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Thursday
November 5, 1987

Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: November 20, at 9 a.m.
WHERE: National Archives and Records Administration, Room 410, 8th and Pennsylvania Avenue NW., Washington, DC.
RESERVATIONS: Robert D. Fox, 202-523-5239.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1260 and 1261

Freedom of Information Reform Act of 1986; Implementation of Uniform Fee Schedule

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Final regulations.

SUMMARY: On September 23, 1987, the Office of the Special Counsel proposed regulations under the authority of sections 1803 and 1804(b)(1) of Pub. L. 99-570, 100 Stat. 5101, 5102, 5103 (October 27, 1986), to implement the fee schedule provisions of the Freedom of Information Reform Act of 1986. At the same time, the Office of the Special Counsel proposed to amend its Freedom of Information Act and Privacy Act regulations to reflect a zip code change. 52 FR 35722. The comment period for these proposed regulations closed on October 20, 1987. No comments were received. Accordingly, the regulations published today are effective upon publication.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, (202) or FTS 653-8982.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986, Pub. L. 99-570, sections 1801-1804, 100 Stat. 5101-03 (1986), establishes a new fee structure under the FOIA. It includes limitations on the assessment of fees for all requesters and for particular categories of requesters, and a revised fee waiver standard. The FOIA Reform Act also authorizes agencies to impose new record "review" charges in order to cover the actual cost of complying with requests made by commercial requesters. Section 1803 of the Reform Act requires agencies to promulagate regulations, consistent with Office of Management and Budget uniform fee schedule guidelines, specifying their new schedules of fees. On March 27, 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule, and on April 2, 1987, the Department of Justice issued fee waiver policy guidance to all federal agencies. The Office of Special Counsel is now implementing revised Freedom of Information/Privacy Act regulations to reflect these changes. These final regulations are identical to the proposed regulations published on September 23, 1987. The only alterations concern the list of subjects.

List of Subjects

5 CFR Part 1260

Public information.

5 CFR Part 1261

Privacy.

Mary F. Wieseman,
Special Counsel.

Dated: October 27, 1987.

5 CFR Parts 1260 and 1261 are amended as follows:

PART 1260—[AMENDED]

1. The authority citation for Part 1260 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1260.1 is revised to read as follows:

§ 1260.1 Public list.

A public list of certain noncriminal whistleblower allegations and Special Counsel findings of violations of law, rule, or regulation, together with reports and certifications by heads of agencies, pursuant to 5 U.S.C. 1206 (b)(3) and (c), is available to the public between 8:30 a.m. and 5:00 p.m. weekdays (except legal holidays) in the Office of the Special Counsel, 1120 Vermont Avenue, NW., Washington, DC 20005.

3. Section 1260.4 is revised to read as follows:

§ 1260.4 Service charge for information.

(a) *Categories of requesters.* There are four categories of requesters:

(1) *Commercial use requesters.* These requesters seek information for themselves or on behalf of someone else for a use or purpose that furthers commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. A requester will not be presumed to be a "commercial use requester" merely by submitting a request on corporate letterhead without further explanation of the use to which he plans to put the requested information. Similarly, a request submitted on the letterhead of a nonprofit organization without further explanation will not be presumed to be for a noncommercial purpose. The Office of the Special Counsel will seek clarification from the requester where there is a reasonable doubt as to the intended use of the information.

(2) *Educational and noncommercial scientific institution requesters.* (i) An "educational institution" requester is associated with a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of vocational or professional education, that operates a program or programs of scholarly research, and seeks the information for a scholarly or scientific research goal of the institution, rather than for an individual goal.

(ii) A "noncommercial scientific institution" requester is associated with an institution that is not operated on a "commercial" basis (as that term is defined by paragraph (a)(1) of this section), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(3) *News media requesters.* These requesters actively gather news for entities that are organized and operated to publish or broadcast news to the public. Freelance journalists may be news media requesters if they can demonstrate a solid basis for expecting publication through a news organization (such as by producing a publication contract or citing their past publication records), even though not actually employed by it. "News" means information about current events or information that would be of current interest to the public. News media "entities" include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

(4) All other requesters.

(b) *Free search time and partially free copying.* Educational and noncommercial scientific institution requesters and news media requesters who are requesting records for noncommercial use are entitled to free search time and free copying for the first 100 pages.

(c) *Partially free search time and partially free copying.* Requesters who are not commercial use requesters, educational or noncommercial scientific institution requesters, or news media requesters are "all other requesters", and are entitled to two hours of free search time and free copying for the first 100 pages. Requests from record subjects for records about themselves filed in a system of records will continue to be treated under the fee provisions of the Privacy Act, which permits the assessment of fees only for copying.

(d) *Waiver or reduction of fees.* (1) The Associate Special Counsel for Investigation, the Assistant Special Counsel for Prosecution, the Associate Special Counsel for Prosecution, the Deputy Special Counsel, and the Special Counsel may authorize waiver or reduction of fees that could otherwise be assessed if disclosure of the information requested:

(i) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and

(ii) Is not primarily in the commercial interest of the requester.

(2) Satisfaction of paragraph (d)(1)(i) of this section will be determined by all of the following:

(i) Whether the subject of the requested records concerns "the operations or activities of the Government." The requested records concern identifiable operations or activities of the Government, and the connection between the records and the operations or activities is direct and clear, not remote or attenuated;

(ii) Whether disclosure is "likely to contribute" to an understanding of Government operations or activities. An analysis of the substantive content of the releasable portions of the requested records reveals meaningfully informative information on the operations or activities of the Government that is not already in the public domain in duplicative or substantially identical form;

(iii) Whether disclosure will contribute to "public understanding." Considering the identity of the requester and his qualifications to make use of the information, disclosure will contribute to the understanding of the public at large, and not to the individual understanding of the requester or a narrow segment of interested persons; and

(iv) Whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. By an objective standard, the disclosure is likely to enhance the general public's understanding of the subject matter in question more than minimally.

(3) Satisfaction of paragraph (d)(1)(ii) of this section will be determined by both of the following:

(i) Whether the requester has a commercial interest to be furthered by the disclosure. The requester does not seek to further a commercial, trade, or profit interest, as those terms are commonly understood; and

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, compared to the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." If the requester has a commercial interest, that interest is not greater than the public interest to be served by disclosure of the requested records.

(e) *Fees to be charged.* (1) Requests for records are subject to the following fees:

(i) *Commercial use requesters.* For search, review, and copying: Photocopies per page, $0.25. Manual record search, $2.50 per quarter hour if conducted by a clerical employee; $5.00 per quarter hour if conducted by a professional or managerial employee. Search fees may be assessed even if the records in question are not located or if the records located are determined to be exempt from disclosure.

(ii) *Educational and noncommercial scientific institution requesters, news media requesters.* For copying only: Photocopies per page, $0.25, excluding the first 100 pages.

(iii) All other requesters. For search and copying only: Photocopies per page (excluding the first 100 pages), $0.25. Manual record search (excluding the first two hours), $2.50 per quarter hour if conducted by a clerical employee; $5.00 per quarter hour if conducted by a professional or managerial employee.

(2) *Method of search.*

(i) Any "search", which includes all time spent looking for material that is responsive to a request, will be done in the most efficient and least expensive manner in order to minimize costs for both the agency and the requester.

(ii) For searches made by computer, costs will be assessed when the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent equals the equivalent dollar amount of two hours of salary of the person performing the search.

(3) *Review charges.* Only commercial use requesters will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. These charges will be assessed only for initial review (i.e., the review undertaken when first analyzing the applicability of a specific exemption to a particular record or portion of record), and not for review at the administrative appeal level of an exemption already applied. However, charges will be assessed for a second review of records or portions of records withheld in full under an exemption which is subsequently determined not to apply in order to determine the applicability of other exemptions not previously considered. Review charges shall not include costs incurred in resolving issues of law or policy that may be raised in the course of processing a request.

(4) *Copying.* A "page" of copying refers to a paper copy of standard size, normally 8½" x 11" or 11" x 14". However, copies may also take the form of microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(5) *Nonassessment of fees.* No fees will be assessed to any requester, including commercial use requesters, if the cost of routine collection and processing of the fee would be equal to or greater than the fee itself. To make this determination, the Office will consider the administrative costs of receiving and recording a requester's remittance and processing the fee for deposit.

(f) *Other charges.* Complying with requests for special services, such as certification of records as true copies and sending records by special methods (e.g., express mail) is entirely at the discretion of the Office. Since neither the Freedom of Information Act nor its fee structure covers these kinds of services, the Office will assess fees to recover the full costs of providing these services should the Office elect to provide them.

(g) *Aggregating requests.* If the Office of Special Counsel reasonably believes that a requester or a group of requesters acting in concert is filing a series of requests for the purpose of evading the assessment of fees, the Office may aggregate the requests and assess fees accordingly. One element to be considered in determining reasonable belief is the time period within which the requests are filed. Multiple requests of this type filed within a 30 day period may be presumed to have been made to

avoid fees. In no case will the Office aggregate requests on unrelated subjects from one requester.

(h) *Advance notice of fees.* If it is likely that fees will exceed $25, the requester will first be notified of the estimated amount, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The notice will offer the requester the opportunity to confer with personnel of the Office of the Special Counsel with the object of reformulating the request to meet his or her needs at a lower cost.

(i) *Payments.* Payment of fees shall be made by check or money order payable to the United States Treasury.

(j) *Advance payments.* A requester is not required to make an advance payment unless:

(1) The Office estimates or determines that the requester may be required to pay fees in excess of $250, in which case the requester will be notified of the estimated cost. The requester must then furnish satisfactory assurance of full payment if the requester has a history of prompt payment of Freedom of Information Act fees. If the requester has no history of payment, then the requester may be required to furnish an advance payment up to the full estimated cost; or

(2) The requester has previously failed to pay a fee assessed in a timely fashion (i.e. within 30 days of the date of billing), in which case the requester may be required to—

(i) Pay the full amount owed plus any applicable interest as provided in paragraph (l) of this section, or prove payment of the alleged amount in arrears, and

(ii) Make an advance payment of the full amount of the estimated cost before a new or pending request will be processed.

