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

The Coast Guard has 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 procedure; 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 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 made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is 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 review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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. 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 § 165.T09–002 to read as follows:

§ 165.T09–002 Safety Zone; West Third Street Bridge replacement project, Cuyahoga River, Cleveland, OH.

(a) *Location.* The following area is a safety zone: All waters of the Cuyahoga River from Mile 3.59 to Mile 3.79.

(b) *Effective Period.* This rule is effective from 7 a.m. (local) Wednesday, February 1, 2006 through 1 p.m. (local) on Tuesday, February 28, 2006.

(c) *Regulations.* Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Coast Guard may be contacted via VHF Channel 16.

Dated: February 1, 2006.

S.J. Ferguson,

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

[FR Doc. 06–1254 Filed 2–9–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 412

[EPA–HQ–OW–2005–0036; FRL–8031–3]

RIN 2040–AE80

Revised Compliance Dates for National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rule extends certain compliance dates in the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated animal feeding operations (CAFOs) in conjunction with EPA's efforts to respond to the order issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance et al.* v. *EPA*, 399 F.3d 486 (2nd Cir. 2005). The purpose of today's rule is to address timing issues associated with the Agency's response to the *Waterkeeper* decision.

This final rule revises dates established in the 2003 CAFO rule, issued on February 12, 2003, by which facilities newly defined as CAFOs were required to seek permit coverage and by which all CAFOs were required to have nutrient management plans (NMPs) developed and implemented. EPA is extending the date by which operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from February 13, 2006, to July 31, 2007. EPA is also amending the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from April 13, 2006, to July 31, 2007. Finally, EPA is extending the deadline by which CAFOs are required to develop and implement NMPs, from December 31, 2006, to July 31, 2007. This rule revises all references to the date by which NMPs must be developed and implemented currently in the 2003 CAFO rule.

DATES: This rule is effective as of February 10, 2006.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–OW–2005–0036. This is where you can obtain a copy of all materials related to this rulemaking, including the

comment response document and the rule. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI 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 through *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The 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: Kawana Cohen, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2345, e-mail address: *cohen.kawana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to concentrated animal feeding operations (CAFOs) as defined in section 502(14) of the Clean Water Act and in the NPDES regulations at 40 CFR 122.23. The following table provides a list of standard industrial codes and analogous North American industry codes for operations covered under this revised rule:

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
Federal, State, and Local Government:			
Industry	Operators of animal production operations that meet the definition of a CAFO.		
	Beef cattle feedlots (including veal)	112112	0211
	Beef cattle ranching and farming	112111	0212
	Hogs	11221	0213
	Sheep	11241, 11242	0214
	General livestock except dairy and poultry	11299	0219
	Dairy farms	11212	0241
	Broilers, fryers, and roaster chickens	11232	0251
	Chicken eggs	11231	0252
	Turkey and turkey eggs	11233	0253
	Poultry hatcheries	11234	0254
	Poultry and eggs	11239	0259
	Ducks	112390	0259
	Horses and other equines	11292	0272

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 under this rulemaking, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. The 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)). Among the core provisions, the CWA establishes the NPDES permit program to authorize and regulate the discharge of pollutants from point sources to waters of the U.S. 33 U.S.C. 1342. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term ''point source.'' Section 502(12) defines the term ''discharge of a pollutant'' to mean ''any addition of any pollutant to navigable waters from any point source.'' EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR part 122. The Act also provides for the development of technology-based and water quality-based effluent limitations that are imposed through NPDES permits to control the discharge of pollutants from point sources. CWA section 301(a) and (b).

B. History of Actions To Address CAFOs Under the NPDES Permitting Program

EPA's regulation of wastewater and manure from CAFOs dates to the 1970s. EPA initially issued national effluent

limitations guidelines and standards for feedlots on February 14, 1974 (39 FR 5704), and NPDES CAFO regulations on March 18, 1976 (41 FR 11458).

