships prior to demutualization on the basis of information that may not be available to all members or on the basis of inaccurate information that a member has received through informal communications channels.

The proposed new Interpretation and Policy .03 relating to CHX Article I, Rule 10 would effectively prohibit transfer of memberships by CHX members, effective immediately. This prohibition would remain in effect until the Disclosure Documents are disseminated to CHX seat owners. If for some reason the Exchange declines to proceed with the demutualization initiative prior to dissemination of the Disclosure Documents, the prohibition would terminate immediately.

2. Statutory Basis

The CHX believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[6] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule,[8] it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[9] andRule 19b–4(f)(1) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX 2004–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–21 and should be submitted on or before September 13, 2004.

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them continued access to the Exchange's trading facilities.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] Pursuant to CHX Article I, Rule 10, all bids for and offers of memberships must be submitted to, and processed by, the Exchange in accordance with procedures established by the Executive Committee. The Exchange must approve all contracts for the sale of memberships. The Executive Committee, pursuant to direction from the Board of Governors, has adopted a policy of not approving any contracts for the sale of memberships during the brief, temporary period between the approval by the Board of the demutualization transaction and the issuance of the Disclosure Documents. This temporary halt in the processing of membership transfers is intended to ensure that the membership transfer process is fair and is based on equivalent disclosure of information about the demutualization transaction. Accordingly, the policy constitutes a stated policy as to the administration and enforcement of the membership transfer procedures set forth in CHX Article I, Rule 10.

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19244 Filed 8–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50202; File No. SR–EMCC–2004–12]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Processing Transactions in Ineligible Instruments

August 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 2, 2004, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend EMCC Rule 3, Section 1 (Lists to be Maintained) to specify that EMCC will no longer process transactions in ineligible instruments where transactions in such ineligible instruments were accepted by EMCC at a time when the instruments were eligible instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to eliminate the risk to EMCC and its members posed by the processing of value recovery rights, also known as warrant transactions, because EMCC cannot obtain accurate prices of such instruments.[2]

Prior to this rule change, EMCC Rule 3, Section 1 provided that transactions in instruments that became ineligible but were currently in the system would continue to be processed and would be deemed to be transactions in EMCC eligible instruments. EMCC is changing this rule to specify that it will no longer continue to process transactions in ineligible instruments, will exit pending transactions in ineligible instruments from its system, and will issue receive and deliver instructions by naming members as contra-parties to such instructions. However, the legal obligations of the parties to such instructions will continue to be subject to EMCC's rules even though such instruments will no longer settle at EMCC. Finally, EMCC will net all open fail warrant positions before exiting the positions. These net positions will be assigned to members on a random basis in quantities that meet Euroclear delivery requirements.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because eliminating unsettled warrant positions will eliminate risks that EMCC can no longer effectively manage.

B. Self-Regulatory Organizations Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

[2] As part of the margining process, EMCC marks to market all open positions. When warrants traded at zero value as part of the associated bond deal, this did not present a problem. However, when warrants are detached and trade at value, which they occasionally do, the zero mark is not appropriate. Due to the lack of readily available prices for the warrants, this component of margining cannot be accurately measured and, thus, presents risk to EMCC and ultimately its members.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)[3] of the Act, which requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control. By eliminating the risk posed by EMCC's inability to accurately mark to market its participants' open warrant positions, the proposed rule change will enhance EMCC's ability to safeguard the securities and funds which are in its custody or control.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because by so approving EMCC will be able to expeditiously eliminate the risk posed by unsettled warrant instruments that compromises its ability to safeguard the securities and funds that are in its custody or control.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EMCC–2004–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–EMCC–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[3] 15 U.S.C. 78q–1(b)(3)(F).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at EMCC's principal office and on EMCC's Web site at *http://www.e-m-c-c.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMCC–2004–12 and should be submitted on or before September 13, 2004.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2004–12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19247 Filed 8–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50199; File No. SR–NASD–2004–079]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc., To Provide for the Web Publication of Summaries of Interpretations Issued Under NASD Rule 4550

August 13, 2004.

On May 14, 2004, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 provide for the web publication of summaries of interpretations issued under NASD Rule 4550. On June 18, 2004, the Nasdaq submitted Amendment No. 1 to the proposal.[3] One June 25, 2004, the Nasdaq submitted Amendment No. 2 to the proposal.[4]

The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on July 6, 2004.[5] The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of Section 15A(b)(6) of the Act.[7] Section 15A(b)(6) requires, among other things, that the rules of an association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal is seeking to codify Nasdaq's current practice of publishing anonymous summaries of its written interpretations of NASD listing rules on the NASD website. The Commission believes that publishing these summaries of Nasdaq's interpretations will provide Nasdaq issuers with additional guidance to help them comply with NASD listing rules. The Commission also believes that publishing the summaries of Nasdaq's written interpretations should reduce the number of requests from listed issuers who might be seeking guidance on identical or similar previously interpreted matters. As a result, the Commission believes that the proposed rule change could significantly reduce the burden on Nasdaq of producing superfluous written interpretations on NASD listing rules. Therefore, the Commission finds that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2004–079), as amended by Amendment Nos. 1 and 2, be hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19243 Filed 8–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50204; File No. SR–NASD–2004–098]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed Amendments To Eliminate Exemptions From the Continuing Education Regulatory Element Requirements

August 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On July 23, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 17, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, Nasdaq added the 90-day publication date requirements and changed the filing from one under Section 19(b)(3)(A) of the Act to one under Section 19(b)(2) of the Act.

[4] *See* letter from T. Eric Lai, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 25, 2004 ("Amendment No. 2"). In Amendment No. 2, Nasdaq removed a sentenced relating to the timing for the implementation of the proposal.

[5] *See* Securities Exchange Act Release No. 49935 (June 29, 2004), 69 FR 40699.

[6] In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 22, 2004. In Amendment No. 1, the NASD replaced in its entirety the original rule filing.

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 1120 to eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education ("CE") Program. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with NASD. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) Requirements

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

[(A)] Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by *NASD* [the Association]. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date,"* shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by *NASD* [the Association] and shall be appropriate to either the registered representative or principal status of person subject to the Rule.

[(B) Persons Exempted from the Rule—Persons who have been continuously registered for more than 10 years on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered representatives, provided such persons have not been subject within the last 10 years to any disciplinary action as enumerated in paragraph (a)(3). A person who has been continuously registered as a principal for more than ten years on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered principals, provided such person has not been subject within the last ten years to any disciplinary action as enumerated in paragraph (a)(3). In the event that a registered representative or principal who was exempt from participation in Regulatory Element programs subsequently becomes the subject of a disciplinary action as enumerated in paragraph (a)(3), such person shall be required to satisfy the requirements of the Regulatory Element as if the date of such disciplinary action is such person's initial registration date with the Association.]

[(C) Persons who have been currently registered for 10 years or less as of July 1, 1998, shall participate in the Regulatory Element within 120 days after the occurrence of the second registration anniversary date, or every third year thereafter, whichever anniversary date first applies.]

(2) No change.

(3) *Disciplinary Actions* [Re-entry into Program]

Unless otherwise determined by *NASD* [the Association], a registered person will be required to *retake* [re-enter] the Regulatory Element and satisfy all of its requirements in the event such person:

(A) Is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act;

(B) Is subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) Is ordered as a sanction in a disciplinary action to *retake* [re-enter] the *Regulatory Element* [continuing education program] by any securities governmental agency or self-regulatory organization.

The retaking of the Regulatory Element [Re-entry] shall commence with [initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above. The date of the disciplinary action shall be treated as such person's *new base* [initial registration] date with *NASD* [the Association].

(4) through (7) No change.

(a) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 1120 (CE Requirements) specifies the CE requirements for registered persons subsequent to their initial qualification and registration with NASD. The requirements consist of a Regulatory Element and a Firm Element.[4] The Regulatory Element is a computer-based education program administered by NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry.[5] Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[6] There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Series 6

[4] The Firm Element of the CE Program applies to any person registered with an NASD member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to NASD Rule 1050, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

[5] NASD Rule 1120(a)(6) permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, NASD Rule 1043 requires that persons serving as Proctors for the purposes of In-Firm Delivery must be registered.

[6] This is the current Regulatory Element schedule, as amended in 1998.

representatives, and the S101 General Program for Series 7 and all other registrations.

Approximately 135,000 registered persons currently are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action[7] in their CRD record for the previous ten years ("grandfathered" persons). These also include those persons who had "graduated" from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when NASD Rule 1120 was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD record for the previous ten years.[8]

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education ("Council")[9] discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons currently do not have the benefit of this material.

In addition, the Council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidance from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and are pursuing amendments to their respective rules. NASD staff will coordinate with the staffs of the other SROs to synchronize the rule changes.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository ("Web CRD"), or (3) April 4, 2005, whichever date is the latest to occur.

Following the effective date of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element (NASD Rule 1120(a)(1)) to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a "base date" for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with NASD Rule 1120(a)(3) or the date on which a formerly registered person re-qualifies for association with an NASD member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Beginning on or after the effective date of the proposed rule change, registered persons formerly exempt from the Regulatory Element requirement must satisfy such requirement on the occurrence of a Regulatory Element base date anniversary (*i.e.*, the second anniversary of the base date and every three years thereafter) (*see* examples in the Table below).

NASD staff has reviewed a projection of how the anniversaries of the formerly exempt registered persons (about 135,000 persons) will occur using the base dates that CRD maintains for these persons. The projection shows that within three years from the proposed rule's effective date, all formerly exempt registered persons will have been brought into the Regulatory Element program. Furthermore, anniversaries will occur at a more-or-less steady rate so that there would be no extraordinary stress placed upon the capacity of the existing test/training facilities during the next three years or thereafter.

TABLE

Registered person	Initial registration date	First regulatory element requirement of a registered person formerly exempt from the regulatory element (assuming an effective date of April 4, 2005)
A	[10] 4/4/1985	4/4/2005
B	7/1/1983	7/1/2006
C	8/1/1984	8/1/2007

[7] For purposes of NASD Rule 1120, a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of $5,000 or more, or being subject to an order from a securities regulator to re-enter the Regulatory Element. *See* NASD Rule 1120(a)(3).

[8] When NASD Rule 1120 was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

[9] As of the date of this rule filing, the Council consists of 17 individuals, six representing self-regulatory organizations ("SROs") (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.) and 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue-neutral basis while assuring adequate financial reserves.

TABLE—Continued

Registered person	Initial registration date	First regulatory element requirement of a registered person formerly exempt from the regulatory element (assuming an effective date of April 4, 2005)
D	4/3/1985	4/3/2008

In addition, the proposed rule change would replace references in NASD Rule 1120(a)(3) to "re-entry" into the Regulatory Element with a requirement to "retake" the Regulatory Element to clarify that the significant disciplinary action provisions apply to all registered persons and not only to currently exempt persons.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] in general and with Section 15A(b)(6) of the Act,[12] in particular, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to accomplish these ends by ensuring that all registered persons are kept up-to-date on industry rules, regulations, and practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–098 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-NASD–2004–098. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–098 and should be submitted on or before September 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19245 Filed 8–20–04; 8:45 am]

BILLING CODE 8010–01–P

[10] A registered person with an initial registration date of April 4, 1985 will have a Regulatory Element anniversary date on April 4 of 1987, 1990, 1993, 1996, 1999, 2002 and 2005.

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P047]

State of Kansas (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 9, 2004, the above numbered declaration is hereby amended to include Butler, Cherokee, Ellis, Graham, Jewell, Labette, Lyon, Mitchell, Osborne, Phillips, Rush, Russell, Smith, and Trego Counties for Public Assistance in the State of Kansas as disaster areas due to damages caused by severe storms, flooding and tornadoes occurring on June 12, 2004, and continuing.

All other information remains the same, i.e., the deadline for filing applications for physical damage is October 4, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: August 13, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–19193 Filed 8–20–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3615]

State of Florida

As a result of the President's major disaster declaration on August 13, 2004, and notices received from the Department of Homeland Security—Federal Emergency Management Agency—on August 14 and 15, 2004, I find that Brevard, Charlotte, Collier, DeSoto, Dixie, Duval, Glades, Hardee, Hendry, Highlands, Indian River, Lake, Lee, Levy, Manatee, Monroe, Okeechobee, Orange, Osceola, Pasco, Polk, Sarasota, Seminole, St. Johns, and Volusia Counties in the State of Florida constitute a disaster area due to damages caused by Tropical Storm Bonnie and Hurricane Charley occurring on August 11, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 12, 2004, and for economic injury until the close of business on May 13, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alachua, Baker, Broward, Citrus, Clay, Flagler, Gilchrist, Hernando, Hillsborough, Lafayette, Marion, Martin, Miami-Dade, Nassau, Palm Beach, Pinellas, Putnam, St. Lucie, Sumter, and Taylor in the State of Florida.

The interest rates are:

	Percent
For Physical Damage:.	
Homeowners with Credit Available Elsewhere	6.375
Homeowners without Credit Available Elsewhere	3.187
Businesses with Credit Available Elsewhere	5.800
Businesses and Non-Profit Organizations without Credit Available Elsewhere	2.900
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	4.875
For Economic InJury:.	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	2.900

The number assigned to this disaster for physical damage is 361508 and for economic injury the number is 9ZP700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 16, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–19192 Filed 8–20–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3613]

State of Indiana

Vanderburgh County and the contiguous counties of Gibson, Posey, and Warrick in the State of Indiana; and Henderson County in the State of Kentucky constitute a disaster area due to damages caused by severe thunderstorms, flash flooding and wind that occurred on July 16 through July 17, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 14, 2004 and for economic injury until the close of business on May 13, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300,Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	5.500
Businesses and Non-profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury.	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 361306 for Indiana and 361406 for Kentucky. The number assigned to this disaster for economic injury is 9ZO700 for Indiana and 9ZO800 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 13, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–19194 Filed 8–20–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV North Florida District Advisory Council; Public Meeting

The U.S. Small Business Administration North Florida District Advisory Council located in Jacksonville, Florida, will host a public meeting at 12 p.m. EST on September 2, 2004, in Committee Room A of the Jacksonville City Hall Chambers located at 117 West Duval Street, Jacksonville, FL 32202, to discuss such matters that may be presented by members and staff of the U.S. Small Business Administration, or others present. Anyone wishing to make an oral presentation to the Board must contact Wilfredo J. Gonzalez, District Director, in writing by letter or fax no later than August 18, 2004, in order to be put on the agenda. Wilfredo J. Gonzalez, District Director, U.S. Small Business Administration, 7825 Baymeadows Way; Suite 100B, Jacksonville, FL 32256. Telephone (904) 443–1900 or FAX (202) 481–4188.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 04–19199 Filed 8–20–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 3—Washington Metropolitan Area District Office Advisory Council; Public Meeting

The U.S. Small Business Administration's Washington Metropolitan Area District Office will host a public meeting on Friday, September 24, 2004, from 9 a.m. until 11:30 a.m. at the Washington Metropolitan Area District Office located at 1110 Vermont Avenue, NW., 9th Floor, Washington, DC 20005. Seating is limited and is available on a first come, first served basis. The focus of the meeting includes a review/update of the status of the district's FY 2004 goals, update on new initiatives and other matters that may be presented by members and staff of the U.S. Small Business Administration's Washington Metropolitan Area District Office, or others present.

Anyone wishing to make an oral presentation to the Board must contact Joseph P. Loddo, District Director, and Designated Federal Official for the SBA's Washington Metropolitan Area District Advisory Council, in writing by letter or fax no later than August 26, 2004, in order to be put on the agenda. Requests for oral comments must be in writing to: Joseph P. Loddo, District

Director, U.S. Small Business Administration, Washington Metropolitan Area District Office, 1110 Vermont Ave., NW., 9th Fl, Washington, DC 20005. Telephone (202) 606–4000, ext. 276 or FAX (202) 481–2740.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 04–19200 Filed 8–20–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Roundtable Discussion on Accessing Government Markets. Representatives From Federal Offices of Small & Disadvantaged Business Utilization (OSDBUs) will present "best practices" supporting women business owners access to Federal contracts. Women business owners will relate their individual experiences with the Federal procurement process. Council members will hold a question and answer session following all presentations. As a result of the discussions, a report on Roundtable findings will be compiled along with policy recommendations for presentation to the President, members of Congress, and the U.S. Small Business Administration.

DATES: September 13, 2004.

ADDRESSES: Small Business Administration, Eisenhower Conference Room A & B, 409 Third Street, SW., Washington, DC.

Time: 1 p.m. to 5 p.m.

Status: Open to the public. Attendance by RSVP only.

Contact: National Women's Business Council, 202/205–6829—Aileen Kishaba.

Anyone wishing to attend and make an oral presentation at the meeting must contact Aileen Kishaba, no later than Monday, September 6, 2004, at 202/205–6829.

Matthew Becker,

Committee Management Officer.

[FR Doc. 04–19303 Filed 8–18–04; 4:50 pm]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4803]

Culturally Significant Objects Imported for Exhibition Determinations: "Pontormo, Bronzino, and the Medici: The Transformation of the Renaissance Portrait in Florence"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "Pontormo, Bronzino, and the Medici: The Transformation of the Renaissance Portrait in Florence," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, from on or about November 20, 2004, until on or about February 13, 2005, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 13, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–19268 Filed 8–20–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–68]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 12, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–200X–XXXXX by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, Tim Adams (202) 267–8033, or Sandy

Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 17, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2004–16901.

Petitioner: Boeing Commercial Airplane Group.

Sections of 14 CFR Affected: 14 CFR 21.195(d)(2).

Description of Relief Sought: To allow Boeing Commercial Airplane Group to obtain Special Airworthiness Certificates in the experimental category for certain aircraft with less than the minimum number of flight hours required by the regulation for the purpose of Market Survey.

[FR Doc. 04–19253 Filed 8–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–69]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 13, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–200X–XXXXX by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, or Susan Lender (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 17, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2001–10267.

Petitioner: Carver Aero, Inc.

Sections of 14 CFR Affected: 14 CFR 135.421(a).

Description of Relief Sought: To allow Carver Aero, Inc. to operate a Piper PA–23–250 aircraft without having overhauled the engine at the appropriate interval.

[FR Doc. 04–19254 Filed 8–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18536]

Notice of Request for Clearance of a New Information Collection: Bus Crash Causation Study

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FMCSA to request the Office of Management and Budget (OMB) to approve a new information collection related to a study of the causation of commercial motor vehicle crashes mandated by the Motor Carrier Safety Improvement Act of 1999. The bus study will fulfill the bus portion of this mandate and aid in the determination of the reasons for, and factors contributing to, serious bus crashes.

DATES: Comments must be submitted on or before October 22, 2004.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

Electronic Access: An electronic copy of this document may be downloaded using the Internet at the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.* For Internet users, all comments received will be available for examination at the universal source location: *http://dms.dot.gov.* Please follow the instructions on-line for additional information and guidance.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Craft, Program Manager, Bus Crash Causation Study, (202) 366–0324, Office of Information Management, Analysis Division, Federal Motor Carrier Safety Administration, 400 7th Street SW., Suite 8214, Washington, DC 20590. Office hours are from 7 a.m. to 4:30

p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Bus Crash Causation Study.

Background: No national database exists that contains information describing the causes of, the reasons for, and the factors contributing to bus crashes. The purpose of the Bus Crash Causation Study is to gather this information for serious bus crashes. With these data, FMCSA and the States will be able to more effectively implement countermeasures to reduce the occurrence and severity of these crashes. The study is required under Section 224 of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748 (December 9, 1999). Buses are defined as vehicles designed or used to transport 9 to 15 people (including the driver) for compensation, or more than 15 people for any purpose.

The FMCSA will conduct a three-part bus crash causation study beginning in 2004. The three parts of the study are as follows: (1) Mining current databases, such as the Fatality Analysis Reporting System (FARS), Buses Involved in Fatal Accidents (BIFA) and Motor Carrier Management Information System (MCMIS) for causation factors; (2) evaluating insurance companies data to assess the quality, quantity and usefulness of bus crash causation data; and (3) collecting extensive data on a sample of crashes in the field. FMCSA field staff, FMCSA contractors and New Jersey State Police (NJSP) will collect more than 400 pieces of data on 50–100 crashes involving commercial buses in northern and central New Jersey throughout 2005. Transit and school buses are excluded from the study. The New Jersey State safety agencies will also be important partners in this study at several levels including: data collection form design, crash notification, crash investigation and bus post crash inspections.

Respondents: The respondents will be individuals involved in the selected bus crashes including the bus drivers, other drivers, passengers, witnesses and motor carrier officials.

Average Burden Per Response: The estimated average burden per response is 1 hour.

Estimated Total Annual Burden: The estimated total annual burden is 500 hours (500 interviews × 1 hour per response).

Frequency: Once.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FMCSA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999); and 49 CFR § 1.73.

Issued on: August 10, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–19255 Filed 8–20–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34532]

Roaring Fork Transportation Authority—Acquisition and Operation Exemption—Roaring Fork Railroad Holding Authority

Roaring Fork Transportation Authority (RFTA), a government entity formed to operate transportation facilities, has filed a notice of exemption to acquire from Roaring Fork Railroad Holding Authority (RFRHA) all of RFRHA's rights to reactivate rail service on RFRHA's line between milepost 360.22 in Glenwood Springs, CO, and milepost 393.66, near Woody Creek, CO, a distance of 33.44 miles (the line).

In a decision and notice of interim trail use or abandonment in *Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield, Eagle, and Pitkin Counties, CO*, STB Docket No. AB–547X (STB served Oct. 16, 1998), RFRHA was authorized to abandon the line and rail bank the right-of-way in its own name. In a decision served on November 30, 2001, in that proceeding, the Board granted the substitution of RFTA as the interim trail manager. RFRHA subsequently transferred all of its rights in the line, as well as ownership of the line to RFTA. RFTA now seeks Board approval for a transfer of the right to reactivate the rail line.

RFTA certifies that its projected annual revenues will not exceed those that would qualify it as a Class III carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34532, 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 Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 16, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19238 Filed 8–20–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209545–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking REG–209545–92, Earnings and Profits of Foreign Corporations (1.964–1(c)(1)(v)).

DATES: Written comments should be received on or before October 22, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–

6665, or at Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Earnings and Profits of Foreign Corporations.

OMB Number: 1545–1318.

Regulation Project Number: REG–209545–92 (formerly INTL–18–92).

Abstract: This regulation modifies the computation of earnings and profits of foreign corporations by allowing them to account for inventory costs using capitalization methods used for financial accounting purposes rather than the uniform capitalization rules required by Internal Revenue Code section 263A. The regulation also permits reliance on financial accounting conventions in computing depreciation for foreign corporations deriving less than 20 percent of gross income from U.S. sources and maintaining assets with financial book bases not materially different from tax bases. Use of simplified rules may result in an accounting method change, which would ordinarily require the filing of Form 3115, Application for Change in Accounting Method. However, the regulation waives any Form 3115 filing requirements if certain conditions are met.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 3115, Application for Change in Accounting Method.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–19262 Filed 8–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–44–94]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–44–94 (TD 8690), Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions (§§ 1.170A–13(f) and 1.6115–1).

DATES: Written comments should be received on or before October 22, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94.

Abstract: This regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions in excess of $75. The regulations affect donee organizations described in Internal Revenue Code section 170(c) and individuals and entities that make payments to these organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,750,000.

Estimated Time Per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 1,975,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–19263 Filed 8–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–33–92]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–33–92 (TD 8507), Information Reporting for Reimbursements of Interest on Qualified Mortgages (§ 1.6050H–2).

DATES: Written comments should be received on or before October 22, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting for Reimbursements of Interest on Qualified Mortgages.

OMB Number: 1545–1339.

Regulation Project Number: IA–33–92.

Abstract: Section 6050H of the Internal Revenue Code relates to the information reporting requirements for reimbursements of interest paid in connection with a qualified mortgage. This information is required by the Internal Revenue Service to encourage compliance with the tax laws relating to the deductibility of payments of mortgage interest. The information is used to determine whether mortgage interest reimbursements have been correctly reported on the tax return of the taxpayer who receives the reimbursement.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden of Form 1098, Mortgage Interest Statement.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–19264 Filed 8–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–56

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–56, Model 457 Plan Provisions.

DATES: Written comments should be received on or before October 22, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Model 457 Plan Provisions.

OMB Number: 1545–1904.

Revenue Procedure Number: Revenue Procedure 2004–56.

Abstract: Revenue Procedure 2004–56 contains model amendments to be used by section 457(b) plans (deferred compensation plans) of state or local governments.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 10,260.

Estimated Annual Average Time Per Respondent/Recordkeeper: 4 hours.

Estimated Total Annual Reporting/Recordkeeping Hours: 41,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–19265 Filed 8–20–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 162
Monday, August 23, 2004

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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–04–4004]

Memorandum of Understanding Between the Food and Drug Administration and the Harvard–Massachusetts Institute of Technology Division of Health Sciences and Technology

Correction

In notice document 04–17513 appearing on page 46157 in the issue of Monday, August 2, 2004, make the following correction:

In the third column, after the file line, insert the following pages:

FINAL – 3/16/04

225-04-4004

Control No. _____

MEMORANDUM OF UNDERSTANDING
Between the

UNITED STATES FOOD AND DRUG ADMINISTRATION
And
HARVARD – MASSACHUSETTS INSTITUTE OF TECHNOLOGY
DIVISION OF HEALTH SCIENCES AND TECHNOLOGY (HST)

This Memorandum of Understanding between the U.S. Food and Drug Administration and HST is established to formalize an agreement to develop collaborative activities between the two parties in the areas of research, education, and outreach.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish the framework for a collaborative partnership on mutually agreed activities in the areas of scientific research and education. The United States Food and Drug Administration (FDA) and the Harvard-MIT Division of Health Sciences and Technology (HST) have a shared interest in advancing science in the pharmaceutical development and regulatory approval process through an exchange of scientific capital in the diverse fields of medical and biological sciences and engineering that directly and indirectly affect human health and medicine. Both institutions also endorse continued scientific training for regulatory scientists, academicians, and students to foster the well-grounded foundations in interdisciplinary science from which scientific learning will grow.

This MOU establishes terms of collaboration between FDA and HST to support these shared interests that can proceed through a variety of programs and subsequently executed agreements such as co-sponsorship of symposia and workshops, sabbaticals, postdoctoral fellowships, and student internships, and cooperative research and development agreements.

The intent of the collaborative partnership resulting from this MOU include: (1) development of a sound working relationship between U.S. Food and Drug Administration and HST, (2) provision of exchange of graduate and undergraduate students, faculty, and personnel, for the purposes of advanced training and outreach, and (3) stimulation of cooperative activities, research, and information exchange in areas such as bioimaging, combination tissue-engineered technologies, and clinical trial designs.

II. Background

The U.S. Food and Drug Adminstration has a primary role in advancing the translational /applied science that is needed to move promising new biomedical technologies into actual manufactured products in the most efficient manner possible while assuring the clinical safety and effectiveness of such products for patient care. The Harvard-MIT Division of Health Sciences and Technology (HST) is a research and education organization that combines faculty from MIT, Harvard University, Harvard-affiliated teaching hospitals and local pharmaceutical industries to provide a multidisciplinary/multiprofessional education and research experience that is equally divided among engineeering and physical sciences, biological sciences, and

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clinical medicine. HST's research focuses on 1) structural and functional biomedical imaging, 2) functional and regenerative biomedical technologies, and 3) biomedical informatics and systems biology. These three areas are all of crucial importance to FDA to keep pace with cutting edge technologies requiring FDA review and approval.