(k) *Effect of nonpayment.* When the Office acts under either paragraph (j)(2)(i) or (j)(2)(ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act will begin only after the fee payments described above have been received.

(l) *Interest charges.* Interest may be charged to any requester who fails to pay fees assessed within 30 days of the date of billing. Interest will be assessed on the 31st day following the day on which the bill for fees was sent, and will be calculated at the rate prescribed in 31 U.S.C. 3717. Receipt of fees, even if not processed, will stay the accrual of interest.

(m) *Collections.* If the Office deems it appropriate in order to encourage repayment of fees assessed in accordance with these regulations, the Office will use the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer reporting agencies and use of collection agencies.

4. Section 1260.5 is revised to read as follows:

§ 1260.5 Appeals.

Any denial, in whole or in part, of a request for records of the Office of the Special Counsel shall advise the requester of his right to appeal the denial to the Special Counsel or his designee. The requester shall submit his appeal in writing within 30 days of the denial. The appeal shall be addressed to the Special Counsel at 1120 Vermont Avenue, NW., Washington, DC 20005. Except in unusual circumstances the Special Counsel or his designee shall make a determination on the appeal within 20 working days after it is received. When a request is denied on appeal, the requester shall be advised of his right to seek judicial review.

PART 1261—[AMENDED]

5. The authority citation for part 1261 continues to read as follows:

Authority: 5 U.S.C. 552a.

6. Paragaph (a) of § 1261.2 is revised to read as follows:

§ 1261.2 Access to records and identification.

(a) Individuals may request access to records pertaining to them that are maintained as described in § 1261.1 by addressing an inquiry to the Office of the Special Counsel either by mail or by appearing in person at the offices of the Special Counsel at 1120 Vermont Avenue, NW., Washington, DC 20005, during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Privacy Act Request". Requests for copies of records shall be subject to duplication fees set forth in § 1260.4 of this subchapter.

* * * * *

[FR Doc. 87-25574 Filed 11-4-87; 8:45 am]
BILLING CODE 7400-02-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

Importation of Egg Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the mandatory inspection of eggs and egg products by adding The Netherlands to the list of countries from which egg products are eligible to be imported into the United States. The egg products inspection system of The Netherlands is acceptable pursuant to the Egg Products Inspection Act (EPIA) and the regulations thereunder. Approved plants in The Netherlands are eligible to ship egg products to the United States.

EFFECTIVE DATE: December 7, 1987.

FOR FURTHER INFORMATION CONTACT: Howard M. Magwire, Assistant Chief, Grading Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Post Office Box 96456, Washington, DC 20090-6456 (202/447-3272).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This final rule has been reviewed for cost effectiveness under U.S. Department of Agriculture (USDA) Secretary's procedures established in Departmental Regulation 1512-1 implementing Executive Order 12291. The rule adds The Netherlands as a country from which egg products are eligible to be imported into the United States. However, it is estimated that only a small volume of egg products in comparison with domestic production will be imported annually.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service (AMS) has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the amount of egg products estimated to be imported would represent a relatively small volume compared to domestic production, based on fiscal year 1986 data.

Background

Section 17 of the EPIA (21 U.S.C. 1046) prohibits the importation into the United States of egg products, unless they are processed under an approved continuous inspection system of the foreign government and are labeled and packaged in accordance with the standards of the Act and regulations issued thereunder. The regulations addressing imported egg products are contained in 7 CFR Part 59. In these regulations, the Administrator has established procedures by which foreign countries desiring to export egg products to the United States may become eligible to do so.

Section 59.910 of the egg products inspection regulations (7 CFR 59.910) provides that an egg products inspection system maintained by a foreign country, with respect to plants preparing products in that country for export to the United States, must ensure compliance of such plants and their egg products with requirements meeting the applicable provisions of the EPIA and the regulations that are applied to official plants in the United States and their egg products.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by USDA personnel. This evaluation consists of two processes—document reviews and onsite reviews of system operations. The document review process involves a review of the laws, regulations, and other written materials used by the country to operate the inspection program. Each point of the country's laws, regulations, and other material is compared with U.S. requirements.

If the document review proves to be satisfactory, onsite reviews are scheduled to evaluate applicable aspects of the country's program. When all requirements of the EPIA and regulations thereunder are satisfied, the country is considered eligible to export products to the United States.

The Netherlands—Review Results

After reviewing all of the documents submitted by The Netherlands and evaluating the findings of the onsite reviews, the egg products inspection system of The Netherlands has been judged by AMS to be adequate to assure, with respect to plants within The Netherlands preparing product for export to the United States, compliance with requirements applicable to official plants within the United States which prepare egg products.

Proposal

A proposed revision was published in the **Federal Register** (52 FR 17763) on May 12, 1987, to provide for the eligibility of egg products produced in certain approved Dutch plants to be imported into the United States.

Accordingly, AMS is amending § 59.910 of the egg products inspection regulations (7 CFR 59.910(b)) to add The Netherlands to the list of countries from which egg products may be eligible for import into the United States.

Discussion of Comments

A notice of proposed rulemaking was published in the **Federal Register** (52 FR 17763) on May 12, 1987. The proposed rule comment period was to close on July 13, 1987, but was extended to August 12, 1987. The extension notice published in the **Federal Register** (52 FR 27562) on July 22, 1987, was based on a request from an industry organization for additional time to evaluate the proposed rule and make comments. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to AMS.

AMS received 18 letters on the proposal within the allotted time period. Letters were received from industry members, trade associations, the military, State governments, and both Houses of Congress. The following is a discussion of issues raised by those commentors and the Agency's response to each.

Comment: One commenter supported the proposal provided that a sufficient number of onsite reviews (at least two), involving several plants, were conducted annually by USDA to ensure continued compliance with applicable provisions of EPIA.

Response: Current regulations provide that onsite reviews may be conducted as often as necessary to ensure the continued compliance of the foreign inspection system with applicable provisions of the EPIA and regulations issued thereunder. This provides the Agency with the flexibility to conduct as many onsite reviews as it deems necessary. This does not mean, however, that the Agency plans to conduct a specific number of annual reviews because the Agency reserves the right to allocate its inspection resources in the most cost-effective manner possible in order to maintain compliance.

Comment: Several commenters argued that the proposed revision would enable Dutch egg products plants to operate a dual inspection system, processing product for both the Dutch domestic market and export to the United States. Also, they believed this arrangement would greatly complicate USDA's ability to reasonably assure that all production ultimately for export is actually being inspected under the prescribed set of rules and regulations.

Response: Under the EPIA, egg products produced for export to this country must comply with the standards and requirements of the EPIA and its regulations. Moreover, plants listed as eligible for export to the United States must maintain a single standard of inspection and sanitation regardless of whether they are producing egg products for domestic or export markets. Thus, facility requirements, the inspection system, sanitation, and other controls that are not readily changeable must remain in place at all times while a plant is listed to ship product to the United States. Additionally, the Dutch Government has set forth specific control procedures to ensure the proper segregation of product intended for export to the United States. Product produced for this country will be processed separately from domestic product. Dutch officials will advise us prior to production of the dates eligible product will be processed, enabling our representative currently in The Hague to monitor these procedures if we deem this necessary.

Comment: A number of commenters expressed opposition over concerns that can be grouped under the broad category of unfair trade issues. These include Dutch subsidies to their egg industry, other European Economic Community (EEC) countries shipping subsidized surplus eggs to The Netherlands, and denial of U.S. access to Dutch egg products markets.

Response: The Agency appreciates the commenters concerns about alleged unfair trade practices; however, this matter is beyond the scope of this revision and beyond the authority of the EPIA. The Agency has no authority to base its eligibility determination on factors other than the country's laws, regulations, and information about public health controls.

Regarding the shipment of U.S. egg products to The Netherlands, the Dutch Agricultural Attache has confirmed that The Netherlands has no restrictions for egg products from the United States. However, products from the United States would have to comply with the Dutch requirements concerning composition, labeling, and food hygiene in accordance with Dutch Food Law as well as be subject to EEC basic and variable levies.

Comment: One commenter state that the proposed approval would allow additional eggs to enter into the U.S. marketing channels. Further, this action would have a negative impact on the U.S. egg industry by depressing prices.

Response: This comment which concerns the domestic shell egg market is not pertinent to the Agency's review of the foreign inspection system. The price of shell eggs in the domestic market is an issue outside of the authority of the EPIA and cannot be a factor considered by the Agency in determining if a foreign government's inspection system meets the applicable provisions of the EPIA and regulations.

Comment: A few commenters stated that the proposed approval would be another burden for the U.S. egg products industry, consumers, and taxpayers. It would require additional inspection and surveillance to guarantee that imported egg products meet the requirements applicable to official plants in the United States.

Response: The EPIA is the legislative authority authorizing USDA to administer the mandatory egg products inspection program. Under this authority, USDA is required to make any necessary inspections of domestic and approved foreign egg products inspection systems to ensure that the health and welfare of consumers are protected and that eggs and egg products used by them are wholesome, otherwise not adulterated, and properly labeled and packaged.

Comment: A few commenters argued that the Dutch egg industry follows manufacturing practices inferior to the United States and the proposed rule does not propose adequate measures to ensure that the imported products are of a high enough quality.

Response: The Agency evaluated the domestic inspection system of The Netherlands and its procedures and controls for inspection of egg products destined for export to this country and controls that are not readily changeable which must remain in place. In that regard, AMS based its eligibility determination on a two-step process involving document reviews and onsite reviews of system operations. The document review involved a review of the laws, regulations, and other written material used by the foreign country to operate its U.S. export inspection program. Each point of the country's laws, regulations, and other material was compared with U.S. requirements. Next, onsite reviews were conducted to evaluate applicable aspects of the country's program. After reviewing all the documents submitted by The Netherlands and evaluating the findings of the onsite reviews, the Agency has determined that the Dutch U.S. export egg products inspection system meets applicable egg products inspection standards and requirements that apply to official plants in the United States.