In February 2003, EPA issued revisions to these regulations that focused on the 5% of the nation's animal feeding operations (AFOs) that presented the highest risk of impairing water quality and public health (68 FR 7176) (the ''2003 CAFO rule''). The 2003 CAFO rule required the owner or operators of all CAFOs [1] to seek coverage under an NPDES permit. CAFO industry organizations (American Farm Bureau Federation, National Pork Producers Council, National Chicken Council, and National Turkey Federation (NTF), although NTF later withdrew its petition) and environmental groups (Waterkeeper Alliance, Natural Resources Defense Council, Sierra Club, and American Littoral Society) filed petitions for judicial review of certain aspects of the 2003 CAFO rule. This case was brought before the U.S. Court of Appeals for the Second Circuit. On February 28, 2005, the court ruled on these petitions and upheld most provisions of the 2003 rule but vacated and remanded others. *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d 486 (2nd Cir. 2005) (hereafter referred to as *Waterkeeper*).

C. Status of EPA's Response to the Waterkeeper Decision

EPA is developing a rulemaking to respond to the vacatures and remands in the *Waterkeeper* decision. EPA plans to issue a proposed rulemaking for public comment in mid 2006 and a final rulemaking as expeditiously as possible. Among other revisions related to the court's decision the Agency plans to address in the forthcoming rulemaking are those that establish which CAFOs must seek permit coverage and procedures for development and implementation of nutrient management plans (NMPs).

D. Proposed Rule

On December 21, 2005, EPA proposed to revise each of the compliance dates in the 2003 CAFO rule that were affected by the Agency's need to respond to the Waterkeeper decision. 70 FR 75771 (December 21, 2005). The 2003 CAFO rule required all newly defined CAFOs, as of the date of the final rule, and some new dischargers to seek permit coverage by February 13, 2006, or April 13, 2006, respectively. The rule also required all CAFOs to develop and implement an NMP by December 31, 2006. EPA proposed to revise these dates in a separate, limited rulemaking, prior to the Agency's response to the *Waterkeeper* decision, in order: (1) To provide the Agency sufficient time to take final action on the regulatory revisions it plans to propose in the near future with respect to the Second Circuit's decision; and (2) to require NMPs to be submitted at the time of the permit application, consistent with the court's decision.

III. Today's Final Rule

A. Today's Final Action

Today's final rule extends certain dates for compliance specified in the 2003 CAFO rule. EPA is extending the dates for newly defined CAFOs to seek NPDES permit coverage and the date by which all CAFOs must develop and implement NMPs. Because EPA will not have completed the rulemaking responding to the *Waterkeeper* decision prior to the dates by which newly defined CAFOs must seek permit coverage, the Agency is revising these dates to a time that is subsequent to the forthcoming CAFO rule revision.

Today's rule is simply a means of avoiding conflict with existing deadlines that precede EPA's upcoming revisions to the 2003 rules. Today's rule does not, for example, address issues associated with the court's vacature of the requirement that all CAFOs seek coverage under an NPDES permit. That issue and other related issues, such as those associated with the development and implementation of nutrient management plans (NMPs) will be addressed in the separate forthcoming rulemaking.

1. Application Deadline for Newly Defined CAFOs

EPA is extending the date by which operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from February 13, 2006, to July 31, 2007. EPA is also proposing to amend the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from April 13, 2006, to July 31, 2007.

Today's rule does not affect the applicable time for seeking permit coverage for new source CAFOs that discharge or propose to discharge, even those in categories that were added to the definition of a CAFO in the 2003 CAFO rule. New source CAFOs that discharge or propose to discharge are required by the 2003 CAFO rule to seek NPDES permit coverage at least 180 days prior to the time that they commence operating.

Nor does today's rule affect requirements for newly defined CAFOs to obtain permit coverage in States that do not revise the deadlines in their current regulations. States may choose to require CAFOs to obtain NPDES permits in advance of the dates set in the federal NPDES regulations, pursuant to the authority reserved to States under Section 510 of the Clean Water Act to adopt requirements more stringent than those that apply under federal law. Furthermore, many CAFOs are already permitted and the extension of the deadline for requesting NPDES permit coverage does not apply to CAFOs that existed prior to the effective date of the 2003 CAFO rule and as such were required to seek NPDES permit coverage even before EPA issued the 2003 CAFO rule.