III. Substance of Agreement

This Memorandum of Understanding is intended as a broad vehicle to promote programmatic interaction in the form of joint collaboration between FDA and HST researchers, students, and personnel as well as joint development of relevant projects.

The areas of collaboration will include but not be limited to the following:

Clinical trial designs. 1) A workshop and or conference focused on improving clinical trial designs in order to facilitate a more stream-lined process for evaluating healthcare products and services will be held that brings together FDA personnel, university and industry scientists, statisticians and bioethicists under a co-sponsorship agreement with HST to be executed subsequent to this MOU.
2) Joint research on the more theoritical statistical questions in this area.

Combination tissue-engineered products. Activities in this area will be based on mutually agreed upon collaborations centered around joint training activities. Training activities such as seminars, workshops or short courses arising from complementary interests may be developed jointly by HST and FDA and offered to FDA scientists and reviewers, HST scientists, industry, and others as identified needs arise. These exchanges could also include internships, research opportunities, and shadowing opportunities for HST post-baccalaureate and graduate students at the FDA. Faculty and senior staff from FDA, HST, and other partners will be encouraged to participate in this effort for mutual research and training interactions to possibly include short or long-term exchanges of staff (e.g. sabbaticals).

Imaging biomarkers. There are several areas of collaboration between FDA and HST relative to imaging biomarkers that have been identified as being mutually beneficial, including but not limited to:

1) Joint research programs. Joint research programs may be formed by scientists from the respective institutions with mutual complementary interests in certain areas such as validation or development of imaging biomarkers. This research may be based on collaborative analysis of data from FDA files and the literature, or experimental work. The partners will disseminate information and enhance the visibility of the work of the collaboration through mutually agreed vehicles including training activities, meetings, and symposia and journal publications.

2) Joint participation and or sponsorship of conferences on issues related to imaging biomarkers, such as the definition of a valid imaging biomarker.

As specific topics for joint research are identified under this MOU they will be conducted under the appropriate formal agreements as required by law.

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IV. Participants

A wide range of faculty and graduate students from programs including, but not limited to Biomedical Enterprises, Medical Sciences, Medical Engineering and Physics, Radiological Sciences, Clinical Investigator Training and Biomedical Engineering would be potential participants from HST. Senior scientists and policy officials from the Commissioners Office, and scientists and reviewers from the Product Centers and Offices of FDA would be participants from the FDA. Other participants could include scientists from industry, field laboratories and others identified for joint training and outreach activities.

V. Resource Obligations

This MOU describes in general terms the basis upon which the Parties intend to cooperate in these activities. It does not create binding, enforceable obligations against any Party. All activities undertaken pursuant to the MOU are subject to the availability of personnel, resources, and appropriated funds. This MOU does not affect or supersede any existing or future agreements or arrangements among the Parties and does not affect the ability of the Parties to enter into other agreements or arrangements related to this MOU.

VI. Sharing of Information

Unless the law requires or permits such sharing, the parties will share only information that is not prohibited from disclosure to the public by law, e.g. the Freedom of Information Act.

VII. Name and Address of Participating Parties

A. Harvard–MIT Division of Health Sciences and Technology
Building E25-519
77 Massachusetts Avenue
Cambridge, MA 02139-4307

B. U.S. Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

VII. Liason Officers

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Fax: (301) 827-3042
mary.poos@fda.gov

VIII. Period of Agreement

This MOU shall become effective upon the signature of all the Parties and will continue in effect for five (5) years. It may be extended by mutual written agreement of the Parties in writing. It may be modified by mutual consent or terminated by either Party upon a 30-day advance notice to the other Party.

XI. Regulations

This MOU and all associated agreements will be subject to the applicable federal and state laws and regulations.

APPROVED AND ACCEPTED FOR THE HARVARD-MIT DIVISION OF HEALTH SCIENCES AND TECHNOLOGY

By _____

Title Director

HST

Date 3/29/04

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

By _____

Title Commissioner,

FDA

Date 3/18/04

[FR Doc. C4–17513 Filed 8–20–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–171386–03]

RIN 1545–BD16

Time and Manner of Making Section 163(d)(4)(B) Election To Treat Qualified Dividend Income as Investment Income

Correction

In proposed rule document 04–17797 beginning on page 47395 in the issue of Thursday, August 5, 2004 make the following correction:

On page 47395, in the third column, the subject heading is corrected to read as set forth above.

[FR Doc. C4–17797 Filed 8–20–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
August 23, 2004

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; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 451

[OW–2002–0026; FRL–7783–6]

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: Final rule.

SUMMARY: Today's final rule establishes Clean Water Act effluent limitations guidelines and new source performance standards for concentrated aquatic animal production facilities. The animals produced range from species produced for human consumption as food to species raised to stock streams for fishing. The animals are raised in a variety of production systems. The production of aquatic animals contributes pollutants such as suspended solids, biochemical oxygen demand, and nutrients to the aquatic environment. The regulation establishes technology-based narrative limitations and standards for wastewater discharges from new and existing concentrated aquatic animal production facilities that discharge directly to U.S. waters. EPA estimates that compliance with this regulation will affect 242 facilities. The rule is projected to reduce the discharge of total suspended solids by about 0.5 million pounds per year and reduce the discharge of biochemical oxygen demand (BOD) and nutrients by about 0.3 million pounds per year. The estimated annual cost for commercial facilities is $0.3 million. The estimated annual cost to Federal and State hatcheries is $1.1 million. EPA estimates that the annual monetized environmental benefits of the rule will be in the range of $66,000 to $99,000.

DATES: This regulation is effective September 22, 2004. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on September 7, 2004 as provided at 40 CFR 23.2.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2002–0026. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although not listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water docket in the EPA Docket Center (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For additional information contact Marta Jordan at (202) 566–1049.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

Entities that directly discharge to waters of the U.S. potentially regulated by this action include:

Category	Examples of regulated entities and SIC Codes	Examples of regulated entities and NAICS codes
Facilities engaged in concentrated aquatic animal production, which may include the following sectors: Commercial (for profit) and Non-commercial (public) facilities.	0273—Animal Aquaculture. 0921—Fish Hatcheries and Preserves.	112511—Finfish Farming and Fish Hatcheries. 112519—Other Animal Aquaculture.

This 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 is regulated by this action, you should carefully examine the applicability criteria listed at 40 CFR part 451 of today's rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2002–0026. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the page limit plus an administrative fee of $25.00.

2. Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1.

C. What Other Information Is Available To Support This Final Rule?

The major documents supporting the final regulations are the following:

• "Technical Development Document for the Final Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category" [EPA–821–R–04–012] referred to in the preamble as the Technical Development Document (TDD). The TDD presents the technical information that formed the basis for EPA's decisions in today's final rule. The TDD describes, among other things, the data collection activities, the wastewater treatment technology options considered by the Agency as the basis for effluent limitations guidelines and standards, the pollutants found in wastewaters from concentrated aquatic animal production facilities, the estimates of pollutant removals associated with certain pollutant control options, and the cost estimates related to reducing the pollutants with those technology options.

• "Economic and Environmental Benefit Analysis of the Final Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Point Source Category [EPA–821–R–04–013] referred to in this preamble as the Economic and Environmental Benefit Analysis or EEBA. This document presents the methodology used to assess economic impacts, environmental impacts and benefits of the final rule. The document also provides the results of the analyses conducted to estimate the projected impacts and benefits.

Major supporting documents are available in hard copy from the National Service Center for Environmental Publications (NSCEP), U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio, USA 45242–2419, (800) 490–9198, *www.epa.gov/ncepihom.* You can obtain electronic copies of this preamble and rule as well as major supporting documents at EPA Dockets at *www.epa.gov/edocket* and at *www.epa.gov/guide/aquaculture.*

D. What Process Governs Judicial Review for Today's Final Rule?

Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and standards may be obtained by filing a petition for review in the United States Circuit Court of Appeals within 120 days from the date of promulgation of these guidelines and standards. For judicial review purposes, this final rule is promulgated as of 1 pm (Eastern time) on September 7, 2004 as provided at 40 CFR 23.2. Under section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

E. What Are the Compliance Dates for Today's Final Rule?

Existing direct dischargers must comply with today's limitations based on the best practicable control technology currently available (BPT), the best conventional pollutant control technology (BCT), and the best available technology economically achievable (BAT) as soon as their National Pollutant Discharge Elimination System (NPDES) permits include such limitations. Generally, this occurs when existing permits are reissued. New direct discharging sources must obtain an NPDES permit for the discharge and comply with applicable new source performance standards (NSPS) on the date the new sources begin discharging. For purposes of NSPS, a source is a new source if it commences construction after September 22, 2004.

F. How Does EPA Protect Confidential Business Information (CBI)?

Certain information and data in the record supporting the final rule have been claimed as CBI and, therefore, EPA has not included these materials in the record that is available to the public in the Water Docket. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential. To support the rulemaking while preserving confidentiality claims, EPA is presenting in the public record certain information in aggregated form, masking facility identities, or using other strategies.

Table of Contents

II. Definitions, Acronyms, and Abbreviations Used in This Document

Act—The Clean Water Act.

Agency—U.S. Environmental Protection Agency.

AWQC—Ambient water quality criteria.

BAT—Best available technology economically achievable, as defined by section 304(b)(2)(B) of the Act.

BCT—Best conventional pollutant control technology, as defined by section 304(b)(4) of the Act.

BMP—Best management practice, as defined by section 304(e) of the Act.

BOD_5—Biochemical oxygen demand measured over a five day period.

BPJ—Best professional judgment.

BPT—Best practicable control technology currently available, as defined by section 304(b)(1) of the Act.

CAAP—Concentrated aquatic animal production.

CBI—Confidential business information.

CFR—Code of Federal Regulations.

CWA—33 U.S.C. §§ 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.

Daily Maximum Limit—the highest allowable "daily discharge".

Direct Discharger—A facility that discharges or may discharge treated or untreated wastewaters into waters of the United States.

DMR—Discharge monitoring report; consists of the reports filed with the permitting authority by permitted dischargers to demonstrate compliance with permit limits.

DO—Dissolved oxygen.

ELG—Effluent limitations guidelines.

EQIP—Environmental Quality Incentives Program.

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 September 22, 2004.

Extralabel drug use—Actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved label. The Federal Food, Drug, and Cosmetic Act allows veterinarians to prescribe extralabel uses of certain approved animal drugs and approved human drugs for animals under certain conditions. These conditions are spelled out in Food and Drug Administration regulations at 21 CFR Part 530. Among these requirements are that any extralabel use must be by or on the order of a veterinarian within the context of a veterinarian-client-patient relationship, must not result in violative residues in food-producing animals, and the use must be in conformance with the regulations. A list of drugs specifically prohibited from extralabel use appears at 21 CFR 530.41.

Facility—All contiguous property and equipment owned, operated, leased, or under the control of the same person or entity.

FAO—United Nations Food and Agriculture Organization.

FCR—Feed conversion ratio.

FDF—Fundamentally different factor.

FFDCA—Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, *et seq.*, as amended.

FIFRA—Federal Insecticide, Fungicide and Rodenticide Act.

FR—Federal Register.

FTE—Full Time Equivalent Employee.

FWS—U.S. Fish and Wildlife Service.

INAD—Investigational new animal drug. A new animal drug (or animal feed containing a new animal drug) intended for testing or clinical investigational use in animals. Food and Drug Administration regulations limit the conditions under which such drugs may be used. 21 CFR 511, 514.

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.

lb(s)/yr—pound(s) per year.

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.

NEPA—National Environmental Policy Act, 33 U.S.C. 4321, *et seq.*

NMFS—National Marine Fisheries Service.

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.

NRCS—Natural Resources Conservation Service.

Nonconventional Pollutants—Pollutants that are neither conventional pollutants listed at 40 CFR 401 nor toxic 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 Source Performance Standards.

NTTAA—National Technology Transfer and Advancement Act, 15 U.S.C. 272 note.

OMB—Office of Management and Budget

Outfall—The mouth of conduit drains and other conduits from which a facility discharges effluent into receiving waters.

Pass through—a discharge that exits a POTW into waters of the United States in quantities or concentrations that alone or in conjunction with discharges from other sources, causes a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

PCB—Polychlorinated biphenyls.

POC—Pollutants of Concern. 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.

Point Source—Any discernable, confined, and discrete conveyance from which pollutants are or may be discharged. See CWA Section 502(14).

POTW(s)—Publicly owned treatment works. It is a treatment works as defined by Section 212 of the Clean Water Act that 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.

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. 40 CFR Part 423, Appendix A.

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the CWA, applicable to indirect dischargers that commenced construction prior to the effective date of a final rule.

PSNS—Pretreatment standards for new sources under Section 307(c) of the CWA.

QUAL2E—Enhanced Stream Water Quality Model.

RFA—Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*

SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121.

SIC—Standard Industrial Classification, a numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products or groups of products that are produced or distributed, or to services that are provided, 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.

TDD—Technical Development Document.

TSS—Total Suspended Solids.

U.S.C.—United States Code.

UMRA—Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501.

USDA—United States Department of Agriculture.

III. Under What Legal Authority Is This Final Rule Issued?

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1318, 1342, and 1361.

IV. What Is the Statutory and Regulatory Background to This Rule?

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 limitations guidelines and standards (effluent guidelines or ELG) for different categories of sources, such as industrial, commercial and public sources of waters. Effluent guidelines are implemented when incorporated into an NPDES permit. Effluent guidelines can include numeric and narrative limitations, including Best Management Practices, to control the discharge of pollutants from categories of point sources.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters may 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 only 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 must develop local treatment limits applicable to their industrial indirect dischargers. Any POTWs required to develop a pretreatment program must develop local limits to implement the general and specific national pretreatment standards. Other POTWs must develop local limits to ensure compliance with their NPDES permit for pollutants that result in pass through or interference at the POTW. (See 40 CFR 403.5). Today's rule does not establish national pretreatment standards for this category, which contains very few indirect dischargers, because the indirect dischargers would be discharging mainly TSS and BOD, which the POTWs are designed to treat and which consequently, do not pass through. In addition, nutrients discharged from CAAP facilities are in concentrations lower, in full flow discharges, and similar in off-line settling basin discharges, to nutrient concentrations in human wastes discharged to POTWs. The options EPA considered do not directly treat nutrients, but some nutrient removal is achieved incidentally through the control of TSS. EPA concluded POTWs would achieve removals of TSS and associated nutrients equivalent to those achievable by the options considered for this rulemaking and therefore there would be no pass through of pollutants in amounts needing regulation. In the event of pass through that causes a violation of a POTW's NPDES limit, the POTW must develop local limits for its users to ensure compliance with its permit.

Direct dischargers must comply with effluent limitations in NPDES permits. Technology-based effluent limitations in NPDES permits are derived from effluent limitations guidelines and new source performance standards promulgated by EPA, as well as occasionally from best professional judgment analyses. Effluent limitations are also derived 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 for major industrial categories generally 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) Nonconventional pollutants (*e.g.*, ammonia-N, formaldehyde, and phosphorus). EPA considered the discharge of these classes of pollutants in the development of this rule. EPA is establishing BMP requirements for the control of conventional, toxic and Nonconventional pollutants. EPA considers development of four types of effluent limitations guidelines and standards for direct dischargers. The paragraphs below describe those pertinent to today's rule.

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 nonconventional 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 performance of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, EPA may establish limitations based on higher levels of control than currently in place in an industrial category, if the Agency determines that the technology is available in another category or subcategory and can be practically applied.

2. Best Conventional Pollutant Control Technology (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, non-water quality environmental impacts including energy requirements, economic achievability, and such other factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. 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 (*i.e.*, conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction, any non-water quality environmental impacts, and energy requirements.

B. Section 304(m) Consent Decree

Section 304(m) of the CWA requires EPA every two years to publish a plan for reviewing and revising existing effluent limitations guidelines and standards and for promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (see 55 FR 80) in which the Agency established schedules for developing new and revised effluent guidelines for several industry categories. Natural Resources Defense Council, Inc., and Public Citizen, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (*NRDC et al* v. *Leavitt*, Civ. No. 89–2980). On January 31, 1992, the court entered a consent decree which, among other things, established schedules for EPA to propose and take final action on effluent limitations guidelines and standards for several point source categories. The amended consent decree requires EPA to take final action on the Concentrated Aquatic Animal Production (CAAP) effluent guidelines by June 30, 2004.

C. Clean Water Act Requirements Applicable to CAAP Facilities

EPA's existing National Pollutant Discharge Elimination System (NPDES) regulations define when a hatchery, fish farm, or other facility is a concentrated aquatic animal production facility and, therefore, a point source subject to the NPDES permit program. See 40 CFR 122.24. In defining "concentrated aquatic animal production (CAAP) facility," the NPDES regulations distinguish between warmwater and coldwater species of fish and define a CAAP facility by, among other things, the size of the operation and frequency of discharge.

A facility is a CAAP facility if it meets the criteria in 40 CFR 122 appendix C or if it is designated as a CAAP facility by the NPDES program director on a case-by-case basis. The criteria described in appendix C are as follows. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it grows, contains, or holds aquatic animals in either of two categories: cold water species or warm water species. The cold water species category includes facilities where animals are produced in ponds, raceways, or other similar structures that discharge at least 30 days per year but does not include facilities that produce less than approximately 20,000 pounds per year or facilities that feed less than approximately 5,000 pounds during the calendar month of maximum feeding. The warm water species category includes facilities where animals are produced in ponds, raceways, or other similar structures that discharge at least 30 days per year, but does not include closed ponds that discharge only during periods of excess runoff or facilities that produce less than approximately 100,000 pounds per year. 40 CFR part 122, appendix C. Today's action does not revise the NPDES regulation that defines CAAP facilities.

Most facilities falling under the definition of CAAP are either flow-through, recirculating or net pen systems. These systems discharge continuously or discharge 30 days or more per year as defined in 40 CFR part 122 and are subject to permitting depending on the production level at the facility. Most pond facilities do not require permits because ponds generally discharge fewer than 30 days per year and therefore generally are not CAAP facilities unless designated by the NPDES program director. The NPDES program director can designate a facility on a case-by-case basis if the director determines that the facility is a significant contributor of pollution to waters of the U.S.

V. How Was This Final Rule Developed?

This section describes the background to development of the proposal, the proposed rule, EPA's data collection effort, and changes to the proposal EPA considered based on new information and comments on the proposal.

A. September 2002 Proposed Rule

EPA started work on these effluent guidelines in January 2000. EPA relied on a federal interagency group known as the Joint Subcommittee on Aquaculture as a primary contact for information about the industry. The Joint Subcommittee on Aquaculture, authorized by the National Aquaculture Act of 1980, 94 Stat. 1198, 16 U.S.C. 2801, *et seq*, operates under the National Science and Technology Council of the Office of Science and Technology in the Office of the Science Advisor to the President. The National Aquaculture Act's purpose is to promote aquaculture in the United States to help meet its future food needs and contribute to solving world resource problems. The Act provides for the identification of regulatory constraints on the development of commercial aquaculture, and for development of a plan identifying specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. It also directs Federal agencies with functions or responsibilities that may affect aquaculture to perform such functions or responsibilities, to the maximum extent practicable, in a manner that is consistent with the purpose and policy of the Act. The Joint Subcommittee on Aquaculture established the Aquaculture Effluents Task Force (AETF) to work with EPA to provide information and expertise for the development of this rule. The AETF became an instrumental group providing input and comments to EPA. The AETF consists of members from various Federal agencies, State governments, industry, academia, and

non-governmental (environmental) organizations.

EPA used the information provided by the AETF and conducted its own research for this rulemaking effort. EPA also relied on the 1998 Census of Aquaculture conducted by the Department of Agriculture (USDA) to provide information on the size and distribution of facilities in the industry. The Census also provided some basic information on the revenues and prices realized by aquatic animal producers. This information became a primary resource for describing the industry.

Because of limitations in the Census data, EPA conducted its own survey of the aquatic animal production industry. EPA adopted a two-phase approach to collecting data from aquatic animal producers. In the first phase, EPA distributed a "screener" survey. EPA designed this survey to collect very basic information from all known aquatic animal producers including public facilities regardless of size, ownership, or production system. EPA mailed the survey to approximately 6,000 potential aquatic animal producers in August 2001. The survey consisted of 11 questions asking for general facility information. EPA used the information collected to refine the profiles of the industry with respect to the production systems in use and the type of effluent controls in use. The screener survey, AETF information, and Census data became the primary sources for the proposed rule.

EPA based the limitations and standards for the proposed rule on the analysis of technologies to achieve effluent reductions using model aquatic animal production facilities. Each of these model facilities represented a different segment of the population corresponding to a particular production system type, size range (in terms of annual pounds of aquatic animals produced), and species produced.

EPA evaluated the economic impact of each regulatory option it considered for the proposed effluent limitations and new source performance standards based on the revenues and production cost information available from the USDA Census of Aquaculture along with EPA's own engineering cost estimates for the pollution control technologies being considered. After determining revenues and compliance costs for each model facility, EPA used a compliance cost-to-revenue ratio as a predictor of potential economic impacts for the different model facilities. EPA used this economic analysis in its evaluation of whether it should limit the application of the national limitations and standards by size of production.

On September 12, 2002, EPA published the proposed rule (*see* 67 FR 57872). The proposed limitations and standards applied only to new and existing CAAP facilities that discharge directly to waters of the United States. EPA proposed requirements for three subcategories for this industry: flow-through, recirculating, and net pen systems. Flow-through and recirculating production systems are land-based. Net pens, by contrast, are located in open water.

EPA based the proposed requirements for the recirculating and flow-through subcategories on effluent control technologies that remove suspended solids from the animal production water prior to discharge. The technologies considered include quiescent zones, settling basins (including off-line settling basins, full flow settling basins, and polishing settling basins) and filtration technology. EPA proposed to establish limitations on the concentration of Total Suspended Solids (TSS) in the discharges from these facilities based on its preliminary assessment of the performance achieved by the various control technologies. In the case of recirculating systems, EPA based the proposed TSS limitations on solids polishing or secondary solids removal technology. For flow-through systems, EPA based the proposed TSS limitations on primary or secondary solids settling technologies depending on the production level of the facility (*i.e.*, primary for 100,000–475,000 lbs/yr and secondary for >475,000 lbs/yr). In addition to numeric limits, EPA also proposed to require these facilities to implement operational measures so-called—Best Management Practices (BMPs)—to reduce the discharge of pollutants and develop a BMP plan to document these practices. Depending on the type and size of the facility, the plan would have required a facility to identify and implement practices that controlled, for example, the discharge of solids and ensured the proper storage and disposal of drugs and chemicals.

EPA based the proposed requirements for net pen facilities on requirements to reduce the amount of solids, mainly feed, being added directly into waters of the U.S. The proposal required net pen facilities to develop and implement BMPs to address the discharge of solids including the requirement to conduct active feed monitoring to minimize the amount of feed not eaten and thus discharged to the aquatic environment. Other proposed requirements included adoption of practices to ensure proper storage and disposal of drugs and chemicals. In addition, EPA proposed that net pen facilities prevent the discharge of solid wastes such as feed bags, trash, net cleaning debris, and dead fish; chemicals used to clean the nets, boats or gear; and materials containing or treated with tributyltin compounds. Further requirements were designed to minimize the discharge of blood, viscera, fish carcasses or transport water containing blood associated with the transport or harvesting of fish.

B. December 2003 Notice of Data Availability

On December 29, 2003, EPA published a Notice of Data Availability (NODA) at 68 FR 75068. In the NODA, EPA summarized the data received since the proposed rule and described how the Agency might use the data for the final rule. The NODA also discussed the second phase of data collection, a detailed survey, which EPA conducted in 2002. The detailed survey was mailed to a stratified sample population of facilities identified from the screener survey. EPA received responses from 203 facilities. The surveyed population included a statistically representative sample of facilities that reported producing aquatic animals with flow-through, recirculating and net pen systems. EPA also surveyed a small number of facilities that would not have been subject to the proposed requirements. EPA's objective was to further verify the assumptions on which it had based its preliminary decision to exclude these facilities from the scope of the final rule.

The detailed data collected through this survey allowed EPA to revise the methods used for the proposed rule to estimate costs and economic impacts. EPA developed facility-specific costs and economic impact assessments for each surveyed facility based on the detailed information provided in the survey responses. The detailed information included production systems, annual production, and control practices and technologies in place at the facility.

The detailed responses to the second survey provided EPA with better information on the baseline level of control technologies and operational measures in use at CAAP facilities. Based on this understanding, EPA described two modified options in the NODA that EPA was considering for the final rule. These options reflected the same technologies and practices considered for the proposed regulation, but reconfigured the combinations of treatment technologies and practices into revised regulatory options.

EPA visited 17 additional sites and sampled at one facility in response to issues raised in the comments. The NODA discussed the post-proposal data including site visits and additional sampling. The results of EPA's analyses of the data were also presented in the NODA. EPA solicited comment on the new data and the conclusions being drawn from them.

C. Public Comments

EPA has prepared a "Comment Response Document" that includes the Agency's responses to comments submitted on the proposed rule and the notice of data availability. All of the public comments, including supporting documents, are available for public review in the administrative record for this final rule, filed under docket number OW–2002–0026.

The comment period on the proposed rule closed on January 27, 2003. EPA received approximately 300 comments, including form letters. EPA received comments from sources including the Joint Subcommittee on Aquaculture—Aquaculture Effluents Task Force (JSA/AETF), industry trade associations, Federal and State agencies, environmental organizations, and private citizens. For the NODA, EPA received 20 comments between December 29, 2003 and February 12, 2004.

D. Public Outreach

As part of the development of the proposed rule and today's final rule, EPA has conducted outreach activities. EPA met with affected and interested stakeholders through site visits and sampling trips to obtain information on operating and waste management practices at CAAP facilities. EPA met numerous times with members of the JSA/AETF and conducted outreach with small businesses during the SBREFA process.

EPA conducted three public meetings to discuss the proposed rule during the public comment period for the proposed rule. EPA has participated in the industry's conferences to update participants on the progress and status of the rule. EPA also held several meetings with other federal agencies to discuss issues that potentially affect their mission, programs, or responsibilities.

Moreover, EPA maintains a website that posts information relating to the regulation. EPA provided supporting documents for the proposed rule on the site. The documents included the Technical Development Document, the Draft Guidance for Aquatic Animal Production Facilities to Assist in Reducing the Discharge of Pollutants, and the Economic and Environmental Impact Analysis. These documents used to support the proposed rule and the final supporting documents are available at *www.epa.gov/guide/aquaculture.*

VI. What Are Some of the Significant Changes in the Content of the Final Rule and the Methodology Used To Develop It?

This section describes some of the major changes that EPA made to the final rule from that it proposed. This section also describes differences in the methodology EPA used in evaluating its options for the final rule.

A. Subcategorization

The proposed regulation included limitations and standards for three subcategories: Flow-through systems, recirculating systems and net pens. The final rule establishes limitations and standards for the same systems but for only two subcategories: A flow-through and recirculating systems subcategory and a net pens subcategory. The recirculating and flow-through systems are combined into one subcategory instead of two separate subcategories.

As previously noted, flow-through and recirculating systems are both land based systems that typically discharge continuously, but can occasionally discontinue discharges for short periods of time. The principal distinguishing characteristic between these two systems is the degree to which water is reused prior to its discharge, with recirculating systems typically discharging lower volumes of wastewater. In the proposal, EPA distinguished recirculating systems from flow-through systems by describing a recirculating system as one that typically filters with biological or mechanically supported filtration and reuses the water in which the aquatic animals are raised. Net pen systems, by contrast, are located in open water and have distinctly different characteristics from either recirculating or flow-through systems.