Comments: A few commenters supported the proposed approval because they believed it would: open up trading opportunities with The Netherlands, provide a stimulus to increase the sale of U.S. products to EEC countries, or give U.S. firms access to Dutch products which were previously unavailable to them.

Response: Issues, such as free trade and the availability of new products, are beyond the scope of this proposed revision. The Agency has no authority to base its decision on factors other than technical issues involving the foreign country's inspection system.

Comment: Two commenters noted that since there will not be a USDA inspector or a full-time USDA inspector in the Dutch plants, there will not be a way to ensure that the Dutch egg products exported to the United States will meet the health and quality standards required of U.S. producers and processors. Additionally, one of the commenters expressed the understanding that Dutch plants would be "spot checked" by U.S. meat inspectors which would not be equivalent.

Response: The EPIA does not require that foreign plants be inspected on a full-time basis by a USDA inspector. It provides for approval of an inspection system of a foreign government. The National Government of The Netherlands, through the Ministry of Agriculture and Fisheries, implements and conducts the Dutch egg products inspection program. The Ministry will staff plants approved to export egg products to the United States with a representative(s) of the Dutch Government who will ensure compliance with the applicable provisions of the EPIA and the regulations that apply to official plants in the United States. The Agency, through its review process, has determined that this aspect of the Dutch egg products inspection program complies with the continuous onsite inspection requirement of the EPIA. AMS has confidence that the Dutch inspection system as a whole meets our requirements, is well managed, and operates in a manner that ensures, as does ours, a wholesome finished product. Moreover, periodic inspection of Dutch plants by our personnel currently stationed in The Hague and by personnel stationed in Washington, DC, will provide additional assurances that Dutch plants are in compliance with our requirements on an ongoing basis. While it is true that personnel stationed in The Hague are mainly involved in meat and poultry inspection, they have been provided training and qualified for egg products inspection. This training is judged by AMS to be adequate to ensure proper inspection of approved Dutch egg products plants.

Comment: One commenter alleged that Dutch plants are permitted to process egg liquid from unwashed eggs for domestic production and that it is virtually impossible to clean plant processing equipment on a day-to-day basis in order to remove all traces of the unwashed egg liquid, thereby affecting the wholesomeness of subsequent products produced for export.

Response: Cleaning, sanitizing, and inspection procedures used in Dutch plants eligible for export must meet requirements of the EPIA and regulations thereunder. Based on field experience, the Agency finds these practices adequate to ensure the production of wholesome egg products.

Comment: This commenter also expressed a number of concerns about alleged practices in The Netherlands that would provide an unfair economic advantage to Dutch plants or that raise serious health questions for U.S. consumers. These were that egg liquid from other countries would be available for use in Dutch plants; that European egg producers would use dyes not permitted in the United States to produce a desired yolk color; that certain loss eggs would be used to produce egg products; that lysozyme-reduced egg whites would not be properly labeled; and that "hatchery clears" or incubated eggs would be used to produce egg products. One other commenter argued against the proposed rule because the Dutch import egg liquid from other countries, and producers in many of those countries use dyes which are prohibited in the United States to produce a darker, more desirable yolk color.

Response: The Dutch have submitted and the Agency has approved regulations covering egg products for export to this country that prohibit each of these practices. Moreover, the Agency has reviewed and judged the Dutch inspection system as meeting our requirements. However, the Agency appreciates these concerns and will give them particular attention during onsite inspection visits to The Netherlands.

Paperwork Reduction Act

This rule would not change or require any additional collection of information

from the public under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Existing information collection requirements in 7 CFR Part 59 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and assigned OMB Control Number 0581-0113.

List of Subjects in 7 CFR Part 59

Shell eggs, Egg products, Mandatory inspection service.

For reasons set out in the preamble and under authority contained in the EPIA (21 U.S.C. 1031-1056), Title 7, Part 59 of the Code of Federal Regulations is amended as set forth below:

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation of Part 59 continues to read as follows:

Authority: Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1635; 21 U.S.C. 1031-1056).

§ 59.910 [Amended]

2. Paragraph (b) of § 59.910 (7 CFR 59.910(b)) is amended by adding alphabetically the following country to the list of countries from which egg products are eligible to be imported into the United States: The Netherlands.

Done at Washington, DC, on: October 29, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-25493 Filed 11-4-87; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-16094; File No. S7-20-87]

Distribution of Long-Term Capital Gains by Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendment.

SUMMARY: The Commission has amended an existing rule to allow registered investment companies to make an additional distribution of long-term capital gains for the purpose of not incurring a special excise tax. The amendment was adopted because of the effect of tax law changes on certain registered investment companies. The amendment eliminates the need for those companies to obtain exemptive orders to make the desired distributions. The Commission has also adopted technical changes to clarify certain references in the existing rule.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Chief, (202) 272-2048, Office of Regulatory Policy, or Lawrence A. Friend, Chief Accountant, (202) 272-2106, Office of Disclosure Review, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today has amended rule 19b-1 (17 CFR 270.19b-1) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a-1 et seq.). The rule generally prohibits a registered investment company from distributing long-term capital gains more frequently than once with respect to any taxable year. The amendment, which the Commission proposed on June 5, 1987 (Investment Company Act Release No. 15771) ("Proposing Release"),[1] allows certain investment companies to make one additional distribution of long-term capital gains for each taxable year, if needed to avoid assessment of an excise tax. At the same time, the Commission has also adopted its proposed technical changes to clarify certain references in the rule.

The background and reasons for the amendment are summarized in this release. The Proposing Release contains a more detailed discussion.

Background

Section 19(b) (15 U.S.C. 80a-19(b)) was adopted as part of the 1970 amendments to the Act.[2] The section prohibits registered investment companies from distributing, in contravention of such rules, regulations or orders as the Commission may prescribe, long-term capital gains more often than once every twelve months.[3] Rule 19b-1 implements section 19(b).[4] The rule prohibits, with minor exceptions, investment companies from distributing more than one long-term capital gains dividend with respect to any taxable year.[5]

Under tax law changes effected by the Tax Reform Act of 1986,[6] the Internal Revenue Code ("Code") (26 U.S.C. 1 *et seq.*) imposes for each calendar year a 4% nondeductible excise tax ("Excise Tax") on any regulated investment company ("RIC") that does not distribute by December 31 to its shareholders at least 90% of its net aggregate short- and long-term capital gains ("Required Distribution") realized for the twelve-month period ended on October 31 of that year.[7] Thus, the Excise Tax, in effect, requires a RIC to make a long-term capital gains distribution by the close of the calendar year.

Since many RICs would also need to make a distribution at the end of their taxable year to receive the favorable tax treatment afforded by Subchapter M of the Code, distributions made to satisfy the Required Distribution could lead to violations of section 19(b) and rule 19b-1.[8] These RICs would need to make two

[1] 52 FR 22496 (June 12, 1987).

[2] Investment Company Amendments Act of 1970, Pub. L. 91-547, 11, 84 Stat. 1413, 1422 (1970).

[3] Section 19(b) of the Act provides that:

It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in the [Internal Revenue Code], more often than once every twelve months.

[4] Investment Company Act Rel. No. 6834 (Nov. 23, 1971) (36 FR 232 (Dec. 2, 1971)).

[5] Paragraph (a) of rule 19b-1 allows a regulated investment company to make a supplemental distribution of up to 10% of the prior distribution. (A regulated investment company, as is relevant here, is any management company registered under the Act, and which, among other things, derives at least 90% of its gross income from securities or currency-related holdings or transactions. I.R.C. section 851.) Further, under paragraph (e) of the rule, an investment company may make a special distribution otherwise prohibited by the rule in the event of "unforeseen circumstances," if it first files a request with the Commission to do so, and the Commission does not deny such request within 15 days after receipt thereof.

[6] Pub. L. 99-514, section 651, 100 Stat. 2294-2297 (1986).

[7] I.R.C. section 4982. A RIC may also be subject to the Excise Tax if it did not make certain other distributions; *e.g.*, the term "required distribution" under the Code includes 97% of a RIC's ordinary income for the calendar year. I.R.C. section 4982(b). The Excise Tax is imposed on the excess of the "required distribution for such calendar year" over the "distributed amount for such calendar year." I.R.C. section 4982(e). "Distributed amount" includes, generally, the dividends paid during the calendar year plus amounts upon which corporate income tax is imposed during such calendar year. I.R.C. section 4982(c).

[8] Under Subchapter M, long-term capital gains earned by a RIC during its taxable year and distributed to investors would not be subject to a corporate tax; however, they would be taxable income to the investor for the year in which they were received. *See generally* I.R.C. sections 561, 852, 855. For undistributed long-term capital gains, the RIC would generally deem the gains distributed and pay the applicable tax, with the investor generally receiving a pro rata credit for the amount paid. *Id.*

long-term capital gains distributions with respect to a taxable year in order not to be subject to additional tax, while section 19(b) and the rule generally permit only one.

Discussion

1. Summary of Comments

The Commission received five comment letters on the proposed amendment.[9] All of the commentators supported allowing the additional distribution. Two commentators believed, however, that the specifics of the proposal should be changed. They were concerned that the amendment would not permit a RIC to make an additional distribution of long-term capital gains that was in excess of the amount required to satisfy the Required Distribution. In addition, one of these commentators believed that the proposal was ambiguous with respect to the timing of the additional distribution, and that the amendment would impair a RIC's ability to distribute fully all realized capital gains. Finally, that commentator also believed that the condition requiring an explanation of the reason for the additional distribution is unnecessary.

The commentator that raised most of the questions concerning the proposal suggested an alternative approach under which a RIC would be permitted, unconditionally, and for any purpose, to make two distributions of long-term capital gains with respect to its fiscal year. This approach would also permit the RIC to make a distribution supplemental to the first two ("Spillover Distribution") to be based on realized, rather than distributed, gains.[10]

2. Response to the Comments

The amendment was not intended to limit the amount of the additional distribution. Consequently, the amendment's text has been changed to make clear that the only requirement is that the purpose of the distribution, in whole or in part, be to avoid imposition of any Excise Tax.[11] Thus, a RIC may distribute, as a single distribution, more than 90% of its long-term capital gains realized during a twelve-month period ended October 31.