2. Deadline for Nutrient Management Plans

EPA is extending the deadline by which permitted CAFOs are required to develop and implement NMPs, from December 31, 2006, to July 31, 2007. This revises all references to the date by which NMPs must be developed and implemented currently in the 2003 CAFO rule. Thus the deadlines established in 40 CFR 122.21(i)(1)(x), 122.42(e)(1), 412.31(b)(3), and 412.43(b)(2) are all revised accordingly.

Today's rule extending deadlines for nutrient management plans would not affect CAFOs operating under existing permits so long as those permits remain in effect. If their existing permits require development and implementation of an NMP, currently permitted CAFOs must develop and implement their NMPs in accordance with the terms of their current permit.

B. Rationale for Today's Action

In December 2005, EPA proposed to extend the dates that EPA is today revising for certain CAFOs to seek NPDES permit coverage and for CAFOs to develop and implement NMPs to March 30, 2007. At the time of the proposed rule, EPA believed that setting the revised dates to March 30, 2007, would allow sufficient time for the Agency to complete the forthcoming rule to address the *Waterkeeper* decision. In proposing these date changes, EPA also reasoned that the rationales for these revised dates were

[1] The Clean Water Act regulates the conduct of persons, which includes the owners and operators of CAFOs, rather than the facilities or their discharges. To improve readability in this preamble, reference is made to ''CAFOs'' as well as ''owners and operators of CAFOs.'' No change in meaning is intended.

generally consistent with the rationales that the Agency had originally relied upon in setting the compliance dates in the 2003 CAFO rule and that these dates would ensure compliance with the NPDES regulations applicable to CAFO owners and operators within a reasonable timeframe consistent with the dates established in the 2003 rule.

EPA received a number of comments on the proposed rule, including comments from States, industry, agricultural trade associations, and environmental groups. Some commenters asserted that the proposed rule is not consistent with the part of the court's decision that vacated the ''duty to apply'' provision of the 2003 regulations. The ''duty to apply'' provision required all CAFOs to apply for a permit, including those with only a potential to discharge. Commenters maintained that the language of the proposed rule was not appropriate because it continued to follow the approach in the 2003 CAFO regulations, under which all CAFOs must have or seek a permit.

In response, EPA reiterates that it will address the various aspects of the court's *Waterkeeper* decision, including the court's ruling on the ''duty to apply'' issue, in a forthcoming rulemaking. That rulemaking will address the regulations on *who* must apply for a permit in order to conform those regulations to the court's ruling. Nothing in today's rule affects or otherwise addresses the issue of *who* must apply for a permit. Today's rule only shifts the deadline for *when* a permit application must be submitted by those CAFOs that *are* required to apply. As a sequence of events, EPA expects that its upcoming rulemaking to respond to *Waterkeeper* will change the universe of *who* must apply for a permit and that those regulations will be finalized and effective *before* the new deadline of July 31, 2007, promulgated in today's rule for permit applications. As a result, only those CAFOs that are required to apply for a permit—as redefined in the upcoming rulemaking—will be subject to the permit application deadlines in today's rule. EPA notes in particular that today's rule is not intended to, and does not, have the effect of requiring *all* CAFOs to apply for a permit by the new deadlines in today's rule.

Some commenters asserted that the proposed deadlines would not offer CAFOs sufficient time to submit permit applications that will comply with the regulatory revisions the Agency is planning to address in its response to the *Waterkeeper* decision. These commenters noted that the proposed March 30, 2007, permit application deadline will not provide EPA sufficient time to propose and take final action on such regulatory revisions in time for CAFOs to apply for permits by that date.