EPA received a number of comments on the distinction between flow-through and recirculating systems described in the proposed rule. Because some flow-through systems also reuse their production water, commenters did not believe EPA had adequately distinguished recirculating systems from flow-through systems. Some commenters encouraged EPA to use hydraulic retention time as a basis for distinguishing between flow-through and recirculating systems. However, EPA's review of available data showed that there is no clear dividing line between the hydraulic retention time in a system that was considered a recirculating system and one that was considered a flow-through system. EPA examined the aquatic animal production literature for alternatives for distinguishing recirculating systems and flow-through systems. Given the difficulty in distinguishing certain flow-through facilities from recirculating ones, EPA considered whether it should combine the two subcategories into one subcategory. EPA discussed this in the NODA and solicited comment on this option.

While some commenters opposed combining these two subcategories, EPA has decided to combine flow-through and recirculating systems for the purpose of establishing effluent limitations guidelines for the following reasons. First, as some commenters recognized, both flow-through and recirculating systems may reuse water and employ similar measures to maintain water quality including mechanical filtration. Second, the characteristic of wastewater discharged from facilities that are identified as recirculating systems that are similar to the wastewater from the off-line or solids treatment units at flow-through systems. Both waste streams are characterized by high levels of suspended solids, which can be effectively treated through properly designed and operated treatment systems employing either settling technology combined with effective feed management or a carefully controlled feed management system alone. Therefore, EPA decided that the same requirements should apply both to wastewater discharged from recirculating production systems and wastewater discharged from off-line solids treatment units at flow-through facilities. Moreover, EPA had based the proposed limits for both of these waste streams on the same data set. For the foregoing reasons, EPA has concluded that this change in the organization of the final rule does not substantively change the requirements.

Commenters also pointed to differences in BMPs employed at the different production systems. EPA recognizes that there are differences between recirculating systems and flow-through systems. EPA has concluded, however, that the control technology selected as the basis for the final narrative limitations will effectively remove pollutants from both systems to the same degree. Further, the BMP requirements in the final rule for this subcategory are flexible enough to accommodate differences in the specific

practices appropriate for the two types of production systems. Finally, commenters were concerned that collapsing these two systems into one subcategory could be interpreted as indicating that EPA favors recirculating systems over flow-through systems and implying that flow-through systems should be modified to become recirculating systems. This certainly is not EPA's intention and the Agency is not suggesting that recirculating systems should replace existing flow-through systems or be given a preference in the construction of new systems. The primary reason to collapse these two systems into one subcategory is to eliminate redundancy in the CFR.

B. Regulated Pollutants

There are a number of pollutants associated with discharges from CAAP facilities. CAAP facilities can have high concentrations of suspended solids and nutrients, high BOD and low dissolved oxygen levels. Organic matter is discharged primarily from feces and uneaten feed. Metals, present in feed additives or from the deterioration of production equipment, may also be present in CAAP wastewater. Effluents with high levels of suspended solids, when discharged into receiving waters, can have a detrimental effect on the environment. Suspended solids can degrade aquatic ecosystems by increasing turbidity and reducing the depth to which sunlight can penetrate, thus reducing photosynthetic activity. Suspended particles can damage fish gills, increasing the risk of infection and disease. Nutrients are discharged mainly in the form of nitrate, ammonia and organic nitrogen. Ammonia causes two main problems in water. First, it is toxic to aquatic life. Second, it is easily converted to nitrate which may increase plant and algae growth.

Some substances, like drugs and pesticides, that may be present in the wastewater may be introduced directly as part of the aquatic animal production process. An important source of the pollutants potentially present in CAAP wastewater is, as the above discussion suggests, the feed used in aquatic animal production. Feed used at CAAP facilities contributes to pollutant discharges in a number of ways: by-product feces, ammonia excretions and, most directly, as uneaten feed (in dissolved and particulate forms). Moreover, the feed may be the vehicle for introducing other substances into the wastewater, like drugs. For example, medicated feed may introduce antibiotics into the wastewater.

In the proposed rule, EPA proposed to establish numeric limitations for only a single pollutant—total suspended solids (TSS)—while controlling the discharge of other pollutants through narrative requirements. Following proposal, EPA reevaluated the technological basis for the numerical limits for TSS and determined that it would be more appropriate to promulgate qualitative TSS limits, in the form of solids control BMP requirements, that could better respond to regional and site-specific conditions and accommodate existing state programs in cases where these appear to be working well (see Section VIII.B. for further discussion). EPA is thus not promulgating numerical limitations for TSS or other pollutants.

EPA is instead establishing narrative effluent limitations requiring implementation of effective operational measures to achieve reduced discharges of solids and other materials. For the final rule, as it did at proposal, EPA has also developed narrative limitations that will address a number of other pollutants potentially present in CAAP wastewater. These narrative limitations address spilled materials (drugs, pesticides and feed), fish carcasses, viscera and other waste, excess feed, feed bags, packaging material and netting.

EPA's decision to not establish national numeric limits for TSS will not restrict a permit writer's authority to impose site-specific permit numeric effluent limits on the discharge of TSS or other pollutants in appropriate circumstances. For example, a permit writer may establish water quality-based effluent limits for TSS (see 40 CFR 122.44(d) or regulate TSS (by establishing numeric limits) as a surrogate for the control of toxic pollutants (see 40 CFR 122.44(e)(2)(ii)) where site-specific circumstances warrant. The permit writer may also issue numeric limits in general permits applicable to classes of facilities. In fact, one of the bases for EPA's decision not to establish uniform national TSS limits is the recognition that a number of states, particularly those with significant numbers of CAAP facilities, already have general permits with numeric limits tailored to the specific production systems, species raised, and environmental conditions in the state, and these permits seem to be working well to minimize discharges of suspended solids (see DCN 63056). EPA believes there would be minimal environmental gain from requiring these states to redo their General Permits to conform to a set of uniform national concentration-based limits that in most cases would not produce significant changes in control technologies and practices at CAAP facilities.

In the final rule, EPA is also not establishing numeric limits for any drug or pesticide, but is requiring CAAP facilities to ensure proper storage of drugs, pesticides and feed to prevent spills and any resulting discharges of drugs and pesticides. EPA is also establishing a requirement to implement procedures for responding to spills of these materials to minimize their discharge from the facility. EPA's survey of this industry indicated that many CAAP facilities currently employ a number of different measures to prevent spills and have established in-place systems to address spills in the event they occur. EPA is thus establishing a requirement for all facilities to develop and implement BMPs that avoid inadvertent spills of drugs, pesticides, and feed and to implement procedures for properly containing, cleaning and disposing of any spilled materials to minimize their discharge from the facility. The effect of these requirements will be to promote increased care in the handling of these materials.

Some commenters suggested that EPA regulate certain other pollutants or substances that may be discharged from these production systems. For this rule, EPA evaluated control of some of these. For example, EPA evaluated the application of activated carbon treatment to remove compounds such as antibiotic active ingredients from wastewater prior to discharge. For the reasons discussed in Section IX.A, however, EPA is not basing any pollutant limitations on the application of this technology.

C. Treatment Options Considered

EPA evaluated three treatment options as the basis for BPT/BCT/BAT proposed limitations for the flow-through and recirculating subcategories and three options for the net pen subcategory. For flow-through and recirculating systems, EPA proposed a numeric limitation for TSS. For Option 1, the least stringent option, EPA considered TSS limitations based on primary settling as well as the use of BMPs to control the discharge of solids from the production system. The second treatment option (Option 2) considered by EPA for establishing TSS limitations was based on Option 1 technologies plus the addition of reporting requirements if INAD or extralabel drug use were used in the production systems, plus the implementation of BMPs to ensure proper storage, handling and disposal of drugs and chemicals and the prevention of escapes when non-native species are produced. EPA based limitations for the most stringent option (Option 3) on primary settling

and the addition of secondary solids settling, in conjunction with BMPs, to control the discharge of solids from the production system. This option also included BMPs to control drugs, chemicals and non-native species and the reporting of drugs. For New Source Performance Standards (NSPS), EPA considered the same three options.

EPA evaluated three treatment options for the net pen subcategory. The least stringent option, Option 1, required feed management and operational BMPs for solids control. Option 2 consisted of the same practices and technology as Option 1 plus a BMP plan to address drugs, chemicals, pathogens, and non-native species and general reporting requirements for the use of certain drugs and chemicals. Option 3, the most stringent option, included the requirements of the first two options as well as active feed monitoring to control the supply of feed in the production units. Many existing facilities use active feed or real time monitoring to track the rate of feed consumption and detect uneaten feed passing through the nets. These systems may include the use of devices such as video cameras, digital scanning sonar detection, or upwellers, in addition to good husbandry and feed management practices. These systems and practices allow facilities to cease feeding the aquatic animals when a build-up of feed or over-feeding is observed. EPA considered the same treatment options for NSPS.

The NODA described two additional options that EPA was considering for flow-through and recirculating systems, but did not identify any new options for net pens. These two options contained the same treatment technologies and practices described in the three options considered for the proposed rule but in slightly different combinations.

The NODA Option A included primary solids treatment, a reporting requirement for the INAD and extralabel drug uses, and the implementation of BMPs to control drugs and chemicals. In addition to Option A requirements, Option B included secondary solids removal treatment or, alternatively, the implementation of BMPs for feed management, and solids handling to control the discharge of solids.

As previously explained, for flow-through or recirculating systems, today's final rule does not establish numeric limitations for total suspended solids (TSS) but does include narrative limitations requiring the solids control measures and operational practices described as part of Option B for BPT/BCT/BAT limitations and NSPS. These include requirements to minimize the discharge of solids. It also requires facilities to develop and implement practices designed to prevent the discharge of spilled drugs and pesticides, inspection and maintenance protocols designed to prevent the discharge of pollutants as a result of structural failure, training of personnel, various recordkeeping requirements, and documentation of the implementation of these requirements in a BMP plan which is maintained on site and available to the permitting authority upon request.

For net pens, the final rule establishes non-numeric, narrative limitations that are similar to those adopted for flow-through and recirculating systems. Thus, the limitations require minimization of feed input, proper storage of drugs, pesticides and feed, routine inspection and maintenance of the production and wastewater treatment systems, training of personnel, and appropriate recordkeeping. Compliance with these requirements must be documented in a BMP plan which describes how the facility is minimizing solids discharges through feed management and how it is complying with prohibitions on the discharge of feed bags and other solid waste materials. Further, net pens must minimize the accumulation of uneaten feed beneath the pens through active feed monitoring and management strategies.

D. Reporting Requirements

EPA's proposed rule would have required permittees to report the use of INADs and extralabel use of both drugs and chemicals. In the final rule, EPA is modifying the proposed requirement, by deleting the reporting requirements for chemicals, including pesticides, and by further limiting the reporting requirement for drugs, as described below. EPA used the term "chemicals" in the proposed rule to refer to registered pesticides.

EPA's decision not to include pesticides in the final reporting requirements is based on the language in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the regulations that implement the statute. FIFRA Section 5 authorizes EPA to allow field testing of pesticides under development through the issuance of Experimental Use Permits. Further, FIFRA Section 18 authorizes EPA to allow States to use a pesticide for an unregistered use for a limited time if EPA determines that emergency conditions exist. Under both of these provisions the applicant is required to submit information concerning the environmental risk associated with the pesticide use as part of the application for the permit or exemption. Also in both cases the permittee or the State or Federal authority must report immediately to EPA any adverse effects from the use. Prior to issuing an emergency exemption, EPA is required to determine that the exemption will not cause unreasonable adverse effects on the environment (*see* 40 CFR 166.25(b)(1)(ii)) and that the pesticide is likely to be used in compliance with the requirements imposed under the exemption (*see* 40 CFR 166.25(b)(1)(iii)). EPA's regulation further specifies that the applicant for an emergency exemption must coordinate with other affected State or Federal agencies to which the requested exemption is likely to be of concern. The application must indicate that the coordination has occurred, and any comments provided by the other agencies must be submitted to EPA with the application (*see* 40 CFR 166.20(a)(8)).

In contrast, the FDA's regulations for Investigative New Animal Drugs (INADs) exempt INADs from the requirement to conduct an Environmental Assessment (*see* 21 CFR 25.20 and 25.33). As a policy matter, FDA encourages INAD sponsors to notify permitting authorities of the use of an INAD. There is, however, no requirement that the sponsors comply. Therefore, EPA considers the reporting of INADs in today's regulation necessary to ensure that permit writers are aware of the potential for discharge of the INAD and can take action as necessary in authorized circumstances.

EPA is providing an exception to the requirement to report INAD use. When an INAD has already been approved for use in another species or to treat another disease and is applied at a dosage that does not exceed the approved dosage, reporting is not required if it will be used under similar conditions. The requirement that the use be under similar conditions is intended to limit the exception to cases where the INAD use would not be expected to produce significantly different environmental impacts from the previously approved use. For example, use of a drug that had been previously approved for a freshwater application as an INAD in a marine setting would not be considered a similar condition of use, since marine ecosystems may have markedly different vulnerabilities than freshwater ecosystems. Similarly, the use of a drug approved to treat terrestrial animals as an INAD to treat aquatic animals would not be considered a similar condition of use. In contrast, the use of a drug to treat fish in a freshwater system that was previously approved for a different

freshwater species would be considered use under similar conditions. EPA has concluded that when a drug is used under similar conditions it is unlikely that the environmental impacts would be different than those that were already considered in the prior approval of the drug.

CAAP facilities must also report the use of extralabel drugs. However, as with INADs, reporting is not required if the extralabel use does not exceed the approved dosage and is used under similar conditions. EPA anticipates that most extralabel drug use will not require reporting, but wants to ensure that permitting authorities are aware of situations in which a higher dose of a drug is used or the drug is used under significantly different conditions from the approved use. It is also possible that drugs approved for terrestrial animals could be used to treat aquatic animals as extralabel use drugs.

For the final rule, the timing and content of reporting requirements related to the use of INADs and extralabel drugs are similar to the proposed requirements. EPA requires both oral and written reporting. The final rule has an added requirement that the CAAP facility report the method of drug application in both the oral report and the written report. EPA has concluded that both oral and written reports are reasonable requirements because the oral report lets the permitting authority know of the drug use sooner than the written report, thus facilitating site-specific action if warranted. The written report provides confirmation of the use of the drug and more complete information for future data analysis and control measures. Today's regulation also adds a requirement that CAAP facilities notify the permitting authority in writing within seven days after signing up to participate in INAD testing. Advance notice prior to the use of the INAD allows the permitting authority to determine whether additional controls on the discharge of the INAD during its use may be warranted.

Finally, today's regulation includes a requirement to report any spill of drugs, pesticides or feed that results in a discharge to waters of the U.S. Facilities are expected to implement proper storage for these products and implement procedures for the containing, cleaning and disposing of spilled material. If the spilled material enters the production system or wastewater treatment system it can be assumed that the material will reach waters of the U.S. EPA considers reporting of these events necessary to alert the permitting authority to potential impacts in the receiving stream. Facilities are expected to make an oral report to the permitting authority within 24 hours of the spill's occurrence followed by a written report within 7 days. The report shall include the identity of the material spilled and an estimated amount.

EPA has concluded that today's reporting requirements are appropriate because they make it easier for the permitting authority to evaluate what additional control measures on INADs and extralabel drug use may be necessary to prevent or minimize harm to waters of the U.S. and to respond more effectively to any unanticipated environmental impacts that may occur. Because neither of these classes of drugs has undergone an environmental assessment for the use being made of them, EPA is ensuring that the permitting authority is aware of their use and if warranted can take site specific action.

Today's reporting requirements are authorized under several sections of the CWA. Section 308 of the CWA authorizes EPA to require point sources to make such reports and "provide such other information as [the Administrator] may reasonably require." 33 U.S.C. 1318(a)(A). Section 402(a) of the Act authorizes EPA to impose permit conditions as to "data and information collection, reporting and such other requirements as [the Administrator] deems appropriate." 33 U.S.C. 1342(a)(2). It is well established that these provisions justify EPA's establishing a range of information disclosure requirements. Thus, for example, the United States Court of Appeals for the District of Columbia Circuit concluded that the Agency's data gathering authority was not limited to information on toxic pollutants already identified by the Agency in a permittee's discharge. EPA regulations required permit applications to include information on toxic pollutants that an applicant used or manufactured as an intermediate or final product or byproduct. In the court's view, EPA could reasonably determine that it could not regulate effectively without information on such pollutants because they could end up present in the permittee's discharge. *Natural Resources Defense Council, Inc.* v. *U.S. Environmental Protection Agency*, 822 F.2d 104, 119 (DC Cir. 1987). The same is true for certain INADs and extralabel drug use that may end up as pollutants discharged to waters of the U.S.

Under the proposed rule, the operators of facilities subject to the rule were to certify that they had developed a BMP plan that met the requirements in the regulation. EPA continues to view BMPs as effective tools to control the discharge of pollutants from CAAP facilities and is establishing narrative requirements based on the use of BMPs as the basis of today's regulation. EPA has also retained the requirement for a BMP plan. The BMP plan is a tool in which the facility must describe the operational measures it will use to meet the non-numeric effluent limitations in the regulation. Upon incorporation of today's requirements into an NPDES permit, the CAAP facility owner or operator will be expected to develop site-specific operational measures that satisfy the requirements. The final rule requires CAAP facilities to develop a BMP plan that describes how the CAAP facility will comply with the narrative requirements and that is maintained at the CAAP facility. The CAAP facility owner or operator must certify in writing to the permitting authority that the plan has been developed. In EPA's view, a BMP plan, as a practical matter, can assist facilities in achieving compliance with the non-numeric limitations. It can also assist regulatory authorities in verifying compliance with the requirements and modifying specific permit conditions where warranted. As explained earlier in this section, EPA has concluded Section 308 clearly authorizes it to require this information. Of course, irrespective of the content of the plan, a facility must still comply with the narrative limitations.

In conjunction with the requirement to inspect and provide regular maintenance of CAAP production and treatment systems to prevent structural damage, EPA is including a reporting requirement associated with failure of the CAAP containment structure and any resulting discharges. EPA is requiring CAAP facilities to report any failure of or damage to the structural integrity of the containment system that results in a material discharge of pollutants to waters of the U.S. For net pen systems, for example, failures might include physical damage to the predator control nets or the nets containing the aquatic animals, that may result in a discharge of the contents of the nets. Physical damage might include abrasion, cutting or tearing of the nets and breakdown of the netting due to rot or ultra violet exposure. For flow-through and recirculating systems, a failure might include the collapse of, or damage to, a rearing unit or wastewater treatment structure; damage to pipes, valves, and other plumbing fixtures; and damage or malfunction to screens or physical barriers in the system, which would prevent the unit from containing

water, sediment, and the aquatic animals. The permitting authority may further specify in the permit what constitutes a material discharge of pollutants that would trigger the reporting requirements. The permittee must report the failure of the containment system within 24 hours of discovery of the failure. The permittee must notify the permitting authority orally and describe the cause of the failure in the containment system and identify materials that were discharged as a result of this failure. Further, the facility must provide a written report within seven days of discovery of the failure documenting the cause, the estimated time elapsed until the failure was repaired, an estimate of the material released as a result of the failure, and steps being taken to prevent a reoccurrence.

E. Costs

At proposal, EPA used a model facility approach to estimate the cost of installing or upgrading wastewater treatment to achieve the proposed requirements. As described in the preamble to the proposed regulation (67 FR 57872), EPA developed 21 model facilities (based on the USDA's Census of Aquaculture and EPA's screener survey) characterized by different combinations of production systems, size categories, species and ownership types. EPA developed regulatory technology options based on screener survey responses, site visits, industry and other stakeholder input, and existing permit requirements.

EPA estimated the cost for each option component for each model facility. We then calculated costs for each regulatory option at each model facility based on model facility characteristics and the costs of the option's technologies or practices corresponding to the option.

EPA estimated frequency factors for treatment technologies and existing BMPs based on screener survey responses, site visits, and sampling visits. Baseline frequency factors represented the portion of the facilities represented by a particular model facility that would not incur costs to comply with the proposed requirements because they were already using the technology or practice. EPA adjusted the component cost for each model facility to account for those facilities that already have the component in-place. Subsequently, EPA derived national estimates of costs by aggregating the component costs applicable to each model facility across all model facilities.

EPA's detailed surveys captured information on the treatment in-place at the facility and other site-specific information (such as labor rates). EPA obtained additional cost information from data supplied from public comments and site visits. With the new data, EPA revised the method to estimate compliance costs. Instead of a model facility approach, EPA used a facility-level cost analysis based on the available facility-specific data contained in the detailed survey responses. We applied statistically-derived survey weights instead of the frequency factors used at proposal to estimate costs to the CAAP industry as a whole.

For proposal, EPA used national averages for many of the cost elements, such as labor rates and land costs. In its analysis for the final regulation, EPA used facility specific cost information, such as labor rates, to determine the costs associated with implementing the regulatory options. When facility specific rates were not available, EPA used national averages for similar ownership types of facilities (*i.e.*, non-commercial and commercial ownership) to determine managerial and staff labor rates. EPA revised estimates for all labor costs using the employee and wage information supplied in the detailed surveys. For those facilities indicating they use unpaid labor for part of the facility operation, we used wages for similar categories (*i.e.*, managerial or staff) supplied by that facility to estimate costs associated with implementing the regulatory options.

Comments also suggested that EPA's assumed land costs were too low at proposal; EPA assumed national average land values for agricultural land. EPA revised its estimates for land costs when determining the opportunity costs of using land at a facility if structural improvements were evaluated that required use of facility land that was not currently in use by the CAAP operation's infrastructure (*e.g.*, occupied by tanks, raceways, buildings, settling basins, *etc.*). When evaluating the cost of land for the revised analyses, EPA used land costs of $5,000/acre, which is twice the median value for land associated with aquaculture facilities surveyed in the U.S. (*see* DCN 63066). EPA used this conservative estimate because the only facilities that required structural improvements in the options evaluated were non-commercial facilities, for which land value estimates were not available.

EPA considered several technology-based options to determine the technical and economic feasibility of requiring numeric TSS limits for in-scope CAAP facilities. EPA's analysis of the detailed survey revealed that over 90% of the flow-through and recirculating system facilities currently had at least primary settling technologies in-place. EPA performed a cost analysis for the facilities without primary settling using the facility-specific configuration information provided in the detailed survey. EPA also evaluated facilities with primary settling in-place by comparing actual (*i.e.*, DMR data) or estimated TSS effluent concentrations to the proposed limits. For those facilities not meeting the proposed TSS limits, EPA also evaluated the implementation of additional solids controls, including secondary solids polishing and feed management.

For facilities with no solids control equipment, we estimated the costs for primary solids control. EPA evaluated each facility to identify the configuration of the existing treatment units and what upgrades would be required.

EPA also used industry cost information provided through public comment and the detailed survey to estimate costs for design and installation of primary settling equipment for effective settling of suspended solids. For example, we used the facility-level data included in the detailed survey responses to place and size the off-line settling basins on the facility site.

EPA classified each facility's wastewater treatment system based on the description provided in its survey response and available monitoring data, including DMR data. We assumed that treatment technologies indicated by a facility on the detailed survey are properly sized, installed, and maintained. EPA estimated facility-specific costs for each of the responding direct dischargers and used these estimates as the basis for national estimates. Because the survey did not collect information about many specific parameters used in individual facilities' production processes and treatment systems, EPA supplemented the facility-specific information with typical specifications or parameters from literature, survey results, and industry comments. For example, EPA assumed that facilities have pipes of typical sizes for their operations.

As a consequence of such assumptions, a particular facility might need a different engineering configuration from those modeled if it installed equipment that varies from the equipment or specifications we used to estimate costs. EPA nonetheless considers that costs for these facilities are generally accurate and representative, especially industry-wide. EPA applied typical specifications and parameters representative of the

industry to a range of processes and treatment systems. We contacted facilities to get site-specific configuration information where possible.

In revising cost estimates, EPA paid particular attention to:

1. Size of tanks, raceways, and culture units;
2. Labor rates;
3. Treatment components in place;
4. BMPs and plans in place;
5. Daily operations at the facility.

Site visits and analysis of the detailed surveys indicated that raceways and quiescent zones are cleaned as necessary to maintain system process water quality.

In evaluating facilities for the need to use additional solids controls, EPA first checked for evidence of a good feed management program. If the facility reported they practice feed management, EPA looked for evidence of solids management and good operation of the physical plant, including regular cleaning and maintenance of feed equipment and solids collection devices (*e.g.*, quiescent zones, sedimentation basins, screens, *etc.*). To evaluate the effectiveness of a facility's solids control practices, we calculated feed conversion ratios (FCRs) using pounds of feed per pound of live product (as reported in the detailed survey) and considered existing solids control equipment. We assumed facilities lacking evidence of good feed management or solids control programs would incur additional costs to improve or establish them.

EPA estimated FCRs from data in the detailed survey and follow-up with some facilities and compared FCRs for groups of facilities (*i.e.*, combinations of ownership, species and production system types such as commercial trout flow-through facilities or government salmon flow-through facilities). We found a wide range of FCRs (reported by facilities in their detailed surveys, which were validated by call backs to the facility) among apparently similar facilities within ownership-species-production system groupings.

For example, we had good data for 24 of 60 government trout producers using flow-through systems. They reported a range of FCRs of 0.79 to 1.80 with a median FCR of 1.30. If an individual facility's reported FCR was significantly greater than the median, EPA further evaluated the facility to ascertain the reason for the higher FCR. Facilities that produce larger fish, such as broodstock, might have higher FCRs because the larger fish produce less flesh per unit of food. Facilities with fluctuating water temperatures could also be less efficient than facilities with constant water temperatures. We did not apply costs for solids control BMPs for facilities with reasonable explanations for the higher FCRs. We evaluated facilities that did not report FCRs or provide enough data for an estimate by using a randomly selected FCR, which is described in Chapter 10 of the Technical Development Document (DCN 63009).

For those facilities that required additional solids controls, EPA evaluated both feed management and the installation of secondary solids polishing technologies. EPA received comments on the use of microscreen filters and EPA agrees with concerns raised in comments that the cost associated with enclosing the filter in a heated structure would be prohibitive. EPA found that the effective operation of microscreen filters requires that they be enclosed in heated buildings to prevent freezing when located in cold climates. EPA's revised estimates of costs for secondary solids polishing are not based on the application of microscreen filters unless the detailed survey response indicated that such a structure existed at the site. When the detailed survey did not indicate a structure at the site, EPA estimated costs for a second stage settling structure rather than a microscreen filter. Based on data from two of EPA's sampling episodes at CAAP facilities, this technology will achieve the proposed limits for TSS.

We also considered the use of activated carbon filtration to treat effluent containing drug or pesticide active ingredients from wastewater, but rejected controls for these materials. Research indicates that this technology is effective at treating these compounds, and at least one aquatic animal production facility installed this technology for water quality reasons. EPA estimated the costs for activated carbon treatment as a stand-alone technology. We estimated costs on a site-specific basis for facilities which reported using drugs and then added these costs for the different regulatory options considered to assess the economic achievability of this technology. A detailed discussion of how EPA estimated costs is available from the public record (DCN 62451). EPA considers these costs to be economically unachievable or not affordable on a national scale. However, EPA is aware of at least one facility currently using this technology, and notes that it is an effective technology for removing drug compounds from wastewater.