Further, the amendment would not, as asserted by one commentator, prevent a RIC whose fiscal year ends after October 31, *e.g.*, on December 31, 1987, from distributing gains realized during November and December 1987. The amendment does not prevent such gains from being included either in the dividend representing the Required Distribution or in a separate fiscal year-end dividend distribution. The amendment permits an "additional" distribution of long-term capital gains, *i.e., in addition to* the one otherwise permitted by rule 19b-1 (for example, in addition to the distribution of November and December 1987 gains); the proposal was not phrased in terms of permitting only a "subsequent" distribution. Nevertheless, the amendment has been modified to remove this ambiguity.

Also, contrary to this commentator, the amendment would not preclude a RIC whose fiscal year ends near October 31, *e.g.*, on September 30, 1987, from distributing October 1987 gains either together with the 1987 Required Distribution or with the distribution for the fiscal year ended September 30, 1987, or as a separate distribution.[12] As indicated earlier, a distribution need not be limited to the precise amount of the Required Distribution to use the amended rule. Note also that the October 1987 distribution would be the first distribution with respect to the RIC's fiscal year ending September 30, 1988, and would, therefore, not be prohibited by rule 19b-1. The RIC, however, would have to be confident that its fiscal 1988 year-end distribution would satisfy the 1988 Required Distribution because that year-end distribution would be the second distribution covering fiscal 1988. Using the commentator's example, if it turns out that the RIC's October 1988 gains are so large in proportion to its fiscal 1988 gains that gains during its fiscal year (October 1, 1987, through September 30, 1988) do not constitute 90% of gains from November 1, 1987, through October 31, 1988, then the fiscal year 1988 year-end distribution would be a prohibited distribution because it would not satisfy the Required Distribution. One way to avoid this potential problem is for the RIC to distribute October 1987 gains as part of its fiscal 1988 year-end distribution.

The commentator further noted that, under the proposal, a distribution covering the period from November 1 to a particular RIC's fiscal year-end might be considered as the basis upon which a Spillover Distribution would be calculated.[13] Accordingly, paragraph (a) of rule 19b-1 has been modified to make clear that the maximum amount allowable as a Spillover Distribution is to be based on the aggregate of the long-term capital gains distributed for the taxable year rather than on merely the "prior distribution."[14]

The commentator also took issue with the condition to the amendment that requires the reason for the additional distribution to be included in the notice accompanying such distribution. The commentator argued that stating the reason for the distribution in the notice could limit a RIC's flexibility in making further distributions for the same fiscal year, and also could confuse investors because the aggregate dividend distribution would likely include distributions other than that made to satisfy the Required Distribution.

The Commission has concluded that stating the reason for the additional distribution in the accompanying notice is not necessary at this time.[15] Accordingly, the condition requiring an explanation of the reason for the additional distribution has been deleted from the rule.

Finally, the commentator proposed an alternative amendment which does not relate the additional distribution to the

[9] Another comment letter was received subsequent to the close of the comment period. Because that commentator made comments similar to those discussed herein, such comments will not be discussed separately.

[10] *See supra* note 5. *See also infra* note 14 and accompanying text.

[11] It should be noted that an additional distribution made merely for the purpose of reducing, rather than avoiding altogether, the Excise Tax is not permitted by the amended rule. However, should a small miscalculation of the Required Distribution result in the assessment of any Excise Tax, the conditions of the rule will still be met if the purpose of the distribution was complete avoidance of such tax.

[12] For example, if a RIC realized $180 of gain from November 1, 1987, through September 30, 1988, and an additional $20 of gain from October 1, 1988 through October 31, 1988, it could distribute the full $200, even if only $180 (90% × $200) is needed to satisfy the 1988 Required Distribution. Moreover, it could do so even if there had been a prior distribution of the gains for the October 1, 1987, to October 31, 1987, period. Although the $180 dividend would be the second distribution covering fiscal 1988, this distribution would satisfy the 1988 Required Distribution and, therefore, would meet the conditions of the amended rule.

[13] Under this construction, the Spillover Distribution would be limited to 10% of the actual taxable year-end distribution rather than the aggregate of that distribution plus the amount distributed as part of the Required Distribution attributed to the subject taxable year. *See supra* note 5.

[14] Such modification is in keeping with the original purpose of the Spillover Distribution. In the release adopting rule 19b-1, the Commission stated that the exception to the rule allowing a Spillover Distribution was for the purpose of permitting a RIC "to take advantage of the 'Spillover' provisions of the Code under which certain distributions made after the close of a taxable year are considered as made during such year." Investment Company Act Rel. No. 6834 (Nov. 23, 1971) (36 FR 232 (Dec. 2, 1971)). Thus, the suggestion by the commentator that the Spillover Distribution be calculated on gains, rather than distributions, was not adopted.

[15] Section 19(a) of the Act (15 U.S.C. 80a-19(a)), and rule 19a-1 thereunder (17 CFR 270.19a-1), however, would still require distributions by RICs to be accompanied by a notice disclosing the source or sources of each distribution.

Excise Tax provision. This approach is too broad. The language and history of section 19(b) of the Act reflect an intent to limit an investment company's distributions of long-term capital gains to one with respect to each taxable year. While the Commission has broad exemptive rulemaking authority under the Act, it may not use that authority to override concerns specifically addressed by Congress. However, sections 6(c) and 19(b) do provide flexibility for the Commission to use its authority in unique circumstances not contemplated by Congress during passage of the Act.[16] In this instance, it was the enactment of the Excise Tax provision that gave to link the amendment to that legislation.

Conclusion

The purpose of the amendment is to aid RICs to avoid unnecessary taxation. The amendment allows RICs the flexibility to make decisions regarding certain tax consequences of distributing or not distributing long-term capital gains without the necessity of seeking exemptive relief from the Commission. Further, the Commission has modified the existing rule to clarify any ambiguity as to the timing or amount of distributions and the calculation of the maximum amount of a Spillover Distribution, and has adopted the technical corrections to the existing rule that were set forth in the Proposing Release.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 603, regarding the proposed amendment to rule 19b-1 was published in the Proposing Release. No comments were received on that analysis. The Commission has prepared a Final Regulatory Flexibility Act Analysis, prepared in accordance with 5 U.S.C. 604, a copy of which may be obtained by contacting Brian M. Kaplowitz, Esq., Mail Stop 5-2, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Paperwork Reduction Act

The Office of Management and Budget approved the amendment to rule 19b-1 on July 31, 1987.

[16] As is relevant here, section 6(c) of the Act provides that the Commission may grant an exemption from the provisions of the Act or any rule thereunder, "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this [Act]."

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments to Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54, Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq.; unless otherwise noted.

* * * Section 270.19b-1 is also issued under secs. 6(c) (15 U.S.C. 80a-6(c)), 19 (a) and (b) (15 U.S.C 80a-19 (a) and (b)), and 38(a) (15 U.S.C. 80a-37(a)).

2. By amending § 270.19b-1 by revising paragraphs (a) and (c)(1)(iii), and adding a new paragraph (f) as follows:

§ 270.19b-1 Frequency of distribution of capital gains.

(a) No registered investment company which is a "regulated investment company" as defined in section 851 of the Internal Revenue Code of 1986 ("Code") shall distribute more than one capital gain dividend ("distribution"), as defined in section 852(b)(3)(C) of the Code, with respect to any one taxable year of the company, other than a distribution otherwise permitted by this rule or made pursuant to section 855 of the Code which is supplemental to the prior distribution with respect to the same taxable year of the company and which does not exceed 10% of the aggregate amount distributed for such taxable year.

* * * * *

(c) * * *

(1) * * *

(iii) The sale of an eligible trust security to maintain qualification of the Trust as a "regulated investment company" under section 851 of the Code,

* * * * *

(f) A registered investment company may make one additional distribution of long-term capital gains, as defined in the Code, with respect to any one taxable year of the company, which distribution is made, in whole or in part, for the purpose of not incurring any tax under section 4982 of the Code. Such additional distribution may be made prior or subsequent to any distribution otherwise permitted by paragraph (a) of this section.

By the Commission.

Jonathan G. Katz,

Secretary.

October 29, 1987.

[FR Doc. 87-25557 Filed 11-4-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 86C-0495]

MICA; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 11, 1987, for the final rule that amended the color additive regulations to provide for the safe use of mica in dentifrices that are drugs as well as cosmetics. FDA also changed the fineness specification for mica to permit a larger average particle size distribution.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 1987 (52 FR 29664), FDA amended the color additive regulations to provide for the safe use of mica in dentifrices that are drugs as well as cosmetics and also changed the fineness specification for mica to permit a larger average particle size distribution.

FDA gave interested persons until September 10, 1987, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of August 11, 1987, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21

CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the August 11, 1987, final rule. Accordingly, the amendments to § 73.1496 (a)(1), (b), and (c) became effective September 11, 1987.

Dated: October 30, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-25582 Filed 11-4-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 184

[Docket No. 86G-0086]

Substances Affirmed as Generally Recognized as Safe; Glyceryl Behenate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that glyceryl behenate is generally recognized as safe (GRAS) for use as a formulation aid in excipient mixtures used in food prepared as tablets.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition, (HFF-334), 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In accordance with § 170.35 (21 CFR 170.35), Gattefosse Etablissements, 36 Chemin de Genas, Saint Priest, France, submitted a petition (GRASP 6G0308) requesting that glyceryl behenate be affirmed as GRAS for use as an excipient in food prepared as tablets.

FDA published a notice of filing of this petition in the **Federal Register** of June 4, 1986 (51 FR 20354), advising that any comments should be submitted to the Dockets Management Branch (HFC-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. No comments were received in response to this notice.

Glyceryl behenate has no history of food use prior to 1958.