EPA is revising its proposal to extend the date from March 30, 2007, to July 31, 2007, to provide sufficient time for the Agency to promulgate regulations addressing the *Waterkeeper* decision. EPA intends to propose such regulations in mid 2006 and to take final action on that proposal as soon as possible thereafter, so that affected CAFOs will have sufficient time to comply with revised regulations after they take effect. In addition, EPA notes that most of the technical provisions of the 2003 CAFO rule (e.g., the substantive NMP requirements) were unaffected by the *Waterkeeper* decision, and therefore CAFOs do have some information at this time to assess the actions they will need to take. Should the Agency decide that a further extension of time is necessary to allow CAFOs an adequate opportunity to meet the requirements of the revised regulations, EPA could allow a further extension in the final rule.

Commenters also raised issues about the way in which the proposed rule failed to separate the date by which an NMP needs to be developed from the date when the CAFO must implement the NMP. Commenters expressed the view that keeping the dates together was inconsistent with the *Waterkeeper* court's decision to require NMPs to be publicly reviewed and the terms of the NMP to be included as conditions in a CAFO's permit before they could be implemented, as such. As discussed above, EPA is developing a rule to address the court's decision regarding public and permitting authority review and the inclusion of NMPs in permits and will issue the proposed rule in mid 2006 and the final rule as soon as possible thereafter. That rule will address issues raised by the commenters in that rulemaking and it is premature to resolve them now. Should further revisions to the deadlines for development and implementation be necessary to address these concerns, the Agency could further modify the dates in the final rule.

Several commenters expressed the view that EPA needed to take into consideration the time necessary for States to make conforming revisions to State programs following EPA's regulatory revisions. While EPA agrees that States need additional time to modify their programs once EPA has finalized its regulatory revisions in response to the *Waterkeeper* decision, the Agency does not believe that these concerns justify further extension of the compliance dates in today's rule. EPA is committed to work with States and other interested parties to work through the procedural challenges and resolve any difficulties that may arise in the implementation of the regulatory revisions.

IV. Effective Date of These Actions

EPA is making this rule immediately effective upon the date of publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' EPA finds that there is good cause to make the rule effective immediately. The 2003 CAFO rule requires some CAFOs to seek NPDES permit coverage and prepare and implement nutrient management plans in 2006 well before EPA regulations will be in place to respond to the *Waterkeeper's* decision. Making this rule immediately effective is consistent with the purpose of the good cause exemption which is to provide reasonable time for affected parties to comply. A delayed effective date is not necessary because affected parties do not have to take any action to comply with this rule which simply extends deadlines for seeking NPDES permit coverage and preparing and implementing nutrient management plans. In addition, consistent with section 553(d)(3), an immediate effective date is justified because this rule relieves certain CAFOs of obligations which would otherwise apply to them, to seek NPDES permit coverage and develop and implement nutrient management plans in 2006.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* As discussed above, the purpose of today's rule is solely to address timing issues associated with the Agency's response to the *Waterkeeper* court ruling based on litigation ensuing from the 2003 CAFO rule. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR parts 9, 122, 123, and 412 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0250. The EPA ICR number for the original set of regulations is 1989.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 based on Small Business Administration (SBA) size standards; (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.

This action will not have a significant economic impact on a substantial number of small entities since the effect of the rule is solely to extend certain deadlines related to NPDES CAFO permitting. Additionally, this rule would not affect small governments, as the permitting authorities are State or Federal agencies.

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 UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to 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 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. As discussed above, the purpose of today's rule is solely to address timing issues associated with the Agency's response to the *Waterkeeper* court ruling based on litigation ensuing from the 2003 CAFO rule.

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.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed

regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA does not consider an annual impact of $2 million on States to be a substantial effect. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations do not alter the basic State-Federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

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.''

This regulation 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. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined under E.O. 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. The benefits analysis performed for the 2003 CAFO rule determined that the rule would result in certain significant benefits to children's health. (Please refer to the *Benefits Analysis* in the record for the 2003 CAFO final rule.) Since today's action would not affect the environmental benefits of the rule, these benefits are retained.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. 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 February 10, 2006.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 412

Environmental protection, Feedlots, Livestock, Waste treatment and disposal, Water pollution control.