EPA estimated the costs to develop and implement escape management practices at facilities where (1) the cultured species was not commonly produced or regarded as native in the State, (2) the facility was a direct discharger, and (3) the species was expected to survive if released. (In contrast, producers of a warm water species in a cold climate, such as tilapia producers in Minnesota or Idaho, would not incur costs for this practice.) Costs for escape prevention include staff time for production unit and discharge point inspections and maintenance of escape prevention devices. We applied these costs to facilities that installed equipment conforming with State requirements for facilities producing non-native species (identified by the State). Management time includes quarterly production unit and discharge point inspections, eight hours a year to review applicable State and Federal regulations, and quarterly staff consultations.

F. Economic Impacts

There are a number of changes made to the costing and economic impact methods used for the final rule. EPA used data from the detailed survey to project economic impacts for the final rule, in contrast to the screener data and frequency factors used for the proposed rule. For existing commercial operations, EPA assessed the number of business closures among regulated enterprises, facilities, and companies by applying market forecasts and using a closure methodology that compares projected earnings with and without incremental compliance costs for the period 2005 to 2015. Other additional analyses include an analysis of moderate impacts by comparing annual compliance costs to sales, an evaluation of financial health using a modified U.S. Department of Agriculture's four-category (2×2) matrix approach, and an assessment of possible impacts on borrowing capacity. For new commercial operations, EPA evaluates whether the regulatory costs will result in a barrier to entry among new businesses. For noncommercial operations, EPA evaluated impacts using a budget test that compares incurred compliance costs to facility operating budgets. Additional analyses investigate whether a facility could recoup increased compliance costs through user fees and estimated the associated increase.

For today's final regulation, EPA modified its forecasting models to include certain data for recent years that became available after the Agency published its NODA (*see* 68 FR 75068–75105). This and other details about how EPA developed its economic

impact methodologies is presented in this preamble and in the Economic and Environmental Benefit Analysis of the Final Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Industry ("Economic and Environmental Benefit Analysis"), available in the rulemaking record.

G. Loadings

To estimate the baseline discharge loadings and load reductions for the proposed rule, EPA used the same model facility approach as used to estimate the compliance costs. Briefly, EPA first estimated pollutant loadings for untreated wastewater based on several factors for each model facility. As previously noted, feed used at CAAP facilities contributes to pollutant discharges in three ways: By-product feces, dissolved ammonia excretions, and uneaten feed (in dissolved and particulate forms). These byproducts of feed contribute to the pollutant load in the untreated culture water. EPA then used typical efficiency rates of removing specific pollutants from water to estimate load reductions for the treatment options and BMPs. EPA estimated frequency factors for treatment technologies and existing BMPs based on screener survey responses, site visits, and sampling visits. The occurrence frequency of practices or technologies was used to estimate the portion of the operations that would incur costs. Using the same frequency factors for technologies in place that were used to estimate costs, EPA estimated the baseline pollutant loads discharged, then calculated load reductions for the options.

As described in the NODA, EPA revised the loadings approach to incorporate facility-level information using data primarily from the detailed surveys. EPA also incorporated information included in comments concerning appropriate feed conversion ratios (FCRs).

EPA based its estimates of pollutant loads on the reported feed inputs included in the detailed surveys. EPA used the annual feed input and feed-to-pollutant conversion factors described in the TDD and DCN 63026 to calculate raw pollutant loads. EPA then analyzed each facility's detailed survey response to determine the treatment-in-place at the facility. Using published literature values to determine the pollutant removal efficiencies for the types of wastewater treatment systems used at CAAP facilities, EPA calculated a baseline pollutant load discharged from each surveyed facility. EPA used these pollutant removal efficiencies and raw pollutant loads to estimate the baseline loads. EPA validated the baseline load estimates with effluent monitoring data (DCN 63061).

For today's regulation, EPA evaluated secondary solids removal technologies and feed management. EPA assessed whether improved feed management in addition to primary solids settling might be as effective at reducing solids in the effluent as secondary settling. EPA found that feed management was the lower cost option compared to secondary solids removal technology. (As discussed in more detail below at VIII.B., EPA has now concluded that a rigorous feed management program alone will achieve significant reductions in solids at CAAP facilities.)

Pollutant removals associated with feed management result from more efficient feed use and less wasted feed. For its evaluation, EPA used feed conversion rates as a surrogate for estimating potential load reductions resulting from feed management activities. Note, EPA used FCR values as a means to estimate potential load reductions, not as a target to set absolute FCR limits for a facility or industry segment.

Based on the information in the detailed surveys, EPA calculated FCRs for 69 flow-through and recirculating system facilities. EPA validated the feeding, production and estimated FCRs by contacting each facility. For those facilities that were not able to supply accurate feed and/or production information, to enable EPA to estimate a FCR, EPA randomly assigned a FCR.

EPA attempted to capture and account for as much of the variation as possible when analyzing FCRs and in the random assignment process. For example, the production system, species, and system ownership (which are all known from the detailed surveys) were expected to influence feeding practices, so facilities were grouped according to these parameters. EPA included ownership as a grouping variable to account for some of the variation in production goals. Most commercial facilities that were evaluated are producing food-sized fish and generally are trying to maintain constant production levels at the facility; commercial facilities would tend to target maximum weight gain over a low FCR in determining their optimal feeding strategy. Non-commercial facilities are generally government facilities that are producing for stock enhancement purposes. Production goals are driven by the desire to produce a target size (length and weight) at a certain time of year for release. Non-commercial facility feeding goals may not place as great an emphasis on maximum growth. However, EPA expects that all facilities, regardless of production goals, can achieve substantial reductions in pollutant discharges over uncontrolled levels by designing and implementing an optimal feed input management strategy, including appropriate recordkeeping and documentation of FCRs.

The process for the random assignment of FCRs to facilities with incomplete information included:

- EPA grouped facilities by ownership, species, and production
- FCRs were estimated for each facility with sufficient data within a group
- The distributions of grouped data were examined for possible outliers, which were defined as FCRs less than 0.75 or greater than 3.0. When extreme values were found and validated, they were removed from the grouping. Although these extremes may be possible and a function of production goals, water temperature, etc., EPA was not able to validate and model all of the factors contributing to the extreme FCR rates. Facilities excluded because of extreme values were not assigned a random FCR, but were found to have a documented reason for the extreme value. For example, one facility produced broodstock for stock enhancement purposes. Some extreme values were updated based on validating information from the facility, and the updates were found to be within the range used for analysis.
- After removing outliers, the first and third quartiles were calculated for each grouping. The first quartile of a group of values is the value such that 25% of the values fall at or below this value. The third quartile of a group of values is the value such that 75% of the values fall at or below this value.
- For each grouping, the target FCR was assumed to be the first quartile value.
- For the facilities with no FCR information, a random FCR between the first and third quartiles was assigned.
- To account for variation in FCRs based on factors such as water temperature, EPA only costed additional feed management practices at a facility when the reported or randomly assigned FCR was within the upper 25% of the inter-quartile range. This was considered to be an indication of potential improvement in feed management.
- For some combinations of ownership, species, and production, there was not sufficient data to do the quartile analysis. In these cases, data

from a similar grouping of ownership, species, and production was used.

If a facility's FCR was in the upper 25% of the inter-quartile range or did not currently have secondary settling technologies in place, EPA assumed the facility would need to improve feed management practices. The improvement in feed management practices would result in increased costs due to increased observations and recordkeeping and in pollutant load reductions resulting from less wasted feed.

The approach for estimating the loadings for the final rule has not changed significantly from the approach taken in the NODA. In estimating the loadings and removals for the final rule, EPA considered incidental removals or removals gained from the control of solids through narrative limitations. As part of the loadings analysis, EPA considered incidental removals of metals, PCBs and one drug, oxytetracycline.

Metals may be present in CAAP effluents from a variety of sources. Some metals are present in feed (as federally approved feed additives), occur in sanitation products, or may result from deterioration of CAAP machinery and equipment. EPA has observed that many of the treatment measures used in the CAAP industry provide substantial reductions of most metals. The metals present are generally readily adsorbed to solids and can be adequately controlled by controlling solids.

Most of the metals appear to be originating from the feed ingredients. Trace amounts of metals at federally approved concentrations are added to feed in the form of mineral packs to ensure that the essential dietary nutrients are provided for the cultured aquatic animals. Examples of metals added as feed supplements include copper, zinc, manganese, and iron (Snowden, 2003).

EPA estimated metals load reductions from facilities that are subject to the final rule (*see* DCN 63011). The metals for which load reductions are analyzed are those which were present above the detection levels in the wastewater samples collected from CAAP facilities during EPA's sampling for this rulemaking. EPA used the net concentrations of the metal in the wastewater to estimate these loads. EPA estimated these load reductions as a function of TSS loads using data obtained from the four sampling episodes. For this analysis, EPA first assumed that non-detected samples had the concentration of half the detection limit. From the sampling data, EPA calculated net TSS and metals concentrations at different points in the facilities. EPA then calculated metal to TSS ratios (in mg of metal per kg of TSS) based on the calculated net concentrations. EPA removed negative and zero ratios from the samples. Finally, basic sample distribution statistics were calculated to derive the relationship between TSS and each metal.

EPA calculated estimated load reductions of PCBs from regulated facilities as a percentage of TSS load reductions. Since the main source of PCBs at CAAP facilities is through fish feed, a conversion factor was calculated to estimate the amount of PCBs discharged per pound of TSS. EPA assumed that 90% of the feed was eaten, and that 90% of the feed eaten would be assimilated by the fish. By combining the amount of food materials excreted by fish (10% of feed consumed) with the 10% of food uneaten, EPA was able to partition the PCBs among fish flesh and aqueous and solid fractions. Due to a lack of sampling data, EPA used a maximum level of 2µg/g, the FDA limit on PCB concentrations in fish feed, to estimate the maximum amount of PCBs that could possibly be in the TSS. This maximum possible discharge load in the TSS was estimated to be 21% of the PCBs in the feed. EPA considers this estimate to provide an upper bound on the amount of PCBs discharged from CAAP facilities, and the amount potentially removed by the rule. Even so, the estimates are quite low (0.52 pounds of PCBs discharged in the baseline). CAAP facilities are not a significant source of PCB discharges to waters of the U.S. (*see* DCN 63011).

EPA estimated the pollutant load of oxytetracycline discharged from in-scope CAAP facilities using data from EPA's detailed survey of the CAAP Industry. EPA first determined facility specific amounts of oxytetracycline used by each CAAP facility. For those facilities that reported using medicated feed containing oxytetracycline, EPA evaluated their responses to the detailed survey to determine the amount, by weight, of medicated feed containing oxytetracycline and the concentration of the drug in the feed. EPA then estimated the amount of oxytetracycline that was reduced at facilities in which feed management practices were applied in the cost and loadings analyses. The facility level estimates were then multiplied by the appropriate weighting factors and summed across all facilities to determine the national estimate of pounds of oxytetracycline reduced from discharges as a result of the regulation.

As part of a sampling episode, EPA also performed a preliminary study to develop a method to measure oxytetracycline in effluent from CAAP facilities. EPA took samples to analyze the effluent from a CAAP facility that produces trout during a time period in which oxytetracycline, in medicated feed, was being used to treat a bacterial infection in some of the animals at the facility. Results of the study indicate that oxytetracycline can be stabilized in samples when preserved with phosphoric acid and maintained below 4 °C prior to analysis. The method found levels of oxytetracycline to range from <0.2 µg/L (which was the method detection limit) in the supply and hatchery effluent to 110 µg/L in the influent to the offline settling basin. The level detected in the combined raceway effluent was 0.95 µg/L. See the analysis report (DCN 63011) for additional information.

H. Environmental Assessment and Benefits Analysis

EPA's environmental assessment and benefits analysis for the proposed rule consisted of two efforts. First, EPA reviewed and summarized literature it had obtained regarding environmental impacts of the aquaculture industry, focusing particularly on segments of the industry in the scope of the proposed rule. Second, EPA used estimates of pollutant loading reductions associated with the proposed requirements to assess improvements to water quality that might arise from the proposed requirements, and monetized benefits from these water quality improvements.

EPA's approach to the environmental assessment and benefits analysis for the final rule is similar to the approach for the proposed rule, except that EPA has incorporated new data, information, and methods that were not available at the time of proposal, particularly those sources described in Section V of this Preamble. For example, literature, discussions, and data submitted by stakeholders both through the public comment process on the proposed rule as well as at other forums were considered. EPA also used facility-specific data provided by or developed from the detailed survey responses. EPA has updated and revised its summary of material relating to environmental impacts of CAAP facilities in Chapter 7 of the Economic and Environmental Benefit Analysis for today's final rule (DCN 63010). EPA's revised benefits analysis are described in both Section X of this Preamble as well as in Chapter 8 of the Economic and Environmental Impact Analysis (DCN 63010).

VII. Who Is Subject to This Rule?

This section discusses the scope of the final rule and explains what wastewaters are subject to the final limitations and standards.

A. Who Is Subject to This Rule?

Today's rule applies to commercial (for-profit) and non-commercial (generally, publicly-owned) facilities that produce, hold or contain 100,000 pounds or more of aquatic animals per year. Any 12 month period would be considered a year for the purposes of establishing coverage under this rule.

While facilities producing fewer than 100,000 pounds of aquatic animals per year are not subject to this rule, in specific circumstances they may require NPDES permits that include limitations developed on a BPJ basis. An aquatic animal production facility producing fewer than 100,000 pounds of aquatic animals per year will be subject to the NPDES permit program if it is a CAAP as defined in 40 CFR 122.24. As explained in the proposed rule, EPA limited the scope of the regulation it was considering to facilities that are CAAPs above this production threshold.

The Agency concluded that facilities below the threshold would likely experience significant adverse economic impacts if required to comply with the proposed limitations. EPA concluded that these smaller CAAP facilities would have compliance costs in excess of 3 percent of revenues. Further, smaller CAAP facilities account for a smaller relative percentage of total CAAP TSS discharges and only limited removals would be obtained from the proposed BPT/BCT/BAT control. 67 FR 57872, 57884. Other types of facilities also not covered by today's action include closed pond systems (most of which do not meet the regulatory definition of a CAAP facility), molluscan shellfish operations, including nurseries, crawfish production, alligator production, and aquaria and net pens rearing native species released after a growing period of no longer than 4 months to supplement commercial and sport fisheries. This last exclusion applies primarily to Alaskan non-profit facilities which raise native salmon for release into the wild in flow-through systems and then hold them for a short time in net pens preceding their release. The flow-through portions of these facilities are within the scope of the rule, if they produce 100,000 pounds or more per year, but the net pen portions would be excluded from regulation. EPA determined for the types of excluded systems or production operations listed above either that they generate minimal pollutant discharges in the baseline or that available pollutant control technologies will reduce pollutant loadings from these operations by only minimal amounts. For further explanation, see the proposal at 67 FR 57572, 57885–86.

Facilities that indirectly discharge their process wastewater (*i.e.*, facilities that discharge to POTWs) are also not subject to today's rule. EPA did not propose and is not establishing pretreatment standards for existing or new indirect sources. As explained above, the bulk of pollutant discharges from CAAP facilities consists of TSS and BOD. POTWs are designed to treat these conventional pollutants. Moreover, CAAP facilities discharge nutrients in concentrations lower in full-flow discharges, and similar in off-line settling basin discharges, to nutrient concentrations found in human wastes discharged to POTWs. EPA has concluded that the POTW removals of TSS would achieve equivalent nutrient removals to those obtained by the options considered for this rulemaking for direct dischargers. EPA, therefore, concluded that there would be no pass through of TSS or nutrients needing regulation. Indirect discharging facilities are still subject to the General Pretreatment Standards (40 CFR 403) and any applicable local limitations. EPA has also determined that there are few indirect dischargers in this industry.

B. What If a Facility Uses More Than One Production System?

EPA has found that several detailed survey respondents are operating more than one type of production system. A facility is subject to the rule if the total production from any of the regulated production systems meets the production threshold. The facility would need to demonstrate compliance with the management practices required for each of the regulated production systems it is operating.

C. What Wastewater Discharges Are Covered?

This rule covers wastewaters generated by the following operations/processes: Effluent from flow-through, recirculating and net pen facilities. The flow-through and recirculating subcategory (Subpart A) applies to wastewaters discharged from these systems.

The type of production system determines the nature, quantity, and quality of effluents from CAAP facilities. Flow-through systems commonly use raceways or tanks and are characterized by continual flows of relatively large volumes of water into and out of the rearing units. Some flow-through systems discharge a single, combined effluent stream with large water volumes and dilute pollutant concentrations. Other flow-through systems have two or more discharge streams, with the process water in which the fish are raised as the primary discharge. This discharge, referred to as raceway effluent or bulk flow, is characterized by a large water volume and dilute pollutant concentrations. The secondary discharges from flow-through systems with multiple discharges result typically from some form of solids settling through an off-line settling basin (OLSB) or other solids removal devices. The discharges from off-line settling basins or solids removal devices have low water volumes and more concentrated pollutants. The supernatant from the OLSB may be discharged through a separate outfall or may be recombined prior to discharge with the raceway effluent.

Recirculating systems may also have two waste streams: Overtopping wastewater and filter backwash. Overtopping is a continuous blowdown from the production system to avoid the buildup of dissolved solids in the production system, and filter backwash is generated by cleaning the filter used to treat the water that is being recirculated back to the production system. Overtopping wastewater is usually small in volume (a fraction of the total system volume on a daily basis) and has higher TSS concentrations than a full flow discharge. Filter backwash wastewater is typically low in volume and is as concentrated as wastewater from similar devices at flow-through systems.

Net pen systems are located in open waters and thus are characterized by the flow and characteristics of the surrounding water body and by the addition of raw materials to the pens including feed, drugs and the excretions from the confined aquatic animals.

VIII. What Are the Requirements of the Final Regulation and the Basis for These Requirements?

This section describes, by subcategory, the options EPA considered and selected as a basis for today's rule. For each subcategory, EPA provides a discussion, as applicable, for the options considered for each of the regulatory levels identified in the CWA (*i.e.*, BPT, BCT, BAT, NSPS). For a detailed discussion of all technology options considered in the development of today's final rule, see the proposal (*see* 67 FR 57872), the NODA (*see* 68 FR 75068) or Chapter 9 of the Technical

Development (TDD) for today's final rule.

Based on the information in the record for the final CAAP rule, EPA has determined that the selected technology for the flow-through and recirculating systems subcategory and the net pens subcategory are technically available. EPA has also determined that the technology it selected as the basis for the final limitations or standards has effluent reductions commensurate with compliance costs and is economically achievable for the applicable subcategory. EPA also considered the age, size, processes, and other engineering factors pertinent to facilities in the scope of the final regulation for the purpose of evaluating the technology options. None of these factors provides a basis for selecting different technologies from those EPA has selected as its technology options for today's rule (*see* Chapter 5 of the TDD for the final rule for further discussion of EPA's analyses of these factors).

As previously explained, EPA adopted a production threshold cutoff as the principal means of reducing economic impacts on small businesses and administrative burden for control authorities associated with the treatment technologies it considered. EPA notes that certain direct dischargers that are not subject to today's effluent limitations or standards will still require a NPDES discharge permit developed on a case-by-case basis if they are CAAPs as defined in 40 CFR 122.24.

The new source performance standards (NSPS) EPA is today establishing represent the greatest degree of effluent reduction achievable through the best available demonstrated control technology. In selecting its technology basis for today's new source performance standards (NSPS), EPA considered all of the factors specified in CWA section 306, including the cost of achieving effluent reductions. EPA used the appropriate technology option for developing today's standards for new direct dischargers. The new source technology basis for both subcategories is equivalent to the technology bases upon which EPA is setting BPT/BCT/BAT (see Chapter 9 of the EEBA). EPA has thoroughly reviewed the costs of such technologies and has concluded that such costs do not present a barrier to entry. The Agency also considered energy requirements and other non-water quality environmental impacts for the new source technology basis and found no basis for any different standards from those selected for NSPS. Therefore, EPA concluded that the NSPS technology basis chosen for both subcategories constitute the best available demonstrated control technology. For a discussion on the compliance date for new sources, *see* section I.E. of today's final rule.

A. What Technology Options Did EPA Consider for the Final Rule?

Among the options EPA considered for the final rule for flow-through and recirculating systems in addition to the options presented in the proposed rule were (i) establishing no national effluent limitations (ii) establishing limitations and BMPs based on technology options A and B, and (iii) establishing narrative limitations based on BMPs only. Based on analysis presented in the NODA, EPA focused it analysis on these latter three options. For net pens, EPA considered three options: no national requirements, requirements equivalent to those proposed but for new sources only, and essentially the same requirements for existing and new sources as those in the proposed rule.

B. What Are the Requirements for the Flow-Through and Recirculating Systems Subcategory?

The following discussion explains the BPT/BCT/BAT limitations and NSPS EPA is promulgating for flow-through and recirculating system facilities.

1. BPT

After considering the technology options described in the previous section and the factors specified in section 304(b)(1)(B) of the CWA, EPA is establishing nationally applicable effluent limitations guidelines for flow-through and recirculating system CAAP facilities producing 100,000 pounds or more of aquatic animals per year for the reasons noted above at VIII.A.

EPA based the final requirements on production and operational controls that include a rigorously implemented feed management program. Programs of production and operational controls that include feed management systems, proper storage of material and adequate solids controls, and proper operation and maintenance are in wide use at existing flow-through and recirculating system facilities. Based on the detailed survey results, EPA estimates that such programs are currently used at 61 flow-through and recirculating facilities out of 242 total facilities. The costs of effluent removals associated with the evaluated practices are reasonable. The cost per pound of pollutant removed is $2.77 as measured using the higher of the removals for either BOD or TSS at each facility. (The removals for these parameters are not summed because of possible overlap and double counting.)

Based on its review of the data and information it obtained during this rulemaking, EPA has concluded that the key element in achieving effective pollution control at CAAP facilities is a well-operated program to manage feeding, in addition to good solids management. Feed is the primary source of TSS (and associated pollutants) in CAAP systems, and feed management plans are the principal tool for minimizing accumulation of uneaten feed in CAAP wastewater. Excess feed in the production system increases the oxygen demand of the culture water and increases solids loadings. In addition, solids from the excess feed usually settle and are naturally processed with the feces from the fish. Excess feed and feces accumulate in the bottom of flow-through and recirculating systems or below net pens. Ensuring that the aquatic animal species being raised receive the quantity of feed necessary for proper growth without overfeeding, and the resulting accumulation of uneaten feed, is a challenging task. Achieving the optimal feed input requires properly designing a site-specific feeding regimen that considers production goals, species, rearing unit water quality and other relevant factors. It also requires careful observation of actual feeding behavior, good record keeping, and on-going reassessment.

After full examination of the data supporting EPA's model technology, EPA has decided not to establish numerical TSS limitations. While the model technology will effectively remove solids to a very low level, EPA's data show wide variability, both temporally and across facilities, in the actual TSS levels achieved. EPA thus does not have a record basis for establishing numeric TSS limitations derived from its data set that are appropriate for all sites under all conditions. EPA believes that establishing a uniform numeric TSS limitation would result in requirements that are too stringent at some sites and not stringent enough at others. This is because feed management, while an effective pollution reduction technology for this industry, is not amenable to the same level of engineering process control as traditional treatment technologies used in other effluent guidelines. The basis for this conclusion is further explained below.

Clean Water Act sections 301(b)(1)(A) and 301(b)(2) require point sources to achieve effluent limitations that require the application of the BPT/BCT/BAT selected by the Administrator under section 304(b). Customarily, EPA implements this requirement through the establishment of numeric effluent

limitations calculated to reflect the levels of pollutant removals that facilities employing those technologies can consistently achieve. EPA traditionally uses a combination of sampling data and data reported in discharge monitoring reports from well-operated systems employing the model technology to calculate numeric effluent limitations.

In the proposed rule and the NODA, EPA used a similar approach to calculate numeric effluent limitations for TSS from a partial data set composed of well operated CAAP facilities employing a combination of wastewater treatment and management practices to reduce TSS concentrations in the discharged effluent. To reduce TSS discharge levels, the facilities examined by EPA used settling ponds and a number of different techniques, including feed management programs and periodic solids removal from both the culture water and settling ponds.

EPA's examination of well-operated facilities also identified several facilities using feed management and other operational and management controls alone that were achieving the same low levels of TSS discharge as facilities using settling ponds in combination with good feed management.

Based on EPA's examination of the data in its record, the Agency has concluded that a combination of settling technology and feed management control practices or rigorous feed management control and proper solids handling practices alone will achieve low levels of TSS. Operational measures like a feed management system, however, are not technologies that reflect the same degree of predictability as can be expected from wastewater treatment technology based on chemical or other physical treatment. While EPA is confident that its chosen technology can consistently achieve BPT treatment levels of solids removal, the Agency recognizes that feed management systems may not have the precision or consistently predictable performance from site to site that come with the traditional wastewater treatment technologies. The record confirms that there is variability in results associated with the use of feed management systems and other operational measures to control solids. Thus, EPA determined that it should not establish specific numeric TSS limitations based on the model technology. This conclusion is supported by a number of commenters who maintained that consistently achieving the proposed TSS levels would require installation of additional settling treatment structures, with little additional environmental benefit.

EPA's decision not to set uniform numeric TSS limitations based on rigorous feed management and good solids management is further supported by its analysis of measured or predicted TSS concentrations at facilities employing this technology. EPA's effluent monitoring data show differences in the measured TSS concentration in discharges at facilities employing feed management programs from the predicted TSS concentration levels derived using EPA's calculation from the data on feed used at BPT/BAT facilities. For this comparison, EPA calculated a TSS concentration that could be achieved through feed management plans using the data on feed and fish production at surveyed facilities. EPA then compared these concentrations, where available, with the actual TSS levels reported by those facilities in their discharge monitoring reports. The differences between the calculated TSS levels and reported levels may result from differences in application of feed management practices, variation in the flows or dilution of the effluent.

EPA recognizes that it would be feasible to calculate numeric effluent limitations for TSS based on treatment technologies alone, *i.e.*, eliminating best management practices from the technology basis for today's rule. EPA did not employ this approach for three reasons. First, EPA has determined that primary treatment in the form of quiescent zones in the culture water tanks and settling ponds by themselves are not the best technology available for treating TSS. Instead, rigorous feed management in conjunction with good solids handling practices constitutes a better technology for controlling this pollutant. Second, EPA is concerned that establishing numeric limitations for TSS based on primary and secondary settling may not be a practicable technology. Commenters pointed out that site and land availability constraints might limit their ability to install the additional treatment needed to achieve TSS limitations. Third, EPA believes based on its analysis of the data, that comparable discharge levels can be achieved using feed management and other management practices alone as can be achieved using these practices in combination with settling technologies. Thus, while settling technology may be amenable to more precise control, EPA believes that the overall environmental benefits of this technology relative to rigorous feed and solids handling management alone are negligible.

EPA is further concerned that establishing a numeric limit for TSS could provide an incentive for facilities to achieve the limit through dilution and would not reduce the pollutant loads discharged to receiving streams. While dilution is generally prohibited as a means of achieving effluent limitations, this prohibition is harder to enforce at CAAP facilities than in most other systems because the flow of culture water is dependent on a wide range of factors and is highly variable from one facility to another. Thus it would be impossible for regulatory authorities to determine if water use was being manipulated to dilute TSS concentration. Due to variations in water use from facility to facility, EPA also decided not to establish mass-based numeric TSS limitations on a national basis. Solids control operational measures such as feed management and the requirement to focus on the proper operation of existing solids control structures are expected to achieve reductions in the TSS concentrations and at the same time reduce the TSS loadings being discharged. This approach is supported by DMR data from facilities in Idaho which have had to comply with feed management BMP requirements in their general permit. This data demonstrates that improved performance can be achieved through BMPs (DCN 63012). A comparison of DMR data from Idaho prior to the issuance of a general permit in calendar year 1999 with data following compliance with the general permit indicates that 64 percent of the facilities have reduced the TSS loads discharged from the facility with an average TSS reduction of 75 percent.