Identity

Glyceryl behenate is a mixture of glyceryl esters (glycerides) of commercial behenic acid. It contains primarily diglycerides (47 to 59 percent) but also triglycerides (26 to 38 percent) and a smaller amount of monoglycerides (10 to 20 percent). Glyceryl behenate is similar in composition to the emulsifying agent mono- and diglycerides of edible fats and oils, or edible fat-forming acids (mono- and diglycerides), which is listed as GRAS in § 182.4505 (21 CFR 182.4505). However, glyceryl behenate contains a higher proportion of triglycerides than does mono- and diglycerides and also contains behenic acid as its primary fatty acid. Behenic acid is not commonly found in traditional edible fats and oils, although it is found in fully hydrogenated rapeseed oil, whose use is affirmed as GRAS in § 184.1555.

The notice of filing in this proceeding used the name "glyceryl behenate" to represent the material that is the subject of the petition. The agency has considered this name to be appropriate primarily for simplicity, although the material is actually not a single chemical substance.

Manufacturing Process

Glyceryl behenate is manufactured by heating a mixture of glycerin and behenic acid (a saturated C_{22} fatty acid). The reaction can proceed with or without the use of a solvent and catalysts. Nevertheless, solvents and catalysts, such as those currently used in the manufacture of fatty acid derivatives, may be used in the manufacture of this ingredient.

Commercial behenic acid, which is one of the raw materials for manufacture of glyceryl behenate, is produced from hydrogenated rapeseed oil and has the approximate composition of 88 percent behenic acid, 10 percent arachidic acid and oleic acid, and 2 percent fatty acids with a higher carbon number than C_{22} (such as lignoceric acid). It may also contain a trace amount of erucic acid but at a level of less than 1 percent.

Technical Effects and Use Levels

The proposed use of the substance is as a component of excipient mixtures used in foods prepared as tablets. The technical properties of the additive in excipient formulations are similar to those of other fatty acid glycerides. Fatty acid glycerides, in general, are excellent lubricants, have good binding effect, have good flowing potency, eliminate anv cleavage problem, and are totally inert toward active ingredients.

The petitioner stated that the normal use level of the substance will be 1 to 4 percent of total tablet weight, but that in some special cases, such as in sustained release formulations, the use level may be 10 to 20 percent. The petition contains no information that would clearly demonstrate the existence of a technological self-limiting use level.

Estimated Daily Intake

The petitioner stated that the typical dosage of vitamin pills is one or two tablets per day, but that individuals taking different vitamins in separate pills may take as many as six tablets per day.

FDA sponsored a telephone survey of vitamin/mineral supplement use in 1980 (Stewart et al., *Journal of the American Dietetic Association*, pp. 1585-1590, December 1985). This survey, although not a definitive survey of vitamin/mineral supplement use, provides the best data available for estimating potential consumption of glyceryl behenate. The survey estimated that 40 percent of U.S. consumers over 16 years of age ingest at least one supplement per day, and that the median intake of these users is one supplement per day. Using the middle value of the range of glyceryl behenate content for tablets, which is 10 percent, and using the median intake of one supplement having a typical table weight of 600 milligrams (mg) per day, the agency estimates that the likely chronic, daily intake for glyceryl behenate would be 60 mg per person per day.

In its safety review of glyceryl behenate, the agency's major concern was the potential increase in consumption of behenic acid that would result from the petitioned use of glyceryl behenate. Because 60 mg of glyceryl behenate contain about 46 mg of behenic acid, the estimated daily intake for behenic acid from this use would be 46 mg per person per day.

Safety Information

The petition cited the GRAS status of fully hydrogenated rapeseed oil (21 CFR 184.1555(a)) and superglycerinated fully hydrogenated rapeseed oil (21 CFR 184.1555(b)), and the data supporting the GRAS status of these ingredients (previously submitted in GRAS petition 4G0036), to support the safety and GRAS status of glyceryl behenate. Included in this data was a 90-day subchronic study in rats of fully hydrogenated rapeseed oil, which supported a daily intake of 189 mg of behenic acid per person after applying a 1,000-fold safety factor. This figure is significantly higher than the estimated daily intake for behenic acid (46 mg per person per day), as stated above, from the petitioned use of glyceryl behenate.

Fully hydrogenated rapeseed oil is a triglyceride, while superglycerinated fully hydrogenated rapeseed oil and glyceryl behenate are mixtures of mono-, di-, and triglycerides. Both fully hydrogenated rapeseed oil and superglycerinated fully hydrogenated rapeseed oil have the same fatty acid composition, which is a mixture of saturated fatty acids (from C_{18} to C_{24}),

with behenic acid accounting for about 42 percent.

Although the percentages of fatty acids in these two oils are different from that in glyceryl behenate, the types of fatty acids in the three oils are the same because they are all derived from fully hydrogenated rapeseed oil. The only difference among these oils is in the relative proportions of the fatty acids. Furthermore, because superglycerinated fully hydrogenated rapeseed oil and glyceryl behenate have similar percentage distributions of mono-, di-, and triglycerides, they have similar physical properties. Based on the similarity between glyceryl behenate and fully hydrogenated rapeseed oil and superglycerinated fully hydrogenated rapeseed oil and on its review of the information in GRAS petition 4G0036, FDA concludes that the information that supports the GRAS status of the use of the latter two substances can be relied upon in deciding whether the petitioned use of glyceryl behenate is GRAS.

Conclusions

The agency has evaluated all the information in the petition along with other available information that relates to the petitioned use of glyceryl behenate and has reached the following conclusions:

1. Glyceryl behenate is not GRAS based upon history of common use in food.

2. Glyceryl behenate is safe for use in tablets based on FDA's evaluation of information on the manufacturing process, the chemical composition, the estimated consumer exposure, and the toxicity of glyceryl behenate, fully hydrogenated rapeseed oil, and superglycerinated fully hydrogenated rapeseed oil.

3. Glyceryl behenate is GRAS based on scientific procedures. Glyceryl behenate is as safe as fully hydrogenated rapeseed oil and superglycerinated fully hydrogenated rapeseed oil. As noted above, glyceryl behenate has a similar percentage distribution of mono-, di-, and triglycerides as that in superglycerinated fully hydrogenated rapeseed oil and is composed of glycerides of the same fatty acids as those found in fully hydrogenated rapeseed oil and superglycerinated fully hydrogenated rapeseed oil. FDA affirmed that the use of the latter two oils is GRAS on the basis of scientific procedures (42 FR 48335 September 23, 1977). FDA is affirming that the use of glyceryl behenate as a formulation aid is GRAS on the basis of this material's similarity in composition to these oils.

4. Like other fatty acid glycerides, glyceryl behenate is effective for use in excipient formulations.

5. The material affirmed as GRAS is food-grade glyceryl behenate conforming to the identity and specifications set forth in the regulation below.

Therefore, the agency is affirming that when done in accordance with good manufacturing conditions, the use of glyceryl behenate as a formulation aid in excipient formulations for tablets is GRAS under § 184.1(b)(1). The agency is including the technical effect and food use in the regulation to make clear that the affirmation of the GRAS status of this material is based on the evaluation of limited uses.

Environmental Effects

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Economic Effects

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this rule would have on small entities including small businesses and has determined that the effect of this final rule is to provide a new use for glyceryl behenate. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, the economic effects of this rule have been analyzed, and FDA has determined that the rule is not a major rule as defined by that order. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

2. Part 184 is amended by adding new § 184.1328 to read as follows:

§ 184.1328 Glyceryl behenate.

(a) Glyceryl behenate is a mixture of glyceryl esters of behenic acid made from glycerin and behenic acid (a saturated C_{22} fatty acid). The mixture contains predominantly glyceryl dibehenate.

(b) The ingredient meets the following specifications:

(1) 10 to 20 percent monoglyceride, 47 to 59 percent diglyceride, 26 to 38 percent triglyceride, not more than 1 percent free glycerin, and not more than 2.5 percent free fatty acids.

(2) Behenic acid. Between 80 and 90 percent of the total fatty acid content.

(3) Acid value. Not more than 4.

(4) Saponification value. Between 145 and 165.

(5) Iodine number. Not more than 3.

(6) Heavy metals (as Pb). Not more than 10 parts per million.

(c) In accordance with § 184.1(b)(1) of this chapter, the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient is generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a formulation aid, as defined in § 170.3(o)(14) of this chapter.

(2) The ingredient is used in excipient formulations for use in tablets at levels not to exceed good manufacturing practice.

Dated: October 30, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-25583 Filed 11-4-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 430, 436, and 442

[Docket No. 87N-0317]

Antibiotic Drugs; Cefuroxime Axetil Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of cefuroxime, cefuroxime axetil tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 5, 1987; comments, notice of participation, and request for hearing by December 7, 1987; data, information, and analyses to justify a hearing by January 4, 1988.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of cefuroxime, cefuroxime axetil tablets. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Parts 430, 436, and 442 to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The final rule, therefore, is effective November 5, 1987. However, interested persons may on or before December 7, 1987, submit written comments to the Dockets Management Branch (address above). 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. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 7, 1987, a written notice of participation and request for hearing, and (2) on or before January 4, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed in the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR Part 430 continues to read as follows:

Authority: Secs. 507, 701(a), 59 Stat. 463 as amended, 52 Stat. 1055 (21 U.S.C. 357, 371(a)); 21 CFR 5.10.

2. Part 430 is amended in § 430.5 by adding new paragraphs (a)(91) and (b)(93) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(91) *Cefuroxime axetil.* The term "cefuroxime axetil master standard" means a specific lot of cefuroxime axetil that is designated by the Commissioner as the standard of comparison in determining the potency of the cefuroxime axetil working standard.

(b) * * *

(93) *Cefuroxime axetil.* The term "cefuroxime axetil working standard" means a specific lot of a homogeneous preparation of cefuroxime axetil.