Dated: February 7, 2006.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 122 and 412 are amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 122.21 by revising paragraph (i)(1)(x) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(i) * * *

(1) * * *

(x) For CAFOs that must seek coverage under a permit after July 31, 2007, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

* * * * *

■ 3. Amend § 122.23 by revising paragraphs (g)(1) and (g)(3)(iii) to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

* * * * *

(g) * * *

(1) *Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date.* For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than July 31, 2007.

(3) * * *

(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until July 31, 2007, or 90 days after becoming defined as a CAFO, whichever is later.

* * * * *

■ 4. Amend § 122.42 by revising the third and fourth sentences in paragraph (e)(1) introductory text to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) * * *

(1) * * * Permitted CAFOs must have their nutrient management plans developed and implemented by July 31, 2007. CAFOs that seek to obtain coverage under a permit after July 31, 2007, must have a nutrient management plan developed and implemented upon the date of permit coverage. * * *

* * * * *

PART 412—CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) POINT SOURCE CATEGORY

■ 5. The authority citation for part 412 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, 1361.

■ 6. Amend § 412.31 by revising paragraph (b)(3) to read as follows:

§ 412.31 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *

(3) The CAFO shall attain the limitations and requirements of this paragraph by July 31, 2007.

■ 7. Amend § 412.43 by revising paragraph (b)(2) to read as follows:

§ 412.43 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *

(2) The CAFO shall attain the limitations and requirements of this paragraph by July 31, 2007.

[FR Doc. 06–1240 Filed 2–9–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229–4300–02; I.D. 010606A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for Western and Eastern U.S./Canada Areas

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

ACTION: Temporary rule; landing limit.

SUMMARY: NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is implementing a yellowtail flounder trip limit of 1,500 lb (680.4 kg) per day, up to a maximum of 15,000 lb (6,804.1 kg) per trip, for NE multispecies Days-at-Sea (DAS) vessels fishing in both the Western and Eastern U.S./Canada Areas. This action is required by the regulations enacting Amendment 13 to the NE Multispecies Fishery Management Plan and is necessary to prevent the GB yellowtail flounder total allowable catch (TAC) from being caught before the end of the 2005 fishing year and to increase the likelihood that the GB yellowtail TAC will be available through the end of the 2005 fishing year on April 30, 2006. This action is being taken to slow the rate of harvest of GB yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective 0001 hrs local time, February 9, 2006, through April 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder landing limit within the Western and Eastern U.S./Canada Areas are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2005 fishing year is 4,260 mt. When 70 percent (2,982 mt) of the GB yellowtail flounder TAC is projected to be harvested, the regulations at § 648.85(a)(3)(iv)(C)(2) require the Regional Administrator to implement and/or adjust the yellowtail flounder landing limit for NE multispecies vessels fishing in both the Western and Eastern U.S./Canada Areas to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

When approximately 59 percent of the GB yellowtail flounder TAC was harvested, NMFS implemented a yellowtail flounder landing limit of 15,000 lb (6,804.1 kg) per trip to slow the rate of catch for this stock (December 22, 2005; 70 FR 75965). Based upon Vessel Monitoring System (VMS) reports and other available information, the Regional Administrator has determined that 70 percent (2,982 mt) of the GB yellowtail flounder TAC of 4,260 mt will be harvested by February 8, 2006. Based on this information, the Regional Administrator is reducing the GB yellowtail trip limit from 15,000 lb (6,804.1 kg) per trip to 1,500 lb (680.4 kg) per day, up to a maximum of 15,000 lb (6,804.1 kg) per trip, for NE multispecies DAS vessels fishing in both the Western and Eastern U.S./Canada Areas trip, effective February 8, 2006, through April 30, 2006. Vessels that have already declared their intent to fish in the Western U.S./Canada Area through VMS, departed on a trip, and crossed the demarcation line as of 0001 hours on February 8, 2006, may possess and land up to 15,000 lb (6,804.1 kg) of GB yellowtail flounder, regardless of the length of their trip.