For these reasons, EPA has expressed effluent limitations in this rule in the form of narrative standards, rather than as numeric values. EPA has a legal authority to do so. The CWA defines "effluent limitation" broadly, and EPA's regulations reflect this as well. Each provides that an effluent limitation is "*any restriction*" imposed by the permitting authority on quantities, discharge rates and concentrations of a pollutant discharged into a water of the United States. CWA section 502(11) (emphasis supplied); 40 CFR 122.2 (emphasis supplied). Neither definition requires an effluent limitation to be expressed as a numeric limit. The DC Circuit observed, "Section 502(11) defines 'effluent limitation' as '*any* restriction' on the amounts of pollutants, not just a numerical restriction." *NRDC* v. *EPA*, 673 F.2d 400, 403 (DC Cir.) (emphasis in original), *cert. denied sub nom. Chemical Mfrs. Ass'n* v. *EPA*, 459 U.S. 879 (1982). In short, the definition of

"effluent limitation" is not limited to a single type of restriction, but rather contemplates a range of restrictions that may be used as appropriate. EPA has concluded that it is appropriate to express today's BPT/BCT/BAT limitations in non-numeric form. These narrative limitations reflect a technology demonstrated to achieve effective solids removals while still giving facilities flexibility in determining how to meet them.

Today's BPT regulation requires CAAP facilities to comply with specified operational and management requirements—best management practices (BMPs)—that will minimize the generation and discharge of solids from the facility. These requirements are non-numeric effluent limitations based on the technologies EPA has determined are BPT.

The final regulation requires adoption of specified solids control practices. *See, e.g.*, § 451.11(a) and § 451.21(a). Thus, to control the discharge of solids from flow-through and recirculating system facilities, the final rule requires minimizing the discharge of uneaten feed through a feed management program. *See* § 451.11(a) of this rule. Complying with this limitation will require a CAAP facility to identify feeding practices which optimize the addition of feed to achieve production goals while minimizing the amount of uneaten feed leaving the rearing unit. Such a program should include practices such as periodic calibration of automatic feeders, visual observation of feeding activity and discontinuation of feeding when the animals stop eating. The rule also requires that CAAPs maintain records of feed inputs and estimates of the numbers and weight of aquatic animals in order to calculate representative feed conversion ratios. *See* § 451.11(a)(1) of this rule. Development of feed conversion ratios is a key component in a properly functioning feed management system because it allows the facility to calibrate more accurately the feeding needs of the species being raised. This, in turn, will result in further improvement in control of solids at the operation.

In addition to feed management, EPA also requires flow-through and recirculating system facilities to identify and implement procedures for routine cleaning. *See* § 451.11(a)(2). This will ensure that CAAP facilities develop practices to minimize the build-up and subsequent discharge of solids from the rearing units. The facility must also identify procedures with respect to harvesting, inventorying and grading of fish so as to minimize disturbance and discharge of solids from the facility during these activities.

The final rule also provides that facilities must remove dead fish and fish carcasses from the production system on a regular basis and dispose of them to avoid the discharge to waters of the U.S. § 451.11(a)(3). EPA is establishing an exception to this requirement when the permit writer authorizes a discharge to benefit the aquatic environment. The following example explains one circumstance in which a permit writer could authorize such a discharge. There are a number of federal, state, and tribal hatcheries that are raising fish for stocking or mitigation purposes. In some cases, these facilities have been approved to discharge fish carcasses along with the live fish that are being stocked. In these situations, the carcasses are serving as a source of nutrients and food to the fish being stocked in these waters. The exception would apply in these circumstances if the permitting authority determines that the addition of fish carcasses to surface water will improve water quality.

Facilities must also implement measures that address material storage and structural maintenance. In the case of material storage, EPA is requiring facilities to identify and develop practices to prevent inadvertent spillage of drugs, pesticides, and feed from the facility. § 451.11 (b). This would include proper storage of these materials. EPA is also requiring facilities to identify proper procedures for cleaning, containing and disposing of any spilled material. EPA's assessment, based on site visits and sampling visits, indicates that facilities may have varying degrees of spill prevention procedures and containment and structural maintenance practices to address these requirements.

The final rule also includes a requirement that facilities inspect and provide regular maintenance of the production system and the wastewater treatment system to ensure that they are properly functioning. § 451.11(c). One area of concern addressed by this requirement is the potential accumulation of solids (especially large solids such as carcasses and leaves) that could clog screens that separate the raceway from the quiescent zone. These solids could prevent the flow of water through the screen causing water to instead flow over the screen and impair the passage of solids into the quiescent zone. Proper maintenance should ensure that screens are regularly inspected and cleaned.

The final rule also requires that facilities conduct routine inspections to identify any damage to the production system or wastewater treatment system and that facilities repair this damage promptly. EPA has not specified any design requirement for structural components of the CAAP facility. Rather, it has adopted the requirement that facilities identify practices that will ensure existing structures are maintained in good working order. Flow-through and recirculating facilities are also required to keep records as described previously and to conduct routine training for facility staff on spill prevention and response.

As discussed further below, in the final rule, EPA is not establishing numeric limits for any drug or pesticide but is requiring CAAP facilities to ensure proper storage of drugs, pesticides and feed to prevent spills and any resulting discharge of spilled drugs and pesticides. EPA is also establishing a requirement to implement procedures for responding to spills of these materials to minimize their discharge from the facility. *See* § 451.11(c)(2) of this rule. Facilities must also train their staff in spill prevention and proper operation and cleaning of production systems and equipment. *See* § 451.11(e) of this rule. The detailed survey did not provide information about spill prevention, but during site visits and sampling visits EPA identified containment systems and practices. EPA's site visit information indicated that CAAP facilities currently employ a number of different measures to prevent spills and some have established in-place systems to address spills in the event they occur. The effect of this narrative limitation will be to promote increased care in the handling of these materials. Its adoption as a regulatory requirement provides an additional incentive for facility operators currently employing effective spill control measures to continue such practices when handling drugs and pesticides. Moreover, because EPA has adopted the same requirements for existing and new sources (*see* discussion below), this will ensure that new sources employ the same highly protective measures as existing sources have employed successfully to protect against spills.

Today's regulation does not include any requirements specifically addressing the release of non-native species. The final regulation, however, includes a narrative effluent limitation that requires facilities to implement operational controls that will ensure the production facilities and wastewater treatment structures are being properly maintained. Facilities must conduct routine inspections and promptly repair damage to the production systems or wastewater treatment units. This requirement, described in more detail in

Section VI.D., will aid in preventing the release of various materials, including live fish.

2. BAT

EPA is establishing BAT at a level equal to BPT for the flow-through and recirculating system discharge subcategory. For this subcategory, EPA did not identify any available technologies that are economically achievable for the subcategory that would achieve more stringent effluent limitations than those considered for BPT. Because of the nature of the wastes generated from CAAP facilities, advanced treatment technologies or practices to remove additional toxic or nonconventional pollutants that would be economically achievable on a national basis do not exist beyond those already considered.

3. BCT

EPA evaluated conventional pollutant control technologies and did not identify a more stringent technology for the control of conventional pollutants for BCT limitations that would be affordable than the final requirements considered. Other technologies for the control of conventional pollutants include biological treatment, but this technology is not affordable for the subcategory as a whole. Consequently, EPA has not promulgated BCT limitations or standards based on a different technology from that used as the basis for BPT limitations and standards.

4. NSPS

After considering the technology options described in the proposal and NODA and evaluating the factors specified in section 306 of the CWA, EPA is promulgating standards of performance for new sources equal to BPT, BAT, and BCT. There are no more stringent technologies available for NSPS that would not represent a barrier to entry for new facilities, *see* Section IX for more discussion of the barrier to entry analysis. Because of the nature of the wastes generated in CAAP facilities, EPA has not identified advanced treatment technologies or practices to remove additional solids (*e.g.*, smaller particle sizes) in TSS or other pollutants that would be generally affordable beyond those already considered.

EPA determined that NSPS equal to BAT will not present a barrier to entry. The overall impacts from the effluent limitations guidelines on new sources would not be any more severe than those on existing sources. This is because the costs faced by new sources are generally 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 facility than it would be to retrofit the same pollution control equipment in an existing plant. At a new facility, 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.

C. What Are the Requirement for the Net Pen Subcategory?

The following discussion explains the BPT/BAT/BCT limitations and NSPS EPA is promulgating for Net Pen Systems.

1. BPT

After considering the technology options described in the proposal and the factors specified in Section 304(b)(1)(B) of the Clean Water Act, EPA is establishing nationally applicable effluent limitations for net pen facilities producing 100,000 pounds or more of aquatic animals per year. Today's BPT regulations requires CAAP net pen systems, like CAAP flow-through and recirculating systems, to comply with specified operational practices and management requirements. These requirements are non-numeric effluent limitations based on technologies EPA has evaluated and determined are cost-reasonable, available technologies.

Based on the detailed survey results, EPA estimates that such programs are currently in use at most or all the net pen systems. As a result, the cost to facilities of meeting the BPT requirements is very low. To EPA's knowledge, all existing net pen facilities that are currently covered by NPDES permits are subject to permit requirements comparable to today's limitations. Therefore, EPA concludes that the BPT limits are both technically available and cost reasonable for the net pen subcategory.

EPA rejected the establishment of numeric effluent limitations for net pens for obvious reasons. Because of the nature of the facilities, net pens cannot use physical wastewater control systems except at great cost. Located in open waters, nets are suspended from a floating structure to contain the crop of aquatic animals. Nets are periodically changed to increase the mesh size as the fish grow in order to provide more water circulating inside the pen. The pens are anchored to the water body floor and sited to benefit from tidal and current action to move wastes away from, and bring oxygenated water to, the pen. As a result, these CAAP facilities experience a constant in- and out-flow of water. Development of a system to capture the water and treat the water within the pen would be prohibitively expensive. EPA, therefore, rejected physical treatment systems as the basis for BPT limitations. Instead, EPA is promulgating narrative effluent limitations.

As was the case with flow-through and recirculating systems, feed management programs are a key element of the promulgated requirements for the reasons explained above and in the proposal at 67 FR 57872, 57887. Consequently, for the control of solids, the final regulation requires that net pen CAAP facilities minimize the accumulation of uneaten feed beneath the pen through the use of active feed monitoring and management practices. § 451.21(a). These strategies may include either real-time monitoring (*e.g.*, the use of video monitoring, digital scanning sonar, or upweller systems); monitoring of sediment quality beneath the pens; monitoring of the benthic community beneath the pens; capture of waste feed and feces; or the adoption of other good husbandry practices, subject to the permitting authority's approval.

As noted, feed management systems are effective in reducing the quantity of uneaten feed. Facilities should limit the feed added to the pens to the amount reasonably necessary to sustain an optimal rate of fish growth. In determining what quantity of feed will result in minimizing the discharge of uneaten feed while at the same time sustaining optimal growth, a facility should consider, among others, the following factors: The types of aquatic animals raised, the method used to feed the aquatic animals, the facility's production and aquatic animal size goals, the species, tides and currents, the sensitivity of the benthic community in the vicinity of the pens, and other relevant factors. In some areas, deep water and/or strong tides or currents may prevent significant accumulation of uneaten feed such that active feed monitoring is not needed. Several states with significant numbers of net pens (*e.g.*, Washington, Maine) already require feed management practices, which may include active feed monitoring, to minimize accumulation of feed beneath the pens. Facilities will need to ensure that whatever practices they adopt are consistent with the requirements of their state NPDES program.

In order to implement a feed management system, the facility must also track feed inputs by maintaining records documenting feed and estimates of the numbers and weight of aquatic animals in order to calculate

representative feed conversion ratios. § 451.21(g). As previously explained, development of feed conversion ratios are a necessary element in any effective feed management system.

Real-time monitoring represents a widely-used business practice that is employed by many salmonid net pen facilities to reduce feed costs. Net pen systems do not present the same opportunities for solids control as do flow-through or recirculating systems for the obvious reason that ocean water is continuously flowing in and out of the net pens. Therefore, in EPA's view, feed monitoring, including real time monitoring and other practices is an important and cost reasonable practice to control solids discharges.

The final rule includes a narrative limitation requiring CAAP net pen facilities to collect, return to shore, and properly dispose of all feed bags, packaging materials, waste rope and netting. § 451.21(b). This will require that net pen facilities have the equipment (*e.g.*, trash receptacles) to store empty feed bags, packaging materials, waste rope and netting until they can be transported for disposal. EPA is also requiring that net pens minimize any discharges associated with the transporting or harvesting of fish, including the discharge of blood, viscera, fish carcasses or transport water containing blood. § 451.21(c). During stocking or harvesting of fish, some may die. The final limitations require facilities to remove and dispose of dead fish properly on a regular basis to prevent discharge. Discharge of dead fish represents an environmental concern because they may spread disease and attract predators, which could imperil the structural integrity of the containment system. The wastes and wastewater associated with the transport or harvest of fish have high BOD and nutrient concentrations and should be disposed of at a location where they may be properly treated.

The final regulations also require net pen facilities to ensure the proper storage of drugs, pesticides, and feed to avoid spilling these materials and subsequent discharge. *See* § 451.21(e)(1) of this rule. Facilities must also implement procedures for properly containing, cleaning and disposing of any spilled material. *See* § 451.21(e)(2) of this rule. As previously discussed, excess feed may present a number of different environmental problems. Preventing spills of feed is consequently important. Additionally, net pens may use different pesticides and drugs in fish production. Preventing their release is similarly important. The final regulation also includes a narrative limitation, similar to that for CAAP flow-through and recirculating systems, requiring that net pen facilities adequately train facility personnel in how to respond to spills and proper clean-up and disposal of spilled material. *See* § 451.21(h) of this rule.

Next, the final regulation requires regular inspection and maintenance of the net pen § 451.21(f). This would include any system to prevent predators from entering the pen. Net pens are vulnerable to damage from predator attack or accidents that result in the release of the contents of the nets, including fish and fish carcasses. Given the economic incentive to prevent the loss of production, EPA assumes facilities will conduct routine inspections of the nets to ensure they are not damaged and make repairs as soon as any damage is identified. Most net pen facilities are already doing these inspections. However, in evaluating this technology option, EPA estimated costs for increased inspections at every net pen facility in order to ensure that costs are not underestimated.

Like the final BPT limitations for flow-through and recirculating systems, the BPT limitations for net pens do not include any requirements specifically addressing the release of non-native species. The final regulation, however, includes a narrative effluent limitation that requires facilities to implement operational controls that will ensure the production facilities and wastewater treatment structures are being properly maintained. Facilities must conduct routine inspections and promptly repair damage to the production systems or wastewater treatment units. EPA included this requirement to ensure achievement of the other BPT limitations for net pens such as the prohibition on the discharge of feed bags, packaging materials, waste rope and netting at net pens, and the requirement to minimize release of solids, fish carcasses and viscera. This requirement will also aid in preventing the release of other materials including live fish.

2. BAT

EPA is establishing BAT at a level equal to BPT for the net pen subcategory. For this subcategory, EPA did not identify any available technologies that are economically achievable that would achieve more stringent effluent limitations than those considered for BPT. Because of the nature of the wastes generated from CAAP net pen facilities, EPA did not identify any advanced treatment technologies or practices to remove additional toxic and nonconventional pollutants that would be economically achievable on a national basis beyond those already considered.

3. BCT

EPA evaluated conventional pollutant control technologies and did not identify a more stringent technology for the control of conventional pollutants for BCT limitations than the final requirements considered. Consequently, EPA has not promulgated BCT limitations or standards based on a different technology from that used as the basis for BPT limitations and standards.

4. NSPS

After considering the technology requirements described previously under BPT, and the factors specified in section 306 of the CWA, EPA is promulgating standards of performance for new sources equal to BPT, BAT, and BCT. There are no more stringent best demonstrated technologies available. Because of the nature of the wastes generated and the production system used, EPA has not identified advanced treatment technologies or practices that would be generally affordable beyond those already considered.

Although siting is not specifically addressed with today's standards, proper siting of new facilities is one component of feed management strategies designed to minimize the accumulation of uneaten feed beneath the pens and any associated adverse environmental effects. When establishing new net pen CAAP facilities, consideration of location is critical in predicting the potential impact the net pen will have on the environment. Net pens are usually situated in areas which have good water exchange through tidal fluctuations or currents. Good water exchange ensures good water quality for the animals in the nets. It also minimizes the concentration of pollutants below the nets. In implementing today's rule for new net pen operations, facilities and permit authorities should give careful consideration to siting prior to establishing a new net pen facility.

EPA has concluded that NSPS equal to BAT does not present a barrier to entry. The overall impacts from the effluent limitations guidelines on new source net pens are no 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 is generally less expensive to incorporate pollution control equipment into the design at a new facility than it is to retrofit the

same pollution control equipment in an existing facility.

Although EPA is not establishing standards of performance for new sources for small cold water facilities (*i.e.*, those producing between 20,000 and 100,000 pounds of aquatic animals per year), such facilities would be subject to existing NPDES regulations and BPT/BAT/BCT permit limits developed using the permit writer's "best professional judgment" (BPJ). EPA, based on its analysis of existing data, determined that new facilities would most often produce 100,000 pounds of aquatic animals or more per year because of the expense of producing the aquatic animals. Generally, the species produced are considered of high value and are produced in such quantities to economically justify the production. For example, one net pen typically holds 100,000 pounds of aquatic animals or more. In reviewing USDA's Census of Aquaculture and EPA's detailed surveys, EPA has not identified any existing commercial net pen facilities producing fewer than 100,000 pounds of aquatic animals per year.

Offshore aquatic animal production is an area of potential future growth. As these types of facilities start to produce aquatic animals, those with 100,000 pounds or more per year will be subject to the new source requirements established for net pens as well as NPDES permitting.

D. What Monitoring Does the Final Rule Require?

The final rule does not require any effluent monitoring. In the case of net pen facilities, however, it does require CAAPs to adopt active feed monitoring and management practices that will most often include measures to observe the addition of feed to the pen. Net pen facilities subject to today's rule must develop and implement active feed monitoring and management strategies to minimize the discharge of solids and the accumulation of uneaten feed beneath the pen. Many existing net pen facilities use a real-time monitoring system such as video cameras, digital scanning sonar, or upweller systems to accomplish this. With a real-time monitoring system, when uneaten feed is observed falling beneath the pen feeding should stop. Depending on the location and other site-specific factors at the facility, a facility may adopt other measures in lieu of real time monitoring. These may include monitoring of sediment or the benthic community quality beneath the pens, capture of waste feed and feces or other good husbandry practices that are approved by the permitting authority.

E. What Are the Final Rule's Notification, Recordkeeping, and Reporting Requirements?

The final rule establishes requirements for reporting the use of spilled drugs, pesticides or feed that result in a discharge to waters of the U.S. by CAAP facilities. This provision ensures that, any release of spilled drugs, pesticides and feed to waters of the U.S. are reported to the permitting authorities to provide them with necessary information for any responsive action that may be warranted. This will allow regulatory authorities to reduce or avoid adverse impacts to receiving waters associated with these spills. EPA is requiring that any spill of material that results in a discharge to waters of the U.S. be reported orally to the permitting authority within 24 hours of its occurrence. A written report shall be submitted within 7 days. Facilities are required to report the identity of the material spilled and an estimated amount.

EPA is retaining for the final rule the proposed requirement that CAAP facilities report to the Permitting Authority whenever they apply certain types of drugs under the following conditions. First, the permittee must report drugs prescribed by a veterinarian to treat a species or a disease when prescribed for a use which is not an FDA-approved use (referred to as "extralabel drug use") as described further below. Second, the permittee must report drugs being used in an experimental mode under controlled conditions, known as Investigative New Animal Drugs (INADs). In EPA's view, notifying the Permitting Authority is necessary to ensure that any potential risk to the environment resulting from the use of these drugs can be addressed with site-specific remedies where appropriate. EPA strongly encourages reporting prior to use where feasible, as this provides the Permitting Authority with the opportunity to monitor or control the discharge of the drugs while the drugs are being applied. EPA has not made this an absolute requirement, however, in recognition of the fact that swift action on the part of veterinarians and operators is sometimes necessary to respond to and contain disease outbreaks.

The reporting requirement applies to the permittee and imposes no obligation on the prescribing veterinarian. The reporting requirement for extralabel drug use is not in any way intended to interfere with veterinarians' authority to prescribe extralabel drugs to treat aquatic animals or other animals in accordance with FFCDA and 40 CFR Part 530. This reporting requirement is promulgated to ensure that permitting authorities are aware of the use at CAAPs of extralabel drugs when such use may result in the release of the drug to waters of the U.S. Because the use is likely to involve adding the drug directly to the rearing unit, EPA believes there is a probability that these drugs may be released to waters of the U.S..

The regulation requires that a permittee must provide a written report to the permitting authority within seven days of agreeing to participate in an INAD study and an oral report preferably in advance of use, but in no event later than seven days after starting to use the INAD. The first written report must identify the drug, method of application, the dosage and what it is intended to treat. The oral report must also identify the drug, method of application, and the reason for its use. Within 30 days after the use of the drug at the facility, the permittee must provide another written report to the permitting authority describing the drug, reason for treatment, date and time of addition, method of addition and total amount added.

EPA has similar reporting requirements for extralabel drug use except that EPA is not requiring a written report in advance of use.

The reporting requirement applies only to those drugs that have not been previously approved for their intended use. Reporting would not be required for EPA registered pesticides and FDA approved drugs for aquatic animal uses when used according to label instructions. Reporting would only be required for INAD drugs and drugs prescribed by a veterinarian for extralabel uses. Because these classes of drugs have not been fully evaluated by FDA for the potential environmental consequences of the use being made of them EPA considers reporting ensures the permitting authority has enough information to make an informed response if environmental problems do occur. EPA has included an exception to the reporting requirement for cases where the INAD or extralabel drug has already been approved under similar conditions for use in another species or to treat another disease and is applied at a dosage that does not exceed the approved dosage. The requirement that the use be under similar conditions is intended to limit the exception to cases where the INAD or extralabel drug use would be expected to produce significantly different environmental impacts from the previously approved

use. For example, use of a drug that had been previously approved for a freshwater application, as an INAD in a marine setting would not be considered a similar condition of use, since marine ecosystems may have markedly different vulnerabilities than freshwater ecosystems. Similarly, the use of a drug approved to treat terrestrial animals used as an INAD or extralabel drug to treat aquatic animals would not be considered a similar condition of use. In contrast, the use of a drug to treat fish in a freshwater system that was previously approved for a different freshwater species would be considered use under similar conditions. EPA has concluded that when a drug is used under similar conditions it is unlikely that the environmental impacts would be different than those that were already considered in the prior approval of the drug.

The reporting requirements with respect to INADs are not burdensome. FDA regulations require that the sponsor of a clinical investigation of a new animal drug submit to the Food and Drug Administration certain information concerning the intended use prior to its use. Therefore, this information will be readily available to any CAAP facility that participates in an INAD investigation. Having advance information will enable the permitting authority to determine whether restrictions should be imposed on the release of such drugs.

EPA is also requiring all CAAP facilities subject to today's regulation to develop and maintain a Best Management Practices plan on site. This plan must describe how the permittee will achieve the required narrative limitations. The plan must be available to the permitting authority upon request. Upon completion of the plan, the permittee must certify to the permitting authority that a plan has been developed.

The proposal included a requirement to implement escape prevention practices at facilities where non-native species are being produced. EPA received comments supporting such controls to prevent the release of non-native species. EPA also received comments arguing against controls in this regulation because other authorities are already dealing with non-native species, and because of the complexities of determining what is a non-native species and when such species may become invasive. For example, species raised by Federal and State authorities for stocking may not be "native," but would not generally impose a threat if escapes occurred.

Today's regulation does not include any requirements specifically addressing the release of non-native species. The regulation, however, includes a requirement for facilities to develop and implement BMPs to ensure the production and wastewater treatment systems are regularly inspected and maintained. Facilities are required to conduct routine inspections and perform repairs to ensure proper functioning of the structures. EPA included this requirement to promote achievement of BPT/BAT limitations on the discharge of feed bags, packaging materials, waste rope and netting at net pens, and on the discharge of solids, including fish carcasses and viscera at all facilities. This requirement, described in more detail in Section VI.D, will also aid in preventing the release of other materials, including live fish.

The final regulation also includes a requirement for facilities to report failures and damage to the structure of the aquatic animal containment system leading to a material discharge of pollutants. EPA realizes that most CAAP facilities take extensive measures to ensure structural integrity is maintained. Nonetheless, failures do occur with potentially serious consequences to the environment. The failure of the containment system can result in the release of sediment, fish and fish carcasses which, depending on the magnitude of the release, can have significant impacts on the environment. For net pen systems, failures include physical damage to the predator control nets or the nets containing the aquatic animals, which result in a discharge of the contents of the nets. Damage includes abrasion, cutting or tearing of the nets and breakdown of the netting due to rot or ultra-violet exposure. For flow-through and recirculating systems, a failure includes a collapse or damage of a rearing unit or wastewater treatment structure; damage to pipes, valves, and other plumbing fixtures; and damage or malfunction to screens or physical barriers in the system, which would prevent the unit from containing water, sediment, and the aquatic animals. In the event of a reportable failure as defined in the NPDES permit, EPA is requiring CAAP facilities to report to the permit authority orally within 24 hours of discovering a failure and to follow the oral report with a written report no later than seven days after the discovery of the failure. The oral report must include the cause of the failure and the materials that have likely been released. The written report must include a description of the cause of the failure, the time elapsed until the failure was repaired, an estimate of the types and amounts of materials released and the steps that will be taken to prevent a recurrence. Because the determination of what constitutes damage resulting in a "material" discharge varies from one facility to the next, EPA encourages permitting authorities to include more specific reporting requirements defining these terms in the permit. Such conditions might recognize variations in production system type and environmental vulnerability of the receiving waters.

Today's regulation requires record-keeping in conjunction with implementation of a feed management system. As previously explained, EPA is requiring flow-through, recirculating and net pen CAAP facilities subject to today's regulation to keep records on feed amounts and estimates of the numbers and weight of aquatic animals in order to calculate representative feed conversion ratios. The feed amounts should be measured at a frequency that enables the facility to estimate daily feed rates. The number and weight of animals contained in the rearing unit may be recorded less frequently as appropriate.

Flow-through and recirculating facilities subject to today's requirements must record the dates and brief descriptions of rearing unit cleaning, inspections, maintenance and repair. Net pen facilities must keep the same types of feeding records as described above and record the dates and brief descriptions of net changes, inspections, maintenance and repairs to the net pens.

IX. What Are the Costs and Economic Impacts Associated With This Rule?

This section discusses the costs and economic impact of the rule promulgated today.

A. Compliance Costs

The information below describes the rule's costs and how EPA determined these costs. A more detailed discussion of how EPA estimated compliance costs is included in the Technical Development Document (EPA–821–R–04–012) and the discussion of the economic impacts is included in the Economic and Environmental Benefits Analysis report (EPA–821–R–04–013). Both of these documents can be found on EPA's Web site, *www.epa.gov/ost/guide/aquaculture.*

1. How Did EPA Estimate the Costs of Compliance With the Final Rule?

EPA estimated costs associated with regulatory compliance for the options it considered to determine the economic

impact of the effluent limitations guidelines and standards on the aquaculture industry. The economic impact is a function of the estimated costs of compliance to achieve the requirements. These costs may include initial fixed and capital costs, as well as annual operating and maintenance (O&M) costs. Estimation of these costs began by identifying the practices and technologies that could be used as a basis to meet particular requirements. EPA estimated compliance costs for each facility, based on the specific configuration of the facility as provided in the detailed survey and the implementation of the practices or technologies to meet particular requirements.