3. In § 430.6 by adding new paragraph (b)(93) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(93) *Cefuroxime axetil.* The term "microgram" applied to cefuroxime axetil means the cefuroxime activity (potency) contained in 1.246 micrograms of the cefuroxime axetil master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

4. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

5. Part 463 is amended in § 436.215 by alphabetically inserting a new item into the table in paragraph (b) and by adding new paragraph (c)(9) to read as follows:

§ 1436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate [1]	Sampling time(s)	Apparatus
*	*	*	*	*
Cefuroxime axetil tablets.	900 mL 0.07*N* hydrochloric acid.	55	15 min. and 45 min.	2
*	*	*	*	*

[1] Rotation rate of basket or paddle stirring element (revolutions per minute)

(c) * * *

(9) *Cefuroxime axetil*—(i) *Preparation of working standard solution.* Accurately weight approximately 60 milligrams of cefuroxime axetil working standard into a suitable-sized volumetric flask. Dissolve in 5 milliliters of methanol and dilute to volume with 0.07*N* hydrochloric acid. Further dilute with 0.07*N* hydrochloric acid to obtain a known concentration equivalent to 0.01 to 0.02 milligram of cefuroxime activity per milliliter.

(ii) *Preparation of sample solution.* Filter the sample through a 0.45-micrometer filter and dilute an accurately measured portion of the filtrate with sufficient 0.07*N* hydrochloric acid to obtain a concentration equivalent to 0.01 to 0.02 milligram of cefuroxime activity per milliliter (estimated).

(iii) *Procedure.* Using a suitable spectrophotometer and 0.07*N* hydrochloric acid as the blank, determine the absorbance of each standard and sample solution at the absorbance peak at approximately 278 nanometers. Determine the exact position of the absorption peak for the particular instrument used.

(iv) *Calculation.* Determine the total amount of cefuroxime activity dissolved as follows:

$$T = \frac{A_u \times c \times d \times 900}{A_s}$$

where:

T = Total milligrams of cefuroxime activity dissolved;

A_u = Absorbance of sample;

c = Cefuroxime activity of working standard solution in milligrams per milliliter;

d = Dilution factor of sample filtrate; and

A_s = Absorbance of standard.

6. By adding a new § 436.217 to read as follows:

§ 436.217 Film-coat rupture test.

(a) *Immersion fluid.* Dilute 6.0 milliliters of hydrochloric acid to 1,000 milliliters with water. During the performance of the test maintain the immersion fluid at a temperature of 37±0.5 °C by using a thermostatically controlled water bath.

(b) *Immersion vessel.* Use a suitable vessel, such as a 1-liter beaker.

(c) *Operation.* Add 750 milliliters of immersion fluid to the immersion vessel.

(d) *Procedure.* Drop a tablet into the immersion fluid and record the time for the tablet coat to rupture. Repeat the test with a further 19 tablets, testing not more than 10 tablets with a given volume of immersion fluid.

(e) *Evaluation.* The tablets pass the film-coat rupture test if the mean coat rupture time does not exceed 20 seconds and not more than 2 tablets have a coat rupture time exceeding 40 seconds.

PART 442—CEPHA ANTIBIOTIC DRUGS

7. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

8. Part 442 is amended by adding a new § 442.19 to read as follows:

§ 442.19 Cefuroxime axetial.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefuroxime axetil is an amorphous mixture of the diastereoisomers of 5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid, 3-[[(aminocarbonyl)oxy]methyl]-7-[[2-furanyl(methoxyimino)acetyl]amino]-8-oxo-, 1-(acetyloxy)ethyl ester, [6*R*-[6 *alpha*, 7 *beta* (*Z*)]]-. It is so purified and dried that:

(i) Its potency is not less than 745 micrograms and not more than 875 micrograms of cefuroxime per milligram on an anhydrous basis. The ratio of isomer A to total isomer content is not less than 0.48 and not more than 0.55.

(ii) Its moisture content is not more than 1.5 percent.

(iii) It is amorphous and not crystalline.

(iv) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Request for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefuroxime potency, isomer A ratio, moisture, crystallinity, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 278 nanometers, a 25-centimeter by 4.6-millimeter column packed with methyl silane bonded silica 5 micrometers in particle size, a flow rate of 1 milliliter per minute, and a known injection volume of 10 microliters. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(A) *0.2M Ammonium phosphate solution.* Transfer 23.0 grams ammonium dihydrogen phosphate to a 1-liter volumetric flask. Dissolve and dilute to volume with distilled water. Mix well.

(B) *Mobile phase.* Transfer 380 milliliters of methanol to a 1-liter volumetric flask and dilute to volume with 0.2*M* ammonium phosphate solution.

(C) *Internal standard solution.* Prepare a solution containing 5.4 milligrams of acetanilide per milliliter in methanol.

(D) *System suitability test solution.* Mix 10.0 milliliters of a solution containing 1.2 milligrams of cefuroxime axetil working standard per milliliter in methanol with 5.0 milliliters of internal standard solution, 2.0 milliliters of a solution containing 0.3 milligram of an authentic sample of (*RS*)-1-acetoxyethyl (6*R*, 7*R*)-3-carbamoyloxymethyl-7-[(2'*Z*)-2-(fur-2-yl)-2-methyoxy-iminoacetamindo]ceph-2-em-4-carboxylate (delta-2 isomers of cefuroxime axetil) per milliliter in methanol and 1.8 milliliters of methanol. Dilute to 50 milliliters with 0.2*M* ammonium phosphate solution.

(ii) *Preparation of working standard and sample solutions*—(A) *Working standard solution.* Dissolve approximately 30 milligrams of the cefuroxime axetil working standard, accurately weighed, in methanol and dilute to 25 milliliters with methanol. Immediately transfer 10.0 milliliters of the working standard solution to a 50-milliliter volumetric flask. Add 5.0 milliliters of internal standard solution and 3.8 milliliters of methanol, and dilute to volume with 0.2*M* ammonium phosphate soluton to obtain a solution containing 0.2 milligram of cefuroxime

activity per milliliter. Store the solution under refrigeration no more than 8 hours.

(B) *Sample solution.* Dissolve approximately 30 milligrams of the sample, accurately weighed, in methanol and dilute to 25 milliliters with methanol. Immediately transfer 10.0 milliliters of the sample solution to a 50-milliliter volumetric flask. Add 5.0 milliliters of internal standard solution and 3.8 milliliters of methanol, and dilute to volume with 0.2*M* ammonium phosphate solution to obtain a solution containing 0.2 milligram of cefuroxime activity per milliliter (estimated). Store the solution under refrigeration no more than 8 hours.

(iii) *System suitability requirements*—(A) *Tailing factor.* The tailing factor (*T*) is satisfactory for isomer A if it is not more than 1.5 at 5 percent of peak height.

(B) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory for isomer A if it is greater than 3,000 theoretical plates.

(C) *Resolution.* The resolution (*R*) between isomer A and isomer B of cefuroxime axetil is satisfactory if it is not less than 1.5 and the resolution (*R*) between isomer A and the delta-2 isomers of cefuroxime axetil is satisfactory if it is not less than 1.5.

(D) *Coefficent of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satisfactory if it is not more than 2.0 percent. If the system suitability requirements have been met, then proceed as described in § 436.216(b) of this chapter. Alternate chromatographic conditions are acceptable provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(1)(ii)(B) of this section should not be changed.

(iv) *Calculations*—(A) Calculate the micrograms of cefuroxime per milligram of sample as follows:

$$\text{Micrograms of cefuroxime per milligram} = \frac{R_u \times P_s \times 100}{R_s \times C_u \times (100-m)}$$

where:

R_u = Sum of the peak height of the cefuroxime axetil sample isomer A and isomer B peaks/Peak height of the internal standard;

R_s = Sum of the peak heights of the cefuroxime axetil working standard isomer A and isomer B peaks/Peak height of the internal standard;

P_s = Cefuroxime activity in the cefuroxime axetil working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture content of the sample.

(B) Calculate the ratio of isomer A to total isomer content as follows:

$$\text{Ratio of isomer A to isomer content} = \frac{\text{Peak height of the isomer A peak}}{\text{Peak area of the isomer A peak} + \text{peak area of the isomer B peak}}$$

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter, using the titration procedure described in paragraph (e)(1) of that section.

(3) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter, except that the particles do not reveal the phenomena of birefringence and extinction positions on revolving the microscope stage.

(4) *Identity.* Proceed as directed in § 436.211 of this chapter, using the mineral oil mull prepared as described in paragraph (b)(2) of that section.

9. By adding new § 422.119 to read as follows:

§ 442.119 Cefuroxime axetil tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefuroxime axetil tablets are composed of cefuroxime axetil and one or more suitable and harmless diluents, binders, lubricants, and colorings. Each tablet contains 125 milligrams, 250 milligrams, or 500 milligrams of cefuroxime activity. Its potency is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of cefuroxime activity that it is represented to contain. Its moisture content is not more than 2.0 percent at the time of certification and not more than 6.0 percent at the time of expiry. It passes the dissolution test. It passes the film-coat rupture test. It passes the identity test. The cefuroxime axetil used conforms to the standards prescribed by § 442.19(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefuroxime axetil used in making the batch for potency, isomer A ratio, moisture, crystallinity, and identity.

(B) The batch for potency, moisture, dissolution, film-coat rupture, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(A) The cefuroxime axetil used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 442.19(b)(1). Working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Preparation of working standard and sample solutions*—(A) *Working standard solution.* Dissolve approximately 30 milligrams of the cefuroxime axetil working standard, accurately weighed, in methanol and dilute to 25 milliliters. Transfer 10.0 milliliters of the working standard solution to a 50-milliliter volumetric flask. Add 5.0 milliliters of internal standard solution, 3.8 milliliters of methanol, and dilute to volume with 0.2*M* ammonium phosphate solution to obtain a stock solution containing 0.24 milligram of cefuroxime axetil per milliliter. Store the stock solution under refrigeration no more than 8 hours.

(B) *Sample solution.* Grind a representative number of tablets in a mortar and pestle. Immediately swirl the ground tablets in a volumetric flask containing methanol and shake for 10 minutes to dissolve the ground cefuroxime axetil. Dilute with methanol to give a stock solution of convenient concentration. Filter the stock solution. Transfer 5.0 milliliters of filtrate to a 50-milliliter volumetric flask. Add 5.0 milliliters of internal standard solution and 8.8 milliliters of methanol. Dilute to volume with 0.2*M* ammonium phosphate solution. Store in a refrigerator and use within 8 hours.

(ii) *System suitability requirements*—(A) *Tailing factor.* The tailing factor (*T*) is satisfactory for isomer A if it is not more than 1.5 at 5 percent of peak height.

(B) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory for isomer A if it is greater than 3,000 theoretical plates.

(C) *Resolution.* The resolution (*R*) between isomer A and isomer B of cefuroxime axetil is satisfactory if it is not less than 1.5 and the resolution (*R*) between isomer A and the delta-2 isomers of cefuroxime axetil is satisfactory if it is not less than 1.5.

(D) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is not more than 2.0 percent. If the system suitability requirements have been met, then proceed as described in § 436.216(b) of this chapter. Alternate chromatographic conditions are acceptable provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(1)(i)(B) of this section should not be changed.

(iii) *Calculation.* Calculate the cefuroxime content as follows:

$$\text{Milligrams of cefuroxime per tablet} = \frac{R_u \times P_s \times d}{R_s \times n}$$

where:

R_u = Sum of peak heights of the cefuroxime axetil sample isomer A and isomer B peaks/Peak height of the internal standard;

R_s = Sum of the peak heights of the cefuroxime axetil working standard isomer A and isomer B peaks/Peak height of the internal standard;

P_s = Potency of the cefuroxime axetil working standard in milligrams of cefuroxime activity per milliliter;

d = Dilution factor of the sample; and

n = Number of tablets in the sample assayed.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter, using the titration procedure described in paragraph (e)(1) of that section.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of cefuroxime activity dissolved) is 60 percent at 15 minutes and 75 percent at 45 minutes.

(4) *Film-coat rupture test.* Proceed as directed in § 436.217 of this chapter.

(5) *Identity.* The high-performance liquid chromatogram of the sample solution determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the cefuroxime axetil working standard solution.

Dated: October 29, 1987.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 87-25584 Filed 11-4-87; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3287-2]

Standards of Performance for New Stationary Sources; Grain Elevators and Stationary Gas Turbines; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This notice clarifies the applicability dates for the standards of performance for grain elevators (Subpart DD of 40 CFR Part 60, published in the **Federal Register** August 3, 1978), and stationary gas turbines (Subpart GG of 40 CFR Part 60, published in the **Federal Register** September 10, 1979). The applicability dates were inadvertently omitted from these subparts.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Doug Bell or Amanda Aldridge, Standards Development Branch, ESED (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5568 or (919) 541-5268.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 60

Air pollution control.

Date: October 28, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 301(a), Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7601(a)).

2. By revising paragraph (b) of § 60.300 of Subpart DD—*Standards of Performance for Grain Elevators* to read as follows:

§ 60.300 Applicability and designation of affected facility.

* * * * *

(b) Any facility under paragraph (a) of this section which commences construction, modification, or reconstruction after August 3, 1978, is subject to the requirements of this part.

3. In Subpart GG—*Standards of Performance for Stationary Gas Turbines,* § 60.330 is revised (existing paragraph is designated as paragraph (a) and revised, and new paragraph (b) is added) as follows:

§ 60.330 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities: All stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour, based on the lower heating value of the fuel fired.

(b) Any facility under paragraph (a) of this section which commences construction, modification, or reconstruction after October 3, 1977, is subject to the requirements of this part except as provided in paragraphs (e) and (j) of § 60.332.

[FR Doc. 87-25539 Filed 11-4-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 403

[FRL-3287-1]

General Pretreatment Regulation for Existing and New Sources; Removal Credits

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 30, 1986, the United States Court of Appeals for the Third Circuit invalidated certain portions of the amendments to the removal credits regulation promulgated on August 3, 1984 (49 FR 31212). *Natural Resources Defense Council, Inc.* v. *EPA,* 790 F.2d 289 (3d Cir. 1986). The effect of that decision on the removal credits rule was to leave in effect the previously promulgated versions of the 1984 regulatory provisions invalidated by the court. The purpose of today's action is to amend the removal credit regulation so that it properly reflects the effect of the court's decision.

DATE: This regulation shall become effective November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Craig Jakubowics, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9533.

SUPPLEMENTARY INFORMATION: On August 3, 1984, EPA promulgated amendments to the removal credits regulation, 40 CFR 403.7 (49 FR 31212). These amendments modified in part the previous version of § 403.7 that EPA promulgated on January 28, 1981 (46 FR 9404). The 1981 regulation was upheld

by the U.S. Court of Appeals for the Third Circuit. *National Association of Metal Finishers* v. *EPA*, 719 F.2d 624, 646–50 (3rd. Cir. 1984).

On April 30, 1986, the Third Circuit held three provisions of the 1984 amendments to be invalid. *NRDC* v. *EPA, supra.* Further, the Court held that EPA may not authorize removal credits in the absence of a more comprehensive set of sludge regulations under Section 405 of the Act.

The effect of the Third Circuit's invalidation of three provisions of the removal credits amendments is to leave in effect the 1981 versions of those three provisions. Thus, the current status of the removal credits regulation is:

(1) Portions of the 1984 amendments not invalidated by the Third Circuit remain in effect, and

(2) The 1981 versions of the three invalidated regulatory provisions are in effect.

Since the currently published version of 40 CFR 403.7 (1986) does not accurately reflect the current status of the removal credits regulation in the wake of the Third Circuit's decision, EPA is publishing today the revised versions of the three provisions that correspond to the current regulatory status as outlined above. Specifically, today's rule:

(1) Replaces the 1984 "consistent removal" provision (§ 403.7(b)) with the previous 1981 version (formerly § 403.7 (a)(2) and (b)(2)), now contained in § 403.7(b);

(2) Reinserts the 1981 definition of "Overflow" and the "compensation for overflow" provisions that had been deleted in the 1984 amendments (formerly § 403.7 (a)(3) and (b)(3), respectively), now contained in § 403.7(h); and

(3) Replaces the 1984 "modification on withdrawal of removal credits" provision (§ 403.7(f)(4)) with the previous 1981 version (formerly § 403.7(f)(5)), now contained in § 403.7(f)(4). The 1981 version of § 403.7(f)(4) is itself revised to delete references to "significant contribution", which was previously held illegal by the Third Circuit in *NAMF* v. *EPA*, supra, 719 F.2d at 638–41.

EPA is publishing these rules in final form. There is no need to solicit public comment on this rule, as it does not modify the current status of the removal credits regulation. Rather, it merely codifies the regulations currently in effect as the result of the Third Circuit's decision. For the same reasons, this regulation is effective immediately upon publication in the **Federal Register**.

Promulgation of this rule does not in itself entitle EPA to authorize removal credits. EPA must still comply with the Third Circuit's ruling requiring a more comprehensive set of sludge regulations under section 405 of the Act as a precondition for granting removal credits. EPA is working to comply with that ruling and will be proposing an extensive set of sludge guidelines under the authority of section 405(d). Note that section 406(e) of the Water Quality Act of 1987 provides that the Third Circuit decision as to sludge was stayed, but only until August 31, 1987, with respect to:

(1) Publicly owned treatment works (POTWs), the owner or operator of which received removal credits authority before February 4, 1987; and

(2) POTWs, the owner or operator of which submitted an application for removal credits authority which was pending on February 4, 1987, and was approved before August 31, 1987.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. Today's action does not satisfy any of the criteria specified in section 1(b) of the Executive Order. Therefore, it is not a major rulemaking. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Regulatory Flexibility Analysis

Today's action announces the current status of the removal credits regulation. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 30501 *et seq.*, EPA must submit a copy of any rule that contains a collection of information requirement to the Director of the Office of Management and Budget for review and approval. This action contains no additional information collection requirements, and therefore the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: October 28, 1987.

A. James Barnes,

Acting Administrator.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reasons set out in the preamble, 40 CFR Part 403 is amended as follows:

1. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 54(c) of the Clean Water Act of 1977 (Pub. L. 95–217); sections 204(b)(1)(C); 208(b)(2)(C)(iii); 301(b)(1)(A)(ii); 301(b)(2)(A)(ii); (301)(b)(2)(C); 301(h)(5); 301(i)(2); 304(e); 304(g); 307; 308; 309; 402(b); 405 and 501(e) of the Federal Water Pollution Control Act (Pub. L. 92–500), as amended by the Clean Water Act of 1977.

2. Section 403.7 is amended by revising paragraphs (b) and (f)(4) and by adding paragraph (h) to read as follows:

§ 403.7 Removal credits.

* * * * *

(b) *Establishment of Removal Credits; Demonstration of Consistent Removal.* (1) *Definition of Consistent Removal.* "Consistent Removal" shall mean the average of the lowest 50 percent of the removal measured according to paragraph (b)(2) of this section. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (b)(2) of this section must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the Approval Authority. If the substance is not measurable in the influent, the date may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the limit of measurement, the Approval Authority may approve alternate means for demonstrating Consistent Removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(2) *Consistent Removal Data.* Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in paragraph (b)(1) of this section, which demonstrates Consistent Removal of the

pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

(i) *Representative Data; Seasonal.* The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

(ii) *Representative Data; Quality and Quantity.* The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in paragraph (b)(1) of this section.

(iii) *Sampling Procedures: Composite.* (A) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(B)(1) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the Approval Authority determines that this schedule will not be most representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be approved.

(2) In addition, upon the Approval Authority's concurrence, a POTW may utilize an historical data base amassed prior to the effective data of this section provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(C) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

(iv) *Sampling Procedures: Grab.* Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.

(v) *Analytical methods.* The sampling referred to in paragraphs (b)(2) (i) through (iv) of this section and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(vi) *Calculation of removal.* All data acquired under the provisions of this section must be submitted to the Approval Authority. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data or procedures subject to concurrence by the Approval Authority as provided for in paragraph (b)(1) of this section.

* * * * *

(f) * * *

(4) *Modification or withdrawal of removal credits.*—(i) *Notice of POTW.* The Approval Authority shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(3) of this section or other relevant information available to it, the Approval Authority determines:

(A) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(B) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's NPDES Permit.

(ii) *Corrective action.* If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Approval Authority shall either withdraw such discharge limits or require modifications in the revised discharge limits.

(iii) *Public notice of withdrawal or modification.* The Approval Authority shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s) as may be specified by the Approval Authority.