EPA developed cost estimates for capital, land, annual O&M, and one-time fixed costs for the implementation of the different best management practices and treatment technologies targeted under the regulatory options. EPA developed the cost estimates from information collected from the detailed survey, site visits, sampling events, published information, vendor contacts, industry comments, and engineering judgment. EPA estimates compliance costs in 2001 dollars that it converted to 2003 dollars using the Engineering News Record construction cost index. All costs presented in this section are reported in pre-tax 2003 dollars, unless otherwise indicated.

The final regulation requires facilities to adopt various management practices to control pollutant discharges and incorporate these practices in a BMP plan. The detailed survey provided information on the use of BMPs at each surveyed facility. In its analyses, EPA estimated the costs associated with implementing various types of BMPs. As explained above, EPA has concluded that BMPs are an effective tool for controlling pollutant discharges. EPA assumed no additional costs for compliance for a facility for particular BMPs when the facility indicated that it had comparable BMPs in place, or EPA found strong evidence that such BMPs were already being implemented at the facility. For example, facilities reporting the use of drugs and pesticides that are located in Washington or Idaho were not costed for drug and pesticide BMPs because the general permits in these states require facilities to implement BMPs related to drugs and pesticides that are at least as stringent as these required by today's rule.

EPA is requiring each facility to develop a BMP plan that describes the practices and strategies it is using to comply with narrative limitations addressing solids control, including feed management, materials storage (*i.e.*, spill containment), structural maintenance, recordkeeping, and training. For net pen facilities, the BMP plan must also document provisions for complying with narrative limitations related to waste collection and disposal, minimization of discharges associated with transport or harvest, and carcass removal. EPA found that the net pen facilities responding to the detailed survey generally have operational measures in place that address these requirements.

The costs associated with BMP plan development include a one-time labor cost of 40 hours for management staff training and time to develop and write the plan. The plan that EPA costed included time for the manager to (1) identify all waste streams, wastewater structures, and wastewater and manure treatment structures at the site, (2) identify and document standard operating procedures for all BMPs used at the facility, and (3) define management and staff responsibilities for implementing the plan. EPA assumed that each employee at a facility would incur a one time cost of 4 hours for initial BMP plan review. EPA included an annual cost for four hours of management labor to maintain the plan and eight hours of management labor and 4 hours for each employee for training and an annual review of BMP performance. EPA included the cost of developing solids control, spill prevention, and structural maintenance components of the BMP plan in the estimates for all appropriate facilities. EPA also included recordkeeping and training costs as a part of annual operation and maintenance activities for the BMP components.

One part of the solids control component of the BMP plan is feed management. Based on feed and production data reported in the surveys, EPA evaluated the effectiveness of a facility's feed management programs. EPA calculated feed conversion ratios (FCRs) using pounds of feed per pound of live product. These calculated FCRs were compared for groups of facilities (*i.e.*, combinations of ownership, species and production system types such as commercial trout flow-through facilities or government salmon flow-through facilities). EPA found a wide range of FCRs (reported by facilities in their detailed surveys, which were validated by call backs to the facility) among apparently similar facilities within ownership-species-production system groupings.

For example, EPA had good data for 24 of 60 government trout producers using flow-through systems. They reported a range of FCRs of 0.79 to 1.80 with a median FCR of 1.30. If an individual facility's reported FCR was significantly greater than the median, EPA further evaluated the facility to ascertain the reason for the higher FCR. Facilities that produce larger fish, such as broodstock, might have higher FCRs because the larger fish produce less flesh per unit of food. Facilities with fluctuating water temperatures could also be less efficient than facilities with constant water temperatures. EPA assumed facilities lacking evidence of good feed management practices (based on the calculated FCR) would incur additional costs to improve or establish them. However, EPA did not apply costs for feed management BMPs for facilities with reasonable explanations for the higher FCRs because EPA assumed such facilities were already optimizing feed input or would be able to do so at reasonable cost.

EPA evaluated facilities that did not report FCRs or provide enough data for an estimate by assigning each facility a random FCR between the first and third quartiles of the FCR distribution of the group of facilities (*i.e.*, combinations of ownership, species, and production systems) where it was classified. For its analysis, EPA estimated target FCRs for each group as the 25th percentile value of the category. EPA used these target FCRs in its costing and loadings analyses, but does not intend to set any specific FCR targets at facilities (*see* DCN 62467). These facilities were assigned costs associated with feed management BMPs in the same manner as facilities with calculated FCRs.

Costs for the feed management BMP component include staff time for recordkeeping for feed delivery and daily feeding observations. Management activities associated with the feed management practices were weekly data reviews of feeding records, regular estimates of changes to feeding regimes for each group of aquatic animals, and staff consultations about feeding. For facilities that reported using drugs or pesticides, EPA evaluated costs for (1) storage containment, (2) spill prevention planning and training, and (3) reporting of INAD and extralabel drug uses. For storage containment, EPA evaluated the amount of product stored onsite and estimated containment structure costs specifically for the facility. This capital cost was for the purchase of commercially available drum storage units and pesticide cabinets that will contain spills in the event of leakage or accidental spills. EPA also estimated the costs for management to develop a spill prevention plan, which is included in the facility BMP plan, and annual staff

training at the facility (8 hours/year for managers and 4 hours/year for each employee). EPA assumed that reporting to the appropriate regulatory authority would occur 6 times per year for facilities reporting using INAD or extralabel drug uses. The reporting for each occurrence includes 20 minutes for an oral report and 1 hour for a written report. EPA considers these costing assumptions to be conservative and may overstate actual reporting frequency.

In addition, EPA estimated costs for inspections in order to maintain the structural integrity of the aquatic animal containment system. The costs include regular inspections of rearing units, solids storage units, and drug/pesticide storage units. EPA considers the aquatic animal containment system to include any physical barriers and practices used to prevent the release of materials from the containment system. For flow-through and recirculating facilities, the containment system includes wastewater treatment, for example, quiescent zones or settling basins, in addition to the rearing units and storage units. For net pens, the containment system includes the use of double nets or other techniques that may be used to deter predators. EPA also included costs for reporting of structural failure or damage to the containment system that results in a material discharge of pollutants to waters of the U.S.

For net pen systems, failures include physical damage to the predator control nets or the nets containing the aquatic animals, which result in a discharge of the contents of the nets. Damage includes abrasion, cutting or tearing of the nets and breakdown of the netting due to rot or ultra violet exposure. For flow-through and recirculating systems, a failure includes a collapse or damage of a rearing unit or wastewater treatment structure; damage to pipes, valves, and other plumbing fixtures; and damage or malfunction to screens or physical barriers in the system, which would prevent the unit from containing water, sediment, and the aquatic animals. The rule provides the permitting authorities may specify what constitutes damage and/or a material discharge on a site-specific basis for the purposes of triggering the reporting requirement. Based on available information related to containment system failures in the past, flow-through and recirculating facilities have had less incidences of failures than net pen facilities. Therefore, EPA estimated that 10 percent of the flow-through and recirculating facilities would incur a cost associated with the reporting of the failure whereas, for costing purposes, all net pen facilities were assumed to experience a failure. Again, EPA believes these assumptions are conservative and may overestimate the frequency of reportable failures.

EPA revised estimates for all labor costs using the employee and wage information supplied in the detailed surveys. For those facilities indicating they use unpaid labor for all or part of the facility operation, or that did not supply useable wage information, EPA used average State or regional wages for both staff and management labor. Separate estimates were used for commercial and non-commercial facilities.

2. What Are the Total National Costs?

Tables IX–1 and IX–2 summarize numbers of affected facilities and total annualized costs for today's final regulation. EPA estimates that a total of 242 facilities will be affected by today's final regulation. These counts include two non-profit flow-through facilities in Alaska producing 100,000 lb/year or more that did not receive a detailed questionnaire. More information is provided in the rulemaking record (DCN 63065). Table IX–1 summarizes the estimated number and type of facilities affected by the rule, based on the production threshold of 100,000 lb/year. These 242 facilities consists of 101 commercial facilities and 141 noncommercial facilities; noncommercial facilities include Federal, state, Alaskan non-profit, and Tribal hatcheries. Of the 101 commercial facilities, 32 are projected to be unprofitable prior to the final rule (*i.e.*, baseline closures) under cash flow analysis. EPA did not identify any academic/research facilities in the detailed questionnaire that produced 100,000 lbs/yr or more.

The estimated cost for this rule is $1.4 million per year (pre-tax, 2003 dollars). Noncommercial facilities account for about 81 percent of the total cost of the rule. These estimated total costs reflect aggregate compliance costs incurred by facilities that produce 100,000 lb/year or more and will be affected by today's final regulation. EPA's total cost estimates do not include costs that are incurred by the 32 commercial facilities that are considered baseline closures. To the extent that some projected baseline closures remain open and incur costs under this rule, despite analysis showing unprofitability in the baseline, national compliance costs, pollutant load reductions and potential benefits would be higher than projected.

TABLE IX–1.—ESTIMATED NUMBER OF AFFECTED FACILITIES WITH PRODUCTION 100,000 LBS/YR OR MORE

Organization	Estimated number of facilities (see note)		
	Baseline closures [1]	Not baseline closures [2]	Total
Commercial	32 (28)	69 [4] (69)	101 (97)
Noncommercial [3]	NA (NA)	141 (141)	141 (141)
Total	32 (28)	210 (210)	242 (238)

Note: Numbers in (parentheses) are facilities that are determined not to be in compliance with final rule requirements at the time this final rule is signed by the EPA Administrator.

NA: EPA does not determine closures for noncommercial facilities.

[1] Projected baseline closures are estimated using cash flow analysis. When net income analysis is assumed for earnings, the number of commercial baseline closures increases to 43. Baseline closures would not be projected to incur costs for a new rule in accordance with EPA's Guidelines for Preparing Economic Analyses (USEPA, EPA 240–R–00–003). Baseline closures (based on cash flow) are therefore not included in estimates of costs for this rule.

[2] Total costs and economic impacts for this rule are estimated using incremental compliance costs incurred by the facilities that are not baseline closures and not in compliance with the rule at time of final signature (*i.e.*, 210 facilities are expected to incur costs under this rule: 69 commercial and 141 noncommercial facilities).

[3] Noncommercial facilities include those operated by States, Tribes, the Federal Government, and Alaskan Non-Profits.

[4] Includes two facilities that are projected to be baseline closures using discounted cash flow analysis but are characterized by EPA as "Not Baseline Closures" due to unique facility-specific evidence associated with production, fish type, scale, and financial data (as outlined in DCN 20500 in the confidential record for this rule).

TABLE IX–2.—NATIONAL COSTS: TOTAL BY SUBCATEGORY

Production system	Owner	Pre-tax annualized costs ($000, 2003 dollars)
		Final option
Flow-through and Recirculating Systems	Commercial	$256
	Noncommercial[2]	$1,149
Net Pen	Commercial	$36
	Noncommercial[2]	$0
Total pre-tax[1]		$1,442

Note: Totals may not sum due to rounding.
[1] Total annual post-tax cost for the final option is $1,362.
[2] Noncommercial facilities include those operated by State, Federal, Alaska nonprofit, and Tribal facilities.

B. Economic Impacts

This section discusses the economic effects associated with the final rule.

1. How did EPA Estimate Economic Effects?

Existing Commercial Facilities. EPA uses several measures to evaluate possible impacts on existing commercial facilities. These measures examine the possibility of business closure and corresponding direct impacts on employment and communities and indirect and national impacts associated with closures. EPA also evaluates potential moderate impacts short of closure, as well as changes in financial health and borrowing capacity.

To evaluate impacts to commercial facilities, EPA conducts a closure analysis that compares projected earnings, with and without cost of compliance with the final regulation for the period 2005 to 2015. For this rule, EPA used discounted cash flow and net income to estimate earnings for closure analysis. The difference between cash flow and net income is depreciation (cash flow equals net income plus depreciation). Analysis using net income is more likely to identify baseline closures and could demonstrate additional regulatory closures associated with the rule. Table IX–3.5 presents closure results obtained using both discounted cash flow and net income. All other analytical results (for example, other measures of economic impacts, costs and benefits) presented in this final action reflect discounted cash flow as the basis for earnings. EPA also examines the effects of attributing a wage rate to unpaid labor and found that imputing costs for unpaid labor and management would not change the projected economic impacts of the rule.

Closure analysis assumes that (1) producers are unable to pass on the costs of incremental pollution control to consumer through higher prices and (2) costs and earnings are discounted assuming a 7 percent real discount rate to account for the time value of money and place earnings and costs on a comparable basis. EPA considers that the rule will result in a facility closure if a facility shows (1) positive discounted cash flow (or net income) without the rule and (2) negative discounted cash flow (or net income) with the rule for two out of three forecasting scenarios. The forecasting methods give a range of trends: (1) Optimistic or upward (USDA CPI Food at Home, Fish and Seafood Sector), (2) pessimistic or downward (weighted average, based on facility production, of USDA trout price data or U.S. Department of Labor, Bureau of Labor Statistics, Fish PPI, Producer Price Index—Unprocessed and packaged fish, not seasonally adjusted), and (3) neutral or no change (average of 1999–2001 earnings collected in the detailed questionnaire). In an effort to evaluate the effects of relying on two out of three forecasts to define closures, EPA also analyzed closures using a more conservative assumption whereby closures are defined as occurring when negative earnings are projected under only one of three forecast scenarios.

EPA does not assess potential for closure under the rule if a facility is projected to have negative earnings under baseline conditions (*i.e.*, baseline closure). Baseline closures are defined as facilities that are projected to have negative earnings under 2 or 3 of the forecasting methods before they incur pollution control costs (*i.e.*, baseline closures). EPA's standard methodology when using forecasts in closure models is to use a "weight of evidence" approach across a set of reasonable assumptions regarding future industry behavior. This allows EPA to recognize uncertainty in the forecasts without placing undue emphasis on any one set of "timing and initial conditions". Using this methodology, EPA determined that 32 out of 101 commercial facilities are baseline closures, assuming discounted cash flow for earnings. When EPA adopts net income as the basis for earnings, baseline closures are projected to be 43. When EPA projects closures based on negative earnings in one out of three forecasts, baseline closures are projected to be 34. EPA notes that this type of analysis identifies candidates for closure; information on facility-level costs and earnings may be too uncertain to allow precise prediction of which operations will actually close, in the absence of the rule.

In addition to its closure analysis, EPA also prepared additional analyses to assess potential effects, short of closure, on existing businesses, including an analysis of additional moderate impacts using a sales test, an evaluation of financial health using an approach similar to that used by USDA, and an assessment of possible impacts on borrowing capacity. Use of these measures has the advantage that they mirror analyses that investment and lending institutions perform to evaluate industries and businesses.

First, to assess whether there are additional moderate impacts to facilities, EPA uses a sales test to compare the pre-tax annualized cost of the final rule to the revenues reported for facilities that passed the baseline closure analysis. EPA considers that facilities show additional moderate impacts if they are not projected to close but incur compliance costs in excess of 5 percent of facility revenue; this threshold is consistent with threshold values established by EPA in previous regulations and is determined to be appropriate for this rulemaking.

Second, EPA calculates impacts on financial health at the company level using USDA's 2×2 matrix (*i.e.*, four-level) categorization of financial health based on a combination of net cash income and debt/asset ratios. The categories are favorable, marginal

solvency, marginal income, and vulnerable. EPA considers any change in financial health category as an impact of the rule.

Finally, EPA performs a credit test by calculating the ratio of the pre-tax annualized cost of an option and the after-tax Maximum Feasible Loan Payment (MFLP) (*i.e.*, 80 percent of after-tax cash flow). EPA identified companies with a ratio exceeding 80 percent of MFLP as being impacted by this rule (*i.e.*, the test threshold is therefore actually 64 percent of the after-tax cash flow).

For the purposes of EPA's analysis, the Agency assumes (1) no growth in production to offset incremental costs and (2) that the costs of the rule are not passed on to consumers. The facility must absorb all increased costs. If it cannot do so and remain in operation, all production is assumed lost. EPA's assumption of no cost pass through is a conservative approach to evaluating economic achievability among regulated entities. To evaluate market and trade level impacts, EPA assumes all costs are shifted onto the broader market level as a way of assessing the upper bound of potential impacts.

The Economic and Environmental Benefit Analysis, available in the rulemaking record, provides more detail on EPA's analysis (DCN 63010).

Noncommercial Facilities. For today's final rule, EPA collected information on how U.S. Fish and Wildlife Service and State agencies make decisions about operating or closing public hatcheries. EPA confirmed that public hatcheries close; the U.S. Fish and Wildlife Service hatchery system once had as many as 250 hatcheries and it now operates fewer than 90 facilities. Closures may result from funding cuts (*e.g.*, Mitchell Act Funds and the Willard National Fish Hatchery or General Funds for State Hatcheries) or revision of a program's mission and goals (*e.g.*, increase focus on endangered species versus provision of recreational services). Closures may also result from water quality impacts associated with aquaculture activities. The costs of upgrading pollution control at public hatcheries are not generally the primary reason for closure, but costs may tip the balance of a particular hatchery toward a closure decision. See the Economic and Environmental Benefits Analysis (DCN 63010) for more details.

In the absence of well defined tests for projecting public facility closures, EPA compares pre-tax annualized compliance costs to 2001 operating budgets for public facilities ("Budget Test"). For the purposes of this analysis, costs exceeding 5 percent and 10 percent are assumed to signal potential "moderate" and "adverse" impacts, respectively. EPA examines the ability of State-owned hatcheries to recoup compliance costs through increases in funding derived solely from user fees. All States and the District of Columbia have fishing license fees for residents. The license fees are not raised every year even though costs increase through inflation. Instead, when fees are raised or a fish stamp instituted, the incremental or new fee is usually a round number such as $3, $5, or $10. A $3 to $5 hike in State fishing license fees translates into an increase in fees of about 20 percent to 35 percent. Although all States report having fishing license fees, if a state hatchery reports no funding from user fee sources, EPA considers that facility to be unable to recoup increased costs through increased funding from user fees.

More detailed information is provided in the Economic and Environmental Benefit Analysis and the rulemaking record.

New Commercial Facilities. To assess effects on new businesses, EPA's analysis considers the barrier that compliance costs due to the effluent guidelines regulation may pose to entry into the industry. In general, it is less costly to incorporate waste water treatment technologies as a facility is built than it is to retrofit existing facilities. Therefore, where a rule is economically achievable for existing facilities, it will also be economically achievable for new facilities that can meet the same guidelines at lower cost. Similarly, even where the cost of compliance with a given technology is not economically achievable for an existing source, such technology may be less costly for new sources and thus have economically sustainable costs. It is possible, on the other hand, that to the extent the up-front costs of building a new facility are significantly increased as a result of the rule, prospective builders may face difficulties in raising additional capital. This could present a barrier to entry. Therefore, as part of its analysis of new source standards, EPA evaluates barriers to entry. If the requirements promulgated in the final regulation do not give existing operators a cost advantage over new source operators, then EPA assumes new source performance standards do not present a barrier to entry for new facilities.

EPA's analysis includes all commercial facilities within scope of the rule, including those that are baseline closures. EPA examines the (1) proportion of commercial facilities that incur no costs, (2) proportion of commercial facilities that incur no land or capital costs, and (3) ratio of incremental land and capital costs to total company assets. The cost to asset ratio is calculated using company data because asset data were collected only at the company level; company impacts cannot be extrapolated to the national-level because sampling weights are based on facilities, not companies. EPA calculates the ratio for each company and uses the average of the ratios. More information is provided in the Economic and Environmental Impact Analysis available in the rulemaking record.

2. What Are the Results of the Economic Analysis?

Existing Commercial Facilities. Table IX–3 shows the impacts on commercial operations from today's regulation. As shown, EPA projects no facility closures as a result of the final rule under the cash flow analysis. No closures are projected for enterprises or companies. Correspondingly, there are no employment and other direct and indirect impacts estimated for this rule as a consequence of closures using cash flow analysis and negative earnings in two of three forecast scenarios. When the closure analysis is conducted using net income as a basis for earnings, EPA projects two closures out of 58 commercial facilities (*see* Table IX–3.5). When the closure analysis is conducted using only one of three forecast scenarios, EPA also identifies two closures out of 67 commercial facilities (*see* Section IX.B.1 for discussion of forecast methods). Based on these results, EPA concludes that the final rule option is economically achievable. EPA notes that all other analytical results (for example other measures of economic impacts, costs) presented in this final action reflect discounted cash flow as the basis for earnings; EPA's analyses indicate that use of net income will not materially change results.

EPA expects some operations will incur moderate impacts, short of closure, based on an analysis that shows that some operations will incur compliance costs in excess of 5 percent of annual revenue. For the final regulation, 4 of 69 commercial facilities incur costs greater than 5 percent of sales, affecting about 5 percent of regulated facilities in the flow-through and recirculating subcategory; no additional facilities have costs exceeding 3 percent of revenues. No commercial facilities have costs that exceed 10 percent of annual revenue. EPA's analysis shows no expected change in financial health. One company fails the USDA credit test as

a result of the final regulation. These results are based on data from companies represented in the Agency's detailed questionnaire. These results further support EPA's conclusion that the final options are economically achievable for commercial facilities (and companies). More information is provided in the Economic and Environmental Benefit Analysis available in the rulemaking record (DCN 63010)

Noncommercial Facilities. Table IX–3 also shows the impacts on noncommercial operations from today's regulation. Four facilities incur costs exceeding 10 percent of budget. EPA assumes that those facilities that face costs exceeding 10 percent of their budget would be adversely affected by the final regulation. None of these facilities report the use of user fee funds. These results indicate that 3 percent of all non-commercial operations may be adversely affected by the final option. Under EPA's assumed criteria for determining economic achievability, these operations may be vulnerable to closure.

Twelve facilities incur costs exceeding 5 percent of annual budgets under the final rule. These results indicate that an additional 6 percent of all non-commercial operations (not counting those adversely affected) would experience some moderate impact, short of closure, associated under this final rule. Some of these facilities report the use of user fees revenues, implying potential flexibility in meeting the incremental costs.

No in-scope Alaskan nonprofit facilities responded to EPA's detailed questionnaire, but EPA did identify two in-scope facilities based on screener data. These facilities were costed using screener data and economic impacts were projected based on publicly available revenue data for 2001. Neither facility is projected to incur costs greater than 3 percent of revenues.

Given that the results of EPA's analysis project that a small share of regulated noncommercial facilities may incur costs exceeding 10 percent of budget, estimated at 3 percent of facilities, the Agency has determined that these final technology options to be economically achievable for noncommercial facilities. For more information, see the Economic and Environmental Benefit Analysis available in the rulemaking record.

New Commercial Facilities. EPA estimated that about 4 percent of regulated facilities do not incur any costs under the final regulation, and about 76 percent of facilities incur no land or capital costs. The incremental land and capital costs, where they were incurred, represented less than 0.2 percent of total assets. This final regulation should therefore not present barriers to entry for new businesses.

TABLE IX–3.—ECONOMIC IMPACTS: EXISTING COMMERCIAL & NONCOMMERCIAL OPERATIONS

Threshold test	Number of in-scope facilities in the Analysis [1]	Impacts projected under final option
Commercial Operations		
Closure Analysis (discounted cash flow) [2]	69	0
Sales test >3% (facility level)	69	4
Sales test >5% (facility level)	69	4
Sales test >10% (facility level)	69	0
Change in Financial Health (Company level) [3]	34	0
Credit test >80% (Company level) [3]	34	1
Noncommercial Facilities [6]		
Budget test >3% (all facilities)	141	19
State owned only (# with user fees) [5]	106	12 (8)
Federal owned only	33	7
Alaskan Non-Profit [4]	2	0
Budget test >5% (all facilities)	141	12
State owned only (# with user fees) [5]	106	8 (8)
Federal owned only	33	4
Alaskan Non-Profit [4]	2	0
Budget test >10% (all facilities)	141	4
State owned only (# with user fees) [5]	106	0 (0)
Federal owned only	33	4
Alaskan Non-Profit [4]	2	0

Source: Estimated by USEPA using results from facility-specific detailed questionnaire responses, see Chapter 3.

[1] There are 101 in-scope commercial facilities, represented by 34 unweighted companies. Of the 101 facilities, 32 are baseline closures, assuming cash flow analysis, leaving 69 commercial facilities that can be analyzed. Closure analysis and sales test are performed at facility level; financial health and credit tests performed at company level; and all noncommercial tests performed at facility level.

[2] Closure analysis results obtained using discounted cash flow and closure defined as negative earnings in two of three forecast scenarios. *See* Table IX–3.5 for results under different assumptions.

[3] Analysis performed at the company level. The statistical weights, however, are developed on the basis of facility characteristics and therefore cannot be used for estimating the number of companies.

[4] Two Alaska non-profit organizations are within the scope of this rule, but did not receive a detailed survey. They were costed using screener survey data. Economic impacts were calculated using publically available information.

[5] Some State-owned facilities reported that they relied, in part, on funds from State user fee operations. These numbers are reported in parenthesis and are included in the overall numbers as well.

[6] There is a potential for a small number of Tribal facilities to be present within the population of non-commercial facilities, despite the absence of a line item for Tribal facilities above. In its screener survey which was a census of the industry, EPA identified a number of Tribal facilities that might be subject to the proposed rule for the CAAP category (DCN 51401). However, all of the tribal facilities represented by the detailed survey were determined to not be in scope.

Because the detailed survey is a sample, there is uncertainty associated with the conclusion that there are no tribal facilities in scope for the final rule. For this reason, EPA believes there may be a few in-scope tribal facilities that have not been analyzed. As part of the analyses conducted prior to the NODA, based on the screener data, EPA estimated impacts for tribal facilities producing between 20,000 and 100,000 pounds per year for Option B (more costly than the final option). These results are for facilities that are not within the scope of the final rule, but they provide evidence that the final rule is expected to be economically achievable for tribal facilities.

TABLE IX–3.5.—CLOSURE ANALYSIS FOR COMMERCIAL FACILITIES UNDER DIFFERENT ASSUMPTIONS

	Number of in-scope facilities in the analysis [1]	Closures projected under final option
Closure Analysis (discounted cash flow) [2]	69	0
Closure Analysis (Net Income) [2]	58	2
Closure Analysis (one out of three forecasts) [3]	67	2

[1] There are 32, 43, and 34 baseline closures projected under discounted cash flow, net income and one out of three forecasts respectively. Baseline closures are not analyzed for regulatory closure and therefore subtracted from the 101 in-scope facilities.

[2] Discounted cash flow and net income are two different assumptions used to estimate earnings under closure analysis (*see* Section IX.B.1 for details). Closures defined as occurring when negative earnings are projected under at least two of three forecast methods.

[3] Analysis assumes earnings estimated using cash flow and closure defined, more conservatively, as occurring when negative earnings are projected under only one of three forecast methods.

3. What Are the Projected Market Level Impacts?

EPA was not able to prepare a market model analysis for this rule because of the complex interaction between commercial and non-commercial operations (*e.g.*, trout are raised commercially, but also for restoration and recreation), wild catch accounts for a large share of the market for some species, and USDA Census data indicate that there is a high degree of concentration of specific species, such as trout and some other food fish. Literature on estimated measures of elasticity of supply and demand is limited and exist for only a few species, such as catfish which are not covered by this regulation. The Agency does therefore not report quantitative estimates of changes in overall supply and demand for aquaculture products and changes in market prices. For more information, *see* Chapter 3.6 of the Economic and Environmental Benefit Analysis for the proposed rulemaking available in the docket (DCN 63010). However, EPA does not expect significant market impacts as a result of today's final rule because economic impacts are expected to be low (*see* discussion above) and the overall cost of the rule is low, as compared to the total value of the U.S. aquaculture industry. Long-term shifts in supply associated with this rule are unlikely given expected continued competition from domestic wild harvesters and low-cost foreign suppliers. For additional information, see the Economic and Environmental Impact Analysis available in the rulemaking record.

4. What Are the Potential Impacts on Foreign Trade?

Foreign trade impacts are difficult to predict, since agricultural exports are determined by economic conditions in foreign markets and changes in the international exchange rate for the U.S. dollar. In addition, for today's final rule, EPA was not able to perform a market model analysis for this rule and did not obtain quantitative estimates of changes in overall supply and demand for aquaculture products and changes in market prices, as well as changes in traded volumes including imports and exports.

Nevertheless, EPA believes that the impact of this final rule on U.S. aquaculture trade will not be significant. Because of the relatively small market share of U.S. aquaculture producers in world markets, EPA believes that long-term shifts in supply associated with this rule are unlikely given expected continued competition from domestic wild harvesters and already lower-cost foreign suppliers in China and other Asian nations. Under a scenario that assumes the total costs of the rule are absorbed by the domestic market, EPA estimates that U.S. aquaculture prices would rise by slightly more than 1 cent per pound. Under the alternative assumption that all costs are born by facility operators, impacts are projected to be small and would not significantly affect production (*see* Section IX.B.2).

5. What Are the Potential Impacts on Communities?

The communities where aquaculture facilities are located may be affected by the final regulation if facilities cut back operations. However, EPA projects no commercial facility closures as a result of this rule, assuming discounted cash flow (two closures are projected using net income as shown in Table IX–3.5), indicating minimal likelihood of measurable impacts on (1) direct losses in commercial production, revenue, or employment; and (2) local economies and employment rates. Should some facilities cut back operations as a result of this final regulation, EPA cannot project how great these impacts would be as it cannot identify the communities where impacts might occur. Under a scenario that assumes the total costs of the rule are absorbed by the domestic market, EPA estimates that U.S. aquaculture prices would rise by slightly more than 1 cent per pound. (See EPA's Economic and Environmental Benefit Analysis.)

Closures of non-commercial facilities could also result in employment impacts on communities. EPA projects four noncommercial facilities, with a total employment of 16 employees could experience impacts such that they would be vulnerable to closure (*i.e.*, costs exceed 10 percent of annual budget). The communities in which these facilities are located could experience moderate impacts, but, as noted in Section IX.B.2, environmental compliance costs are generally a contributing rather than the deciding factor in closure decisions. EPA therefore does not expect significant impacts on communities as a result of today's final rule.

C. What Do the Cost-Reasonableness Analyses Show?

EPA performed an assessment of the total cost of the final rule relative to the expected effluent reductions. EPA based its "cost reasonableness" (CR) analysis on estimated costs, loadings, and

removals. See EPA's Development Document in the rulemaking record for additional details.

Table IX.4 shows the cost-reasonableness values for conventional pollutants. EPA estimates BOD and TSS removals for each facility for each option. Because BOD can be correlated with TSS, EPA selected the higher of the two values (not the sum) to avoid possible double-counting of removals. For the Flow-through and Recirculating Systems Subcategory, cost-reasonableness is $2.77/lb. Cost-reasonableness is undefined for the Net Pen Subcategory systems because these facilities have adequate treatment to achieve requirements for pollutants (*i.e.*, no incremental removals are estimated for these facilities).

TABLE IX–4.—COST-REASONABLENESS: BOD OR TSS

Subcategory	Pre-tax annualized costs ($2003)	BOD or TSS removals (lb) [1]	Cost-reasonableness ($2003/pound)
Flow-through and Recirculating Systems	$1,405,866	506,839	$2.77
Net pen	$35,640	0	Undefined

[1] EPA determines the higher of BOD or TSS mass removal for each facility and then aggregates pounds across facilities.
Undefined: Facilities in this group are not projected to achieve incremental removals of the pollutants in this table (*i.e.*, no incremental removals are estimated).

X. What Are the Environmental Benefits for This Rule?

A. Summary of Environmental Benefits

Today's final action does not establish numeric limits for total suspended solids (TSS) or other pollutants from flow-through and recirculating systems. It establishes BMPs for solids control, materials storage, structural maintenance, recordkeeping, and training. The final rule also requires the permitteé to develop a BMP plan on-site describing how the permittee will achieve the BMP requirements and make the plan available to the permitting authority upon request. The facilities are also to maintain the structural integrity of the aquatic animal containment system. The final rule also establishes BMP requirements for net pen systems that address feed management, waste collection and disposal, discharges associated with transport and harvest, carcass removal, materials storage, structural maintenance, recordkeeping, and training. Net pen facilities are to develop and maintain a BMP plan on-site describing how the permittee is to achieve the BMP requirements. The permittee must make the plan available to the permitting authority upon request. Both the flow-through and recirculating and net pen subcategories have reporting requirements for (1) the use of INADs and extralabel drugs use, (2) failure or damage to the structural integrity of the aquatic animal containment system, and (3) spills of drugs, pesticides and feed which result in discharge of pollutants to waters of the U.S. The requirements, according to EPA loadings estimates, will reduce facility discharges of TSS, total nitrogen (TN), total phosphorus (TP), and biochemical oxygen demand (BOD). EPA has also estimated reductions for metals and some feed contaminants as a result of these final requirements. EPA could not quantify baseline or regulated loads for drugs and pesticides.

These requirements and loading reductions (TSS, TN, TP, BOD, metals, and feed contaminants) could affect water quality, the uses supported by varying levels of water quality, and other aquatic environmental variables (*e.g.*, primary production and populations or assemblages of native organisms in the receiving waters of regulated facilities). These impacts may result in environmental benefits, some of which have quantifiable, monetizable value to society. For today's final action, EPA has only monetized benefits from water quality improvements resulting from reductions in TSS, TN, TP, and BOD.

TABLE 1.—SUMMARY OF ENVIRONMENTAL BENEFITS OF FINAL RULE

Type of benefit	Monetized value ($2003)
Improved water quality from reduced TSS, TN, TP, and BOD loadings due to improved solids control, including feed management	$66,000–$99,000
Reduced inputs to receiving water of metals and feed contaminants	not monetized
Reduced inputs of drugs and pesticides	not monetized
Reduced inputs of materials as a result of structural maintenance and material storage requirements	not monetized

B. Non-Monetized Benefits

1. Metals and Other Additives and Contaminants

CAAP facilities may release metals and other feed additives and contaminants to the environment in limited quantities; proper management of solids and other management practices may reduce environmental risk from these releases. Trace amounts of metals are added to feed in the form of mineral packs to ensure that the essential dietary nutrients are provided. In general, FDA establishes safety limits for feed additives and must address environmental safety concerns associated with such additives under the requirements of the Federal Food, Drug, and Cosmetic Act (FFD&CA) and National Environmental Policy Act (NEPA). Trace amounts of metals may also be present as feed contaminants. Metals may also be introduced into the environment from CAAP machinery, equipment, and structures (*e.g.*, net pens treated with antifouling copper compounds). Other feed additives may include FDA-approved compounds used to improve the coloring of fish flesh. Organochlorine contaminants such as polychlorinated biphenyls (PCBs) also may be present as trace residues regulated by FDA in some fish feeds.

EPA estimates that today's final rule will reduce total suspended solids (TSS) released by CAAP facilities by about half a million pounds per year. Metals and other feed contaminants that may be released to the environment from CAAP facilities are in large part associated with waste solids. EPA estimates that reductions in TSS will be accompanied by incidental removals of metals and PCBs. EPA estimated metal reductions of approximately 2,700 pounds per year nationally and a maximum of PCB reductions of 0.04 lbs

per year. For further discussion of metals and other feed additives and contaminants, see the Economic and Environmental Impact Analysis and Technical Development Document for this final rule (DCNs 63010 and 63009).

2. Drugs and Pesticides

CAAP facilities employ drugs and pesticides for a variety of therapeutic and water treatment purposes. Facilities release treated waters that may contain residual amounts of drugs, pesticides, and their byproducts directly to the environment. Drugs used for therapeutic purposes are regulated by FDA. Prior to approving drugs for use, FDA must evaluate the environmental safety of animal drugs as required by FFDCA and NEPA. While FDA is required to consider environmental impacts of approved and investigational drugs under these authorities, the environmental safety of drugs used under FDA's "investigational new animal drug" (INAD) program may not be fully characterized. The INAD program is an important mechanism that enables the collection of data that can be used to characterize and establish the environmental safety of new drugs. For compilations of technical literature supporting FDA's environmental assessments of therapeutants used at CAAP facilities, see the FDA's Center for Veterinary Medicine (CVM) Web site (*www.fda.gov/cvm*). It should be noted that FDA environmental assessments are not site-specific and may not cover all discharge scenarios (*e.g.*, multiple dischargers to a single receiving water) or applications (*e.g.*, extralabel applications of drugs). For additional discussion of this topic, see Chapter 7 of EPA's Environmental Impact Analysis for this final rule.

Today's final rule requires the proper storage of drugs, pesticides, and feed to prevent spills that may result in a discharge from CAAP facilities. For reasons explained in Section VI.G (Loadings) of this Preamble, EPA has not quantified expected reductions in the release of drugs and pesticides to the environment nor environmental benefits that might result. Today's final rule also requires CAAP facilities to report to permitting authorities whenever an investigative drug or an extralabel drug is used in amounts exceeding a previously approved dosage, as described above in Section VIII.E. This requirement is expected to better enable permitting authorities to monitor the potential for environmental risks that could result from such uses. EPA has not quantified benefits that might arise as a result of this requirement.

C. Monetized Benefits

1. Case Study Framework

As was done for EPA's proposed rule, EPA estimated monetized benefits of the regulation based on predicted improvements in water quality in the receiving waters of facilities that were expected to have load reductions as a result of the rule. EPA's water quality modeling for today's final action differs from the proposal modeling, however, in that for the final rule, more detailed, facility-specific operational and environmental data were obtained, both from information provided by facilities on the detailed surveys as well as other sources. This more detailed data provided EPA with a better basis for developing representative case studies on which to perform water quality modeling and valuation and for extrapolating from case studies to a national benefit estimate.

To select a set of representative case studies from among the facilities for which EPA had detailed data, EPA assumed that three factors primarily drive water quality improvements at any given facility: (1) The magnitude of pollutant load reductions under the final rule, (2) effluent pollutant concentrations at baseline (prior to regulatory reductions), and (3) the ratio of facility effluent flow to receiving water streamflow ("dilution ratio"). EPA then created categories based on combinations of values (low and high) for each of these factors. For example, the "LLL" category means facilities with "low" pollutant reductions under the final rule, "low" baseline effluent concentrations, and "low" dilution ratios; this category is expected to experience the smallest benefits of the final regulation. In this manner, eight categories were created (LLL, LLH, LHL, LHH, HLL, HLH, HHL, HHH; *see* Table 2). EPA then assigned all detailed survey facilities with non-zero load reductions in the scope of the final rule to an appropriate category based on the three factors described above. For more details on the categorization procedure, *see* Chapter 8 of the Economic and Environmental Impact Analysis for today's final action [DCN 63010].

EPA then developed a "case study" for one facility in each of the five categories expected to experience the greatest water quality improvement (EPA did not develop case studies for all categories partly because of resource constraints). EPA multiplied the estimated benefits for each case study by the total number of facilities assigned to that category to estimate a total national benefit for that category. No benefits were estimated for the three categories for which case studies were not developed. Benefits for these categories are expected to be small relative to those included in the analysis. The total national benefit estimate was estimated as the sum of benefits for all categories.

2. Economic Valuation Method

Economic research indicates that the public is willing to pay for improvements in water quality and several methods have been developed to translate changes in water quality to monetized values, as noted in EPA's "Guidelines for Preparing Economic Analyses (EPA–240–R–00–003, 2003;). At proposal, EPA based the water quality benefits monetization on results from a stated-preference survey conducted by Carson and Mitchell (1993) (DCN 20157). We divided household willingness-to-pay (WTP) values for changes in recreational water "use classes" by the number of "water quality index" points (an index based on water quality variables; see below) in each use class. We assigned a portion of the value for each unit change to achieving the whole step. Recently, EPA developed an alternative approach, also based on Mitchell and Carson's work. Mitchell and Carson also expressed their results as an equation relating a household's WTP for improved water quality to the change in the water quality index and household income. An important feature of this approach is that it is less sensitive to the baseline use of the water body. This approach is also consistent with economic theory in that it exhibits a declining marginal WTP for water quality (see more information on this approach in DCNS 40138 and 40595). While caution must be used in manipulating valuations derived from stated preference surveys, this valuation function approach helps address some concerns about earlier applications of the water quality benefits monetization method. (*See* DCN 40595 for a more detailed discussion).

3. Water Quality Modeling

As was done for the proposed rule, EPA applied the Enhanced Stream Water Quality Model (QUAL2E, *http://www.epa.gov/waterscience/wqm/*) to simulate changes in receiving water quality resulting from reductions in TSS, BOD, total nitrogen, and total phosphorus estimated by EPA to result from the regulatory requirements of this final rule. 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 model projects water

quality by solving an advective-dispersive mass transport equation. Water quality constituents simulated include conservative substances, temperature, bacteria, BOD_5, DO, ammonia, nitrate and organic nitrogen, phosphate and organic phosphorus, and algae.

Resource and data limitations constrained the number of QUAL2E applications that could be performed. EPA developed a QUAL2E case study for the following categories: LHL, LHH, HLH, HHL, and HHH. EPA did not prepare case studies for the LLL, LLH, and HLL categories because (a) no facilities were in the HLL category and (b) EPA focused modeling resources on categories expected to represent a larger proportion of benefits. Water quality improvements for facilities in the LLL and LLH categories were expected to be smaller than the improvements for the facilities in the other categories.

4. Calculation of "Water Quality Index"

Simulated water quality changes for each case study must be translated into a composite "index" value for the monetization method described in Section X.B.2 above. EPA more recently developed a six-parameter WQI ("WQI–6") based on TSS, BOD, DO, FC, plus nitrate (NO_3) and phosphate (PO_4). The new index more completely reflects the type of water quality changes that will result from loading reductions for TSS, total nitrogen (TN), total phosphorus (TP), and BOD. Final rule benefits presented here were estimated on the basis of WQI–6.

5. Estimated National Water Quality Benefits

EPA monetized water quality benefits for each of the 5 QUAL2E case studies performed (Table 2). Using the methods described above, the Agency estimates that the total national benefit from water quality improvements arising from TSS, BOD, TN, and TP reductions from this rule are $66,000—$99,000. This range reflects varying assumptions that the Agency implemented to reflect some sources of uncertainty. Furthermore, this range of water quality-based benefits of this regulation may be uncertain for several reasons including:

- EPA did not estimate benefits for the facilities in the LLL and LLH extrapolation categories. However, it is not expected that inclusion of these facilities would greatly increase monetized water quality benefits.
- EPA's monetization method mainly captures benefits for recreational uses of the streams. Economic research indicates that there are significant "non-use" values associated with some dimensions of water quality. Analysis using monetization methods that fully captures non-use values could increase the estimated benefits for this rule if it significantly affects these dimensions. EPA does not have enough information to determine if this is the case.
- Other receiving water impacts are not captured in the QUAL2E modeling, such as build-up of organic sediments in stream channels. Research included in the administrative record for today's final action documents that such accumulations can impair aquatic ecosystems. Benefits from reducing these effects are not captured in EPA's analysis of water quality-based benefits of today's final action.

TABLE 2.—EXTRAPOLATED TOTAL NATIONAL WATER QUALITY BENEFIT ESTIMATE, FINAL OPTION

A Extrapolation category	B Total national benefit for extrapolation category ($2003)
LLL–LLH	not estimated
LHL–LHH	$2,126–$5,330
HLL–HLH	$6,591–$12,031
HHL–HHH	$57,497–$81,255
Total	$66,214–$98,616

In general, however, the relatively small recreational benefits projected for the rule suggest that non-monetized benefits categories are likely to be small as well.

XI. What Are the Non-Water Quality Environmental Impacts of This Rule?

Under Sections 304(b) and 306 of the Clean Water Act, EPA may consider non-water quality environmental impacts (including energy requirements) when developing effluent limitations guidelines and standards. Accordingly, EPA has considered the potential impact of today's final regulation on air emissions, energy consumption, and solid waste generation.

A. Air Emissions

With the implementation of feed management, the final rule decreases the amount of solid waste generated and land applied from CAAP facilities. Land application is a common waste disposal method in the CAAP industry; therefore, the amount of ammonia released as air emissions would be expected to decrease as the quantity of waste applied to cropland decreases. EPA estimates the decrease in ammonia emissions to be 8,182 pounds of ammonia per year. This is a decrease of about 8 % over the ammonia emissions presently estimated for the industry. For additional details about air emissions from CAAP facilities, see Chapter 11 of the TDD.

B. Energy Consumption

EPA estimates that implementation of today's rule would result in a net decrease in energy consumption for aquaculture facilities. The decrease would be based on electricity used today to pump solids from raceways to solids settling ponds, which will no longer be generated, from wastewater treatment equipment. EPA determined that the decrease in energy consumption for flow-through and recirculating systems is estimated at 4,900 kilowatt-hour (kW-h). This represents about 1.3×10^{-7} percent of the national generated energy.

C. Solid Waste Generation

EPA estimates that implementation of today's rule would result in an estimated reduction of 2.3 million pounds of sludge, on a wet basis (assuming 12 percent solids) for flow-through and recirculating facilities. This reduction is due to feed management that results in less solid waste generated.

XII. How Will This Rule Be Implemented?

This section helps permit writers and CAAP facilities implement this regulation. This section also discusses the relationship of upset and bypass provisions, variances, and modifications to the final limitations and standards. For additional implementation information, see Chapter 2 of the Technical Development Document for today's rule.

A. Implementation of Limitations and Standards for Direct Dischargers

Effluent limitations guidelines and new source performance standards act as important mechanisms to control the discharges of pollutants to waters of the United States. These limitations and standards are applied to individual facilities through NPDES permits issued by the EPA or authorized States under Section 402 of the Act.

In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, where State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits or standards on covered pollutants in order to attain and maintain water quality standards), the

permitting authority must apply those limitations or standards. See CWA Section 301(b)(1)(C).

The final regulation establishing narrative limitations for the flow-through and recirculating system and net pen subcategories requires that a point source must meet the prescribed limitations expressed as operational practices or "any modification to these requirements as determined by the permitting authority based on its exercise of its best professional judgment." Sections 451.11 and 451.21. This provision authorizes the permitting authority to tailor the specific NPDES permit limits that implement the guideline limitations to individual sites. As previously explained, the final narrative requirements, in many cases, require achievement of environmental end points. There may be circumstances which require some modification to these requirements to best accomplish these environmental end points, or to accommodate specific circumstances at a particular site. The provision allows the permitting authority to address such situations by incorporating in the NPDES permit specific tailored conditions that accomplish the intent of the narrative limitations. The CWA recognizes that it should provide mechanisms for addressing certain unique, site-specific situations in the guidelines regulation. Here, EPA has provided upfront in this rule such a mechanism.

1. What Are the Compliance Dates for Existing and New Sources?

New and reissued NPDES permits to direct dischargers must include these effluent limitations unless water quality considerations require more stringent limits, and the permits must require immediate compliance with such limitations. If the permitting authority wishes to provide a compliance schedule, it must do so through an enforcement mechanism.

New sources must comply with the new source standards (NSPS) of this rule when they commence discharging CAAP wastewater. Because the final rule was not promulgated within 120 days of the proposed rule, the Agency considers a discharger to be a new source if its construction commences after September 22, 2004.

2. Who Does Part 451 Apply To?

In Section VI.A. of this preamble and Chapter 2 of the TDD, EPA provides detailed information on the applicability of this rule. 40 CFR part 451 will apply to existing and new concentrated aquatic animal production facilities that produce 100,000 pounds or more of aquatic animals per year in flow-through, recirculating, and net pen systems. There is an exception for net pen systems rearing native species released after a growing period of no longer than 4 months to supplement commercial and sport fisheries.

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

While the CWA requires application of effluent limitations established pursuant to section 301 to all direct dischargers, the statute also provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency established administrative mechanisms to provide an opportunity for relief from the application of the national effluent limitations guidelines for categories of existing sources for toxic, conventional, and nonconventional pollutants.

1. Fundamentally Different Factors Variances

EPA will 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 BPT effluent limitations, BAT limitations for toxic and nonconventional pollutants and BCT limitations for conventional pollutants for direct dischargers. 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.

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. 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.

Facilities must submit all FDF variance applications to the appropriate Director (defined at 40 CFR 122.2) no later than 180 days from the date the limitations or standards are established or revised (see CWA section 301(n)(2) and 40 CFR 122.21(m)(1)(i)(B)(2)). EPA regulations clarify that effluent limitations guidelines are "established" or "revised" on the date those effluent limitations guidelines are published in the **Federal Register** (see 40 CFR 122.21 (m)(1)(i)(B)(2)). Therefore, all facilities requesting FDF variances from the effluent limitations guidelines in today's final rule must submit FDF variance applications to their Director (as defined at 40 CFR 122.2) no later than February 21, 2005.

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.

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.

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. NRCS does not at present have standards that apply specifically to waste handling at aquaculture facilities, thus EQIP funds for aquaculture projects would only apply to practices related to other agricultural aspects of a facility such as CNMPs for the land application of solids.

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51,735 (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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq*. The information collection requirements are not enforceable until OMB approves them.

EPA has several special reporting and monitoring provisions in this regulation as previously explained. The provisions include reporting requirements (1) for the use of INAD or extralabel drug uses; (2) for failure or damage to the containment system (including the production system(s) and all the associated storage and water treatment systems) that results in a material discharge of pollutants to waters of the U.S; and (3) for spills of drugs, pesticides or feed. Section 308(a) of the CWA authorizes the Administrator to require the owner or operator of any point source to file reports as required to carry out the objectives of the Act. This ELG requires reporting in the event that drugs are used which are either under a conditional approval as an Investigative New Animal Drugs (INADs) or are prescribed by a licensed veterinarian for treatment of a disease or a species that is outside the approved use of the specific drug, referred to as extralabel drug use, unless the INAD or extralabel drug use is under similar conditions and dosages as a previously approved use. EPA believes this reporting requirement is appropriate for these classes of drugs, because they have not undergone the same degree of review with respect to their environmental effects as approved drugs. The final regulation also requires reporting when the facility has a failure in the structural integrity of the aquatic animal containment systems that results in a material discharge of pollutants. EPA believes this reporting is necessary

to alert the permitting authority to the release of large quantities of material from these facilities. The rule also allows the permitting authority to specify in the permit what constitutes damage and/or material discharge of pollutants for particular facilities based on consideration of relevant site-specific factors.

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; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. EPA estimates that the reporting and recordkeeping requirements included in today's regulation will result in a total annual burden of 45,000 hours and cost $808,000.

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 in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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 is primarily engaged in concentrated aquatic animal production, as defined by North American Industry Classification (NAIC) codes 112511 and 112519, with 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 impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by the final rule are primarily commercial businesses that fall within the NAIC codes for finfish farming, fish hatcheries, and other aquaculture. The Small Business Administration size standard for these codes is $0.75 million in annual revenues. Among the costed facilities, EPA identified 38 facilities belonging to small businesses or organizations. Of the 38, 37 facilities are owned by small businesses and 1 is an Alaskan facility operated by a small non-profit organization that is not dominant in its field. For the purposes of the RFA, Federal, and State governments are not considered small governmental jurisdictions, as documented in the rulemaking record (DCN 20121). Thus, facilities owned by these governments are not considered small entities, regardless of their production levels. EPA identified no public facilities owned by small local governments. No small organization is projected to incur impacts. Of the 101 commercial facilities, 37 (37 percent) are owned by small businesses. Under EPA's closure analyses no small business is projected to close as a result of the final rule, assuming discounted cash flow (two small business closures are projected using net income). In addition to considering the potential for adverse economic impacts, EPA also evaluated the possibility of other, more moderate financial impacts. Expressed as a comparison of compliance costs to sales, only 4 facilities belonging to small businesses (11 percent of small businesses, and 4 percent of commercial facilities) are likely to incur costs that exceed 3 percent of sales. One small business fails the USDA credit test.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless designed the rule to reduce the impact on small entities. The scope of the final rule is restricted to CAAP facilities that produce 100,000 lbs/year or more. This means that of the approximately 4,000 aquaculture facilities nationwide, as identified by USDA's Census of Aquaculture, EPA's final regulation applies to an estimated 101 commercial facilities or approximately 2.6 percent of all operations. Among commercial facilities, EPA identifies 38 facilities (37 percent of in-scope facilities) as small businesses using SBA's definition. Finally, EPA based the final rule on a technology option that has lower costs and fewer impacts (including impacts on small businesses) than several other technology options that were considered as possible bases for the final rule.

EPA conducted outreach to small entities and convened a Small Business Advocacy Review Panel prior to proposal 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, 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. On February 6, 2002, the 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's Report (DCN 31019) for a complete discussion of SER comments. The Panel evaluated the assembled materials and small-entity comments on issues related to the elements of an Initial Regulatory Flexibility Analysis. A copy of the Panel's report is included in the rulemaking docket. EPA provided responses to the Panel's most significant findings in the Notice of Proposal Rulemaking (67 FR 57918–57920). In general, the requirements of this final rule address the concerns raised by SERs and are consistent with the Panel's recommendations.

D. 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 does 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 $1.4 million. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of UMRA.

E. 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 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 significant 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on this distribution of power and responsibilities between the Federal government and Indian tribes."

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The Executive Order provides that EPA must ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. EPA's rulemaking process has provided that opportunity for meaningful and timely input. EPA first published a notice of proposed rulemaking for CAAPs in September 2002, requesting comment on the proposal. In December 2003, EPA issued a Notice of Data Availability describing options for changes to the proposed rule. As noted, EPA identified a number of tribal facilities in its screener survey, however further evaluation did not identify any in-scope tribal facilities based on subsequent evaluation of the detailed survey information from a sample of these facilities. Thus EPA has not had a basis to have any formal consultation with Tribal officials. EPA has however concluded that the final rule will not have a substantial direct effect on one or more Indian Tribes, will not impose substantial direct compliance costs on Indian tribal governments, nor pre-empt tribal law.

G. Executive Order 13045: Protection of Children From Environmental Health 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 rule is not subject to Executive Order 13045 because it is not an economically significant rule under E.O. 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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 requirements. The rule will result in a net decrease in energy consumption for flow-through and recirculating systems. The decrease would be based on electricity used today to pump solids from raceways to solids settling ponds, which will no longer be generated, from wastewater treatment equipment. EPA estimated the decrease in energy consumption for

flow-through and recirculating systems at 4,900 kilowatt-hour (kW-h). Comparing the annual decrease in electric use resulting from the final requirements to national annual energy use, EPA estimates the decrease to be 1.3×10^{-7} percent of national energy use. Therefore, we conclude that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards, thus NTTAA does not apply to this rule.

J. 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 final 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 today's final rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 22, 2004.

List of Subjects in 40 CFR Part 451

Environmental protection, Concentrated aquatic animal production, Waste treatment and disposal, Water pollution control.

Dated: June 30, 2004.

Stephen L. Johnson,

Acting Deputy Administrator.

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended by adding part 451 to read as follows:

PART 451—CONCENTRATED AQUATIC ANIMAL PRODUCTION POINT SOURCE CATEGORY

Sec.

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., 973.

§ 451.1 General applicability.

As defined more specifically in each subpart, this Part applies to discharges from concentrated aquatic animal production facilities as defined at 40 CFR 122.24 and Appendix C of 40 CFR Part 122. This Part applies to the discharges of pollutants from facilities that produce 100,000 pounds or more of aquatic animals per year in a flow-through, recirculating, net pen or submerged cage system.

§ 451.2 General definitions.

As used in this part:

(a) The general definitions and abbreviations in 40 CFR part 401 apply.

(b) *Approved dosage* means the dose of a drug that has been found to be safe and effective under the conditions of a new animal drug application.

(c) *Aquatic animal containment system* means a culture or rearing unit such as a raceway, pond, tank, net or other structure used to contain, hold or produce aquatic animals. The containment system includes structures designed to hold sediments and other materials that are part of a wastewater treatment system.

(d) *Concentrated aquatic animal production facility* is defined at 40 CFR 122.24 and Appendix C of 40 CFR Part 122.

(e) *Drug* means any substance defined as a drug in section 201(g)(1) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

(f) *Extralabel drug use* means a drug approved under the Federal Food, Drug and Cosmetic Act that is not used in accordance with the approved label directions, see 21 CFR part 530.

(g) *Flow-through system* means a system designed to provide a continuous water flow to waters of the United States through chambers used to produce aquatic animals. Flow-through systems typically use rearing units that are either raceways or tank systems.

Rearing units referred to as raceways are typically long, rectangular chambers at or below grade, constructed of earth, concrete, plastic, or metal to which water is supplied by nearby rivers or springs. Rearing units comprised of tank systems use circular or rectangular tanks and are similarly supplied with water to raise aquatic animals. The term does not include net pens.

(h) *Investigational new animal drug (INAD)* means a drug for which there is a valid exemption in effect under section 512(j) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360b(j), to conduct experiments.

(i) *New animal drug application* is defined in 512(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360b(b)(1)).

(j) *Net pen system* means a stationary, suspended or floating system of nets, screens, or cages in open 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 submerged cages rely on tides and currents to provide a continual supply of high-quality water to the animals in production.

(k) *Permitting authority* means EPA or the State 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.

(l) *Pesticide* means any substance defined as a "pesticide" in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)).

(m) *Real-time feed monitoring* means a system designed to track the rate of feed consumption and to detect uneaten feed passing through the nets at a net pen facility. These systems may rely on a combination of visual observation and hardware, including, but not limited to, devices such as video cameras, digital scanning sonar, or upweller systems that allow facilities to determine when to cease feeding the aquatic animals. Visual observation alone from above the pens does not constitute real-time monitoring.

(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.

§ 451.3 General reporting requirements.

(a) *Drugs.* Except as noted below, a permittee subject to this Part must notify the permitting authority of the use in a concentrated aquatic animal production facility subject to this Part of any investigational new animal drug (INAD) or any extralabel drug use where such a use may lead to a discharge of the drug to waters of the U.S. Reporting is not required for an INAD or extralabel drug use that has been previously approved by FDA for a different species or disease if the INAD or extralabel use is at or below the approved dosage and involves similar conditions of use.

(1) The permittee must provide a written report to the permitting authority of an INAD's impending use within 7 days of agreeing or signing up to participate in an INAD study. The written report must identify the INAD to be used, method of use, the dosage, and the disease or condition the INAD is intended to treat.

(2) For INADs and extralabel drug uses, the permittee must provide an oral report to the permitting authority as soon as possible, preferably in advance of use, but no later than 7 days after initiating use of that drug. The oral report must identify the drugs used, method of application, and the reason for using that drug.

(3) For INADs and extralabel drug uses, the permittee must provide a written report to the permitting authority within 30 days after initiating use of that drug. The written report must identify the drug used and include: the reason for treatment, date(s) and time(s) of the addition (including duration), method of application; and the amount added.

(b) Failure in, or damage to, the structure of an aquatic animal containment system resulting in an unanticipated material discharge of pollutants to waters of the U.S. In accordance with the following procedures, any permittee subject to this Part must notify the permitting authority when there is a reportable failure.

(1) The permitting authority may specify in the permit what constitutes reportable damage and/or a material discharge of pollutants, based on a consideration of production system type, sensitivity of the receiving waters and other relevant factors.

(2) The permittee must provide an oral report within 24 hours of discovery of any reportable failure or damage that results in a material discharge of pollutants, describing the cause of the failure or damage in the containment system and identifying materials that have been released to the environment as a result of this failure.

(3) The permittee must provide a written report within 7 days of discovery of the failure or damage documenting the cause, the estimated time elapsed until the failure or damage was repaired, an estimate of the material released as a result of the failure or damage, and steps being taken to prevent a reccurrence.

(c) In the event a spill of drugs, pesticides or feed occurs that results in a discharge to waters of the U.S., the permittee must provide an oral report of the spill to the permitting authority within 24 hours of its occurrence and a written report within 7 days. The report shall include the identity and quantity of the material spilled.

(d) *Best management practices (BMP) plan.* The permittee subject to this Part must:

(1) Develop and maintain a plan on site describing how the permittee will achieve the requirements of § 451.11(a) through (e) or § 451.21(a) through (h), as applicable.

(2) Make the plan available to the permitting authority upon request.

(3) The permittee subject to this Part must certify in writing to the permitting authority that a BMP plan has been developed.

Subpart A—Flow-Through and Recirculating Systems Subcategory

§ 451.10 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 of aquatic animals in a flow-through or recirculating system.

§ 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 meet the following requirements, expressed as practices (or any modification to these requirements as determined by the permitting authority based on its exercise of its best professional judgment) representing the application of BPT:

(a) *Solids control.* The permittee must:

(1) Employ efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of aquatic animal growth in order to minimize potential discharges of uneaten feed and waste products to waters of the U.S.

(2) In order to minimize the discharge of accumulated solids from settling ponds and basins and production systems, identify and implement procedures for routine cleaning of

rearing units and off-line settling basins, and procedures to minimize any discharge of accumulated solids during the inventorying, grading and harvesting aquatic animals in the production system.

(3) Remove and dispose of aquatic animal mortalities properly on a regular basis to prevent discharge to waters of the U.S., except in cases where the permitting authority authorizes such discharge in order to benefit the aquatic environment.

(b) *Materials storage.* The permittee must:

(1) Ensure proper storage of drugs, pesticides, and feed in a manner designed to prevent spills that may result in the discharge of drugs, pesticides or feed to waters of the U.S.

(2) Implement procedures for properly containing, cleaning, and disposing of any spilled material.

(c) *Structural maintenance.* The permittee must:

(1) Inspect the production system and the wastewater treatment system on a routine basis in order to identify and promptly repair any damage.

(2) Conduct regular maintenance of the production system and the wastewater treatment system in order to ensure that they are properly functioning.

(d) *Recordkeeping.* The permittee must:

(1) In order to calculate representative feed conversion ratios, maintain records for aquatic animal rearing units documenting the feed amounts and estimates of the numbers and weight of aquatic animals.

(2) Keep records documenting the frequency of cleaning, inspections, maintenance and repairs.

(e) *Training.* The permittee must:

(1) In order to ensure the proper clean-up and disposal of spilled material adequately train all relevant facility personnel in spill prevention and how to respond in the event of a spill.

(2) Train staff on the proper operation and cleaning of production and wastewater treatment systems including training in feeding procedures and proper use of equipment.

§ 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, any existing point source subject to this subpart must meet the following requirements representing the application of BAT: The limitations are the same as the corresponding limitations 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, any existing point source subject to this subpart must meet the following requirements representing the application of BCT: The limitations are the same as the corresponding limitations specified in § 451.11.

§ 451.14 New source performance standards (NSPS).

Any point source subject to this subpart that is a new source must meet the following requirements: The standards are the same as the corresponding limitations specified in § 451.11.

Subpart B—Net Pen Subcategory

§ 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 of aquatic animals in net pen or submerged cage systems, except for net pen facilities rearing native species released after a growing period of no longer than 4 months to supplement commercial and sport fisheries.

§ 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, any existing point source subject to this subpart must meet the following requirements, expressed as practices (or any modification to these requirements as determined by the permitting authority based on its exercise of its best professional judgment) representing the application of BPT:

(a) *Feed management.* Employ efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of aquatic animal growth. These strategies must minimize the accumulation of uneaten food beneath the pens through the use of active feed monitoring and management practices. These practices may include one or more of the following: Use of real-time feed monitoring, including devices such as video cameras, digital scanning sonar, and upweller systems; monitoring of sediment quality beneath the pens; monitoring of benthic community quality beneath the pens; capture of waste feed and feces; or other good husbandry practices approved by the permitting authority.

(b) *Waste collection and disposal.* Collect, return to shore, and properly dispose of all feed bags, packaging materials, waste rope and netting.

(c) *Transport or harvest discharge.* Minimize any discharge associated with the transport or harvesting of aquatic animals including blood, viscera, aquatic animal carcasses, or transport water containing blood.

(d) *Carcass removal.* Remove and dispose of aquatic animal mortalities properly on a regular basis to prevent discharge to waters of the U.S.

(e) *Materials storage.*

(1) Ensure proper storage of drugs, pesticides and feed in a manner designed to prevent spills that may result in the discharge of drugs, pesticides or feed to waters of the U.S.

(2) Implement procedures for properly containing, cleaning, and disposing of any spilled material.

(f) *Maintenance.*

(1) Inspect the production system on a routine basis in order to identify and promptly repair any damage.

(2) Conduct regular maintenance of the production system in order to ensure that it is properly functioning.

(g) *Recordkeeping.*

(1) In order to calculate representative feed conversion ratios, maintain records for aquatic animal net pens documenting the feed amounts and estimates of the numbers and weight of aquatic animals.

(2) Keep records of the net changes, inspections and repairs.

(h) *Training.* The permittee must:

(1) In order to ensure the proper clean-up and disposal of spilled material adequately train all relevant facility personnel in spill prevention and how to respond in the event of a spill.

(2) Train staff on the proper operation and cleaning of production systems including training in feeding procedures and proper use of equipment.

§ 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, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT: The limitations are the same as the 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, any existing point source subject to this subpart must achieve the following effluent

limitations representing the application of BCT: The limitations are the same as the limitations specified in § 451.21.

§ 451.24 New source performance standards (NSPS).

Any point source subject to this subpart that is a new source must meet the following requirements: The standard is the same as the limitations specified in § 451.21.

[FR Doc. 04–15530 Filed 8–20–04; 8:45 am]
BILLING CODE 6560–50–U

Federal Register

Monday,
August 23, 2004

Part III

Department of Housing and Urban Development

HUD–2004–0005; Changes in Certain Multifamily Mortgage Insurance Premiums; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–08]

HUD–2004–0005; Changes In Certain Multifamily Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with HUD regulations, this Notice changes the mortgage insurance premiums (MIP) for the Section 221(d)(4) and the Section 232 Federal Housing Administration (FHA) mortgage insurance programs whose commitments will be issued in Fiscal Year (FY) 2005.

DATES: Comment Due Date: September 22, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–6000, (202) 708–1142 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

On March 17, 2003 (68 FR 12792), HUD published a final rule on "Mortgage Insurance Premiums in Multifamily Housing Programs," which adopted, without change, the interim rule published on July 2, 2001 (66 FR 35072). The final and interim rule revised the regulatory system for establishing the MIP. Instead of setting the MIP at a specific rate, the Secretary is permitted to change an MIP within the full range of HUD's statutory authority of one fourth of one percent to one percent through a notice, as provided in section 203(c)(1) of the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)). The final rule states that HUD will provide a 30-day period for public comment on future notices changing MIPs in multifamily insured housing programs. These regulations are codified at 24 CFR 207.252, 207.252a, and 207.254.

This Notice announces a change in the MIP for programs authorized under Sections 221(d)(4), 232, and 241(a) of the National Housing Act for FY 2005 (12 U.S.C. 1715l(d)(4), 1715w, and 1715z–6 respectively). The mortgage insurance premium for the Section 221(d)(4) new construction and substantial rehabilitation multifamily apartment program without low-income housing tax credits has been lowered from 50 basis points to 45 basis points. The mortgage insurance premium for the 232 new construction and substantial rehabilitation of health care facilities and 241(a) supplemental loans for Section 232 projects has been increased from 50 basis points to 57 basis points. The effective date of these changes is October 1, 2004.

Certain project mortgages with low-income housing tax credits (LIHTC) require a 50 basis point MIP. Thus, an application under Section 221(d)(4), which requires 45 basis points without LIHTC, requires 50 basis points with LIHTC. In the rare occasion when the new construction of an assisted living facility has LIHTC, the MIP is 50 basis points instead of 57 basis points. Under the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235 (Approved December 15, 1989) and HUD's implementing instructions, a sponsor is required to submit a certification regarding governmental assistance including low-income housing tax credits with all mortgage insurance applications.

Whether or not LIHTC are involved, the multifamily programs under the following Sections of the Act will remain at 80 basis points and will continue to require a credit subsidy obligation: Section 221(d)(3) for nonprofit and cooperatives for new construction or rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) supplemental loans for additions or improvements to existing apartments. The MIP for Sections 207, 213, 220, 223(a)(7), 207 pursuant to 223(f), 231, 232 pursuant to 223(f), 234(d), 242 and Title XI remain unchanged at 50 basis points.

The mortgage insurance premium for risk-sharing applications under Sections 542(b) and 542(c) of the Housing and Community Development Act of 1992 remains at 50 basis points. The premium is shared by the Participating Entity or by the Housing Finance Agency in proportion to the risk assumed by the Entity or Agency. Premiums and risk under Section 542(b) are shared equally. The premiums for 542(c) are contained in 24 CFR 266.604.

The mortgage insurance premiums to be in effect for FHA firm commitments issued, amended, or reissued in FY 2005 are shown in the table below:

FISCAL YEAR 2005 MULTIFAMILY LOAN PROGRAM

	Basis points
Section 207—Multifamily Housing—New Constr/Sub. Rehab	50
Section 207—Manufactured Home Parks	50
Section 220—Housing In Urban Renewal Areas	50
Section 221(d)(3)—Moderate Income Housing	80
Section 221(d)(4)—Moderate Income Housing	45
Section 221(d)(4)—Low-Income Housing Tax Credits	50
Section 223(a)(7)—Refinancing of Insured Multifamily Project	50
Section 223(d)—Operating Loss Loans	80
Section 207 pursuant to 223(f)—Purchase or Refinance Housing	*50
Section 213—Cooperatives	50
Section 231—Housing for the Elderly	50
Section 232—Health Care Facilities	57
Section 232—Low-Income Housing Tax Credits	50
Section 232 pursuant to Section 223(f)—Purchase or Refinance Health Care Facility	*50
Section 234(d)—Condominium Housing	50
Section 241(a)—Additions & Improvements for Apartments	80
Section 241(a)—Additions & Improvements for Health Care Facilities	57
Section 242—Hospitals	50
Title XI—Group Practice	50

*First Year MIP for these programs remain at 100 basis points.

Applicable Mortgage Insurance Premium Procedures

The MIP regulations are found in 24 CFR part 207. This Notice is published in accordance with the procedures stated in 24 CFR 207.252, 207.252(a), and 207.254.

Transition Guidelines

A. General

If a firm commitment has been issued at a higher MIP for a Section 221(d)(4) loan, and FHA has not initially endorsed the note, the lender may request the field office to reprocess the commitment at the lower MIP and reissue the commitment on or after October 1, 2004. If the initial endorsement has occurred, the MIP cannot be changed.

B. Extension of Outstanding 50 Basis Points Firm Commitments

FHA may extend outstanding firm commitments when the Hub/Program Center determines that the underwriting conclusions (rents, expenses, construction costs, mortgage amount and case required to close) are still valid in accordance with Mortgagee Letter 03–21, "FHA Policies for Controlling Multifamily Firm Commitments and Credit Subsidy," dated December 3, 2003.

C. Reprocessing of Outstanding 50 Basis Points Firm Commitments

- FHA will consider requests from mortgagees to reprocess outstanding firm commitments at the lower mortgage insurance premium for Section 221(d)(4) once the new premiums become effective on October 1, 2004:

1. Outstanding commitments with initial 60-day expiration dates on or after the effective date of this MIP notice.

- FHA Multifamily Hub/Program Center staff will simply reprocess these cases to reflect the impact of the lower MIP and reissue commitments with a new date.

2. Outstanding commitments with initial expiration dates prior to the effective date of this MIP notice which have pending extension requests or have had extensions granted by FHA beyond the initial 60-day period of the commitment.

- These cases will require more extensive reprocessing by FHA staff. Reprocessing will include an updated FHA field staff analysis and review of rents, expenses, construction costs, particularly considering any changes in Davis-Bacon wage rates, and cash required to close. (An updated appraisal and other exhibits may be required from the mortgagee depending on the age of the appraisal and the age of the commitment. (See Mortgagee Letter 03–21) If reprocessing results in favorable underwriting conclusions, Hub/Program Center staff will reissue commitments with a new date at the new MIP.

D. Reopening of Expired 50 Basis Points Firm Commitments Under Section 221(d)(4)

FHA will consider mortgagee's requests, which may be either updated Traditional Application Processing (TAP) firm commitment applications or updated Multifamily Accelerated Processing (MAP) applications with updated exhibits, to reopen expired 50 basis points commitments on or after October 1, 2004; provided that the reopening requests are received within 90 days of the expiration of the commitments and include the $.50 per thousand of requested mortgage reopening fee. Reopening requests will be reprocessed by FHA field staff under the instructions in paragraph C.2 above and Mortgagee Letter 03–21.

After expiration of the 90-day reopening period, mortgagees are required to submit new applications with the $3 per thousand application fee (MAP applications must start at the pre-application stage).

Credit Subsidy

In FY 2005, the same three programs will require credit subsidy as in FY 2004: Section 221(d)(3) for nonprofit and cooperatives for new construction or substantial rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) for supplemental (additions or improvements for apartments) loans for additions or improvements to existing apartments only.

Dated: August 13, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–19221 Filed 8–20–04; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Monday,
August 23, 2004

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 28

Federal Acquisition Regulation; Powers of Attorney for Bid Bonds; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 28

FAR Case 2003–029

RIN 9000–AK01

Federal Acquisition Regulation; Powers of Attorney for Bid Bonds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to establish that a copy of an original power of attorney, including a photocopy or facsimile copy, when submitted in support of a bid bond, is sufficient evidence of the authority to bind the surety. The authenticity and enforceability of the power of attorney at the time of the bid opening will be treated as a matter of responsibility.

DATES: Interested parties should submit comments in writing on or before October 22, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2003–029 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2003–029@gsa.gov*. Include FAR case 2003–029 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2003–029 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2003–029.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR rule proposes to revise the policy relating to acceptance of copies of powers of attorneys accompanying bid bonds. There has been a significant level of controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney.

Since 1999, a series of GAO decisions has rejected telefaxed as well as photocopied powers of attorney. Then in *All Seasons Construction, Inc.*, B–291166.2, Dec. 6, 2002, GAO sustained the Government's decision to reject a low bidder's power of attorney because the signatures were generated by computer as part of the document. This decision has been interpreted by industry and procuring agencies to require a contracting officer to inspect the power of attorney at bid opening to ascertain that the signatures are original. The requirement for an original power of attorney, combined with the requirement for an original "wet" signature after the generation of the document, has become costly and unworkable for the surety industry.

Furthermore, most recently, on January 9, 2004, the U.S. Court of Federal Claims (COFC), in *Hawaiian Dredging Constr., Co. v. U.S.*, No. 03–2763C, issued a ruling opposing the Government's decision to reject a low bidder's power of attorney because the signatures were not original. In this decision, the COFC indicated that the FAR does not require an original signature on the document that serves as evidence of authority to bind the surety. Moreover, the COFC held that the contracting officer was unreasonable in relying on *All Seasons* to require original signatures and was critical of certain aspects of GAO's reasoning in the decision. The *Hawaiian Dredging* case has created a division of opinion in the bid protest forums in regards to the standards for acceptability of powers of attorney.

Another problem is that it has become even more difficult for the contracting officer to determine at bid opening the authenticity and enforceability of the power of attorney. Commercial practice would permit a quick check to determine if the power of attorney was in fact authentic and enforceable. However, in our current procurement process, if the contracting officer is unable to determine with unequivocal certainty that the surety would be bound by the bid bond and associated documents, then the bid must be rejected as nonresponsive. This may not be in the best interest of the Government, if the power of attorney was actually authentic and enforceable. Only after the rejected bidder challenges the contracting officer decision in a bid protest are the facts established through testimony and representations of the surety company as to whether the document was indeed authentic. If doubt about the power of attorney becomes a matter of responsibility rather than responsiveness, then the surety can confirm whether the attorney-in-fact is actually authorized to represent the company before the contracting officer rejects the bid.

The objective of the proposed rule is to establish clear and uniform standards for powers of attorney accompanying bid bonds that safeguard the integrity of the procurement process but are not unduly onerous to both industry and Government. Accordingly, the Councils propose a rule that will allow a copy of an original power of attorney, including a photocopy or facsimile copy, as sufficient evidence of authority for a person signing a bid bond to bind the surety as an attorney-in-fact. Providing the bid bond with evidence of power of attorney is still a matter of responsiveness, but if there is any reason to doubt the authenticity and enforceability of a power of attorney at the time of the bid opening, the rule provides that the contracting officer will handle this after the bid opening as a matter of responsibility. The proposed rule is consistent with commercial practices, decreases the burden on industry, and will allow the contracting officer to make more informed decisions that are in the best interest of the Government.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this rule, because the proposed change to FAR Part 28 may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. This rule establishes very simple and uniform standards for providing evidence of

powers of attorney, which remove a costly and unworkable requirement from all sureties and attorneys-in-fact. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The objective of this proposed rule is to establish clear and uniform standards for powers of attorney accompanying bid bonds and to allow the contracting officer to make more informed decisions that are in the best interest of the Government. The proposed rule applies to all offerors in Federal acquisitions that require bid bonds, and the associated sureties and attorneys-in-fact. The proposed rule will reduce the information collection requirement by simplifying the standards for an acceptable evidence of power of attorney in support of a bid bond. There are no significant alternatives to the proposed rule that accomplish the stated objectives. This rule will have a beneficial impact on small entities, which are offerors in Federal acquisitions that require bid bonds, as well as the associated sureties and attorneys-in-fact.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the IRFA from the FAR Secretariat. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* FAR case 2003–029, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0045. The Councils estimate that this revision will decrease the actual burden because it will reduce the number of hours that industry must expend in providing original powers of attorney.

List of Subjects in 48 CFR Part 28

Government procurement.

Dated: August 17, 2004.

Laura Auletta,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 28 as set forth below:

PART 28—BONDS AND INSURANCE

1. The authority citation for 48 CFR part 28 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Add section 28.101–3 to read as follows:

28.101–3 Authority of an Attorney-in-Fact for a Bid Bond.

(a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.

(b) An original or photocopy, or facsimile of an original power of attorney is sufficient evidence of such authority.

(c) The contracting officer shall—

(1) Treat the failure to provide a signed and dated power of attorney at the time of bid opening as a matter of responsiveness; and

(2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.

[FR Doc. 04–19234 Filed 8–20–04; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Monday,
August 23, 2004

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129
Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments); Extension of Comment Period; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129

[Docket No. FAA–2004–17681; Amendment No. 91–283, 121–305, 125–46, 129–39]

RIN 2120–AI20

Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments); Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comments; extension of comment period.

SUMMARY: This action extends the comment period for the Aging Airplane Program Update portion of the Final Rule issued on July 30, 2004 (Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)). In the Final Rule, the FAA extended the date for operators to comply with the special maintenance program requirements for transport airplane fuel tank systems from December 6, 2004 to December 16, 2008. In addition, the Final Rule included an overview of the findings of the FAA's review of our Aging Airplane Program and the additional rulemaking projects we plan because of that review. This extension is a result of a request from Airbus.

DATES: Send your comments on or before September 29, 2004.

ADDRESSES: You may send comments identified by Docket Number FAA–2004–17681 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov.* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mario L. Giordano, FAA, Aircraft Maintenance Division, Flight Standards Service, AFS–300, 800 Independence Avenue, SW., Washington DC 20591; telephone: (412) 262–9024 (x241); fax: (412) 264–9302, e-mail: *Mario.Giordano@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA continues to invite interested persons to take part in this rulemaking by sending written comments, data, or views about the Final Rule we issued on July 30, 2004 (Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)(69 FR 45936, July 30, 2004)). We also invite comments about the economic, environmental, energy, or federalism impacts that might result from either the Fuel Tank Safety Compliance Extension or the Aging Airplane Program Update. The most helpful comments reference a specific portion of the Final Rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about the Final Rule. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

We will consider all comments we receive on either the Fuel Tank Safety Compliance Extension or the Aging Airplane Program Update by their respective comment period closing dates. We will consider comments filed late if it is possible to do so without incurring expense or delay.

If you want the FAA to acknowledge receipt of your comments on the Final Rule, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On July 30, 2004, the FAA issued Amendment No. 91–283, 121–305, 125–46, 129–39, Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (66 FR 45936, July 30, 2004). Comments to that document were to be received by August 30, 2004.

On August 5, 2004, Airbus asked the FAA to extend the comment period to October 31, 2004. In its petition, Airbus did not object to the existing notice period as it relates to the Fuel Tank Compliance Extension. However, Airbus believes the discussion of our plans about the relationship between design approval holders and operators are important and represent a major shift in our philosophy about regulatory requirements for design approval holders. Airbus expresses a strong interest in carefully considering the implications of these potential changes and providing comment to us. As such, Airbus believes the existing comment period for the Aging Airplane Program Update is inadequate.

While the FAA agrees with the petitioner's request for an extension of the comment period for the Aging Airplane Program Update, the FAA believes that an extension to October 31, 2004 would be excessive. As we stated in the Final Rule, the Aging Airplane Program Update was provided mainly for informational purposes. As part of the normal rulemaking process, the public will have an opportunity to comment on the specifics of each proposal under the Aging Aircraft Program at the time we publish the applicable rulemaking documents. Therefore, we believe an added 30 days would be enough for the petitioner to respond to the Aging Airplane Program Update in the Final Rule.

Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for the Aging Airplane Program Update.

Extension of Comment Period

In accordance with 14 CFR 11.47(c), the FAA has reviewed the petition made by Airbus for an extension of the comment period to Amendment No. 91–283, 121–305, 125–46, 129–39. The FAA finds that extension of the comment period for the Aging Airplane Program Update is consistent with the public interest, and that good cause exists for taking this action. This petitioner has a substantive interest in the Aging Airplane Program Update and good cause for the extension.

Accordingly, the comment period for the Aging Airplane Program Update in Amendment No. 91–283, 121–305, 125–46, 129–39 is extended until September 29, 2004.

Issued in Washington, DC, August 17, 2004.

John M. Allen,

Deputy Director, Flight Standards Service.

[FR Doc. 04–19252 Filed 8–20–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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State Nonmetropolitan Median Household Income; definition clarification; comments due by 9-1-04; published 8-9-04 [FR 04-18087]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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CFR CHECKLIST

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44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
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500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

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