* * * * *

(h) *Compensation for overflow.* "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant. POTWs which at least once annually Overflow untreated wastewater to receiving waters may claims Consistent Removal of a pollutant only by complying with either paragraph (h)(1) of (h)(2) or this section. However, this subsection shall not apply

where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;

(1) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur at the POTW or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(i) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (h)(1)(iii) of this section, to insure that Industrial Users are containing, ceasing or reducing operations during POTW System Overflow; and

(iii) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, State Director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

(2)(i) The Consistent Removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \frac{8760-Z}{8760}$$

Where:

r_m = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (b)(2) of this section

r_c = removal corrected by the Overflow factor

Z = hours per year that Overflow occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

(ii) After July 1, 1983, Consistent Removal may be claimed only where efforts to correct the conditions resulting in untreated Discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" or "Program Guidance Memorandum-61" (same document) published on December 16, 1975, by EPA Office of Water Program Operations (WH-546). (See Appendix A.) Revisions to discharge limits in categorical Pretreatment Standards may not be made where efforts have not been committed to by the POTW to minimize pollution from Overflows. At minimum, by July 1, 1983, the POTW must have completed the analysis required by PRM 75-34 and be making an effort to implement the plan.

(iii) If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, Consistent Removal, subject to the approval of the Approval Authority, may continue to be claimed according to the formula in paragraph (h)(2)(i) of this section as long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the non-structural cost-effective measures identified by the analysis; and so long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective Overflow controls identified in the analysis should Federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, Consistent Removal may, subject to the approval of the Approval Authority, continue to be claimed according to the formula in paragraph (h)(2)(i) of this section where the POTW has completed and the Approval Authority has accepted the analysis required by PRM 75-34 and the POTW has requested inclusion in its NPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. (In considering what is timely implementation, the Approval Authority shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.)

[FR Doc. 87-25655 Filed 11-4-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 87-309]

Establishment of an Office of Public Affairs and an Office of Legislative Affairs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action reorganizes the Office of Congressional and Public Affairs into two independent offices: the Office of Public Affairs and the Office of Legislative Affairs.

EFFECTIVE DATE: October 13, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walker Feaster, telephone: 202-632-3906.

SUPPLEMENTARY INFORMATION:

Adopted: September 22, 1987.

Released: October 27, 1987.

1. By this Order, the Commission amends its rules to reorganize the Office of Congressional and Public Affairs (OCPA) into two independent offices: the Office of Public Affairs (OPA) and the Office of Legislative Affairs (OLA).

2. The Commission's communication and liaison activities with the public, news media and the Congress were consolidated into one office in 1985. This reorganization was designed to create an integrated structure for disseminating the Commission's policies to these organizations and groups and to reflect an increasing commitment by the Commission to coordinate telecommunications policy with the Congress.[1] Experience with this

[1] Order Establishing the Office of Congressional and Public Affairs, 50 FR 2985 (January 23, 1985).

management structure indicates that it is not necessary to consolidate public and congressional relations in one office to achieve optimum management efficiencies. These functions are, to a large extent, autonomous and require the full time attention of management personnel.

3. The consolidation of the Commission's congressional liaison functions within a division of OCPA has improved the Commission's coordination with the Congress. This reorganization takes that decision one step further by creating an independent office devoted exclusively to congressional liaison. The Commission expects that this reorganization will improve both its public and congressional affair operations by allowing management and staff to focus efforts in these areas at a time when public, news media, and congressional liaison activities have increased.

4. Because these amendments concern only matters of agency organization and procedure, compliance with the notice and comment procedure of the Administrative Procedure Act is not required.[2] Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. 603 and 604, does not apply.

5. Accordingly, it is hereby ordered that, pursuant to authority contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 155(b), Part 0 of the Commission's rules are amended as set forth below. These rules and regulations are effective October 13, 1987.

List of Subjects in 47 CFR Part 0

Organization, functions.

Rules Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 0.5 is amended by revising paragraph (a)(13), adding paragraph (a)(14), revising paragraph (b)(7) and adding paragraph (b)(8).

[2] 5 U.S.C. 553(b)(A).

§ 0.5 General description of Commission organization and operations.

(a) * * *

(13) Office of Public Affairs.

(14) Office of Legislative Affairs.

(b) * * *

(7) *Office of Public Affairs.* The Office of Public Affairs has primary responsibility for the Commission's News Media and Consumer Assistance and Small Business programs. The major purposes of these programs are to inform the public of the Commission's regulatory requirements, to facilitate public participation in the Commission's decisionmaking processes, and to apprise the public of Commission policies promoting minority participation in telecommunications.

(8) *Office of Legislative Affairs.* The Office of Legislative Affairs has primary responsibility to implement the Commission's legislative programs. The major purposes of these programs are to inform the Congress of the Commission's regulatory decisions, respond to congressional inquiries, and provide or respond to proposals for changes in existing law as it affects the Commission or its processes.

* * * * *

4. 47 CFR 0.15 is amended by revising the undesignated center heading, introductory paragraph and removing paragraph (j) to read as follows:

Office of Public Affairs

§ 0.15 Functions of the Office.

The Office of Public Affairs is directly responsible to the Commission. The Office has the following duties and responsibilities:

* * * * *

5. 47 CFR 0.16 is revised to read as follows:

§ 0.16 Units in the Office.

The Office of Public Affairs is comprised of the following units:

(a) Immediate Office of the Director.

(b) Consumer Assistance and Small Business Division.

(c) News Media Division.

6. A new undesignated center heading and § 0.17 is added to read as follows:

Office of Legislative Affairs

§ 0.17 Functions of the Office.

The Office of Legislative Affairs is directly responsible to the Commission. The Office has the following duties and responsibilities:

(a) Advise and make recommendations to the Commission with respect to legislation proposed by members of Congress or the Executive Branch and coordinate the preparation of Commission views thereon for submission to Congress or the Executive Branch.

(b) Coordinate with the Office of General Counsel responses to Congressional or Executive Branch inquiries as to the local ramifications of Commission policies, regulations, rules, and statutory interpretations.

(c) Assist the Office of the Managing Director in preparation of the annual report to Congress, the Commission budget and appropriations legislation to Congress; assist the Office of Public Affairs in preparation of the Commission's Annual Report.

(d) Assist the Chairman and Commissioners in preparation for, and the coordination of their appearances before the Committees of Congress.

(e) Coordinate the annual Commission legislative program.

(f) Coordinate Commission and staff responses to inquiries by individual members of Congress, congressional committees and staffs.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-25621 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-350; RM-5340]

Radio Broadcasting Services; McCall, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266C1 to McCall, Idaho, at the request of Dean C. Hagerman, as proposed by the *Notice.* Additionally, Channel 294A is allotted to McCall in response to the interest demonstrated by the comments of Charles Edward Jordon, for a second allotment to that community. With this action, this proceeding is terminated.

DATES: Effective December 14, 1987; the window period for filing applications will open on December 15, 1987, and close on January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-350, adopted October 7, 1987, and released October 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets

Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended in the entry for McCall, Idaho, by adding Channels 266C1 and 294A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25624 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-512; RM-5563, RM-5862]

Radio Broadcasting Services; Monterey, TN, and Monticello, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 295C2 for Channel 296A at Monterey, Tennessee, and modifies the construction permit of Station WRJT(FM) to specify operation on the new frequency, at the request of First Media of Monterey, Inc., as that community's first wide coverage area FM station. In addition, at the request of Robert L. Bertram, we are allocating Channel 226A to Monticello, Kentucky, as that community's second FM service. The Monterey substitution requires a site restriction of 14.1 kilometers (9.3 miles) east of the city. We denied a request from Faye S. Anderson, the permittee of Station WBLG(FM), Channel 296A, Smiths Grove, Kentucky, to substitute Channel 294C2 for Channel 296A at Smiths Grove, at a preferred site. With this action, this proceeding is terminated.

DATES: Effective December 10, 1987. The window period for filing applications on Channel 226A at Monticello, Kentucky, will open on December 11, 1987, and close on January 12, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-512, adopted September 30, 1987, and released October 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Tennessee, by adding Channel 295C2 and removing Channel 296A for Monterey and under Kentucky, by adding Channel 226A for Monticello.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-25619 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Parts 815 and 849

Procurement by Negotiation, Termination of Contracts

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is revising the VA Acquisition Regulation (VAAR) to provide for the contracting officer to request audits for cost and pricing data and settlement proposals directly from the cognizant audit agency. This revision will streamline the VA process for obtaining required audit services, thereby compressing the acquisition cycle.

EFFECTIVE DATE: December 7, 1987.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Policy and Interagency Service (91A), Office of Procurement and Supply, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2334.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from sections 3 and 4 of Executive Order 12291.

II. Regulatory Flexibility Act (RFA)

Because this final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR subpart will primarily implement the regulations set forth in FAR Subpart 8.4.

III. Paperwork Reduction Act

This final rule requires no additional information collection or recordkeeping requirement upon the public.

List of Subjects in 48 CFR Parts 815 and 849

Government procurement.

Approved: October 28, 1987.

Thomas K. Turnage,

Administrator.

In 48 CFR Chapter 8, Parts 815 and 849 are amended as set forth below:

1. The authority citation for Parts 815 and 849 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

PARTS 815 AND 849—[AMENDED]

2. In 48 CFR Parts 815 and 849, all references to "Office of Construction" are revised to read "Office of Facilities."

815.805-5 [Amended]

3. In subsection 815.805-5 the last sentence in paragraph (a) is revised and paragraph (b) is amended by removing the word "proposal" and inserting in its place the word "proposals" to read as follows:

815.805-5 Field pricing support.

(a) * * * Contracting officers located at VA medical centers, the marketing center and supply depots are to request audits directly from the cognizant audit agencies. The Marketing Center will obtain a block of audit control numbers from the Office of the Inspector General (53C). Contracting officers located at VA medical centers and the supply depots, if appropriate, will request an audit

control number from the Director, Office of Procurement and Supply (93D).

* * * * *

4. In subsection 849.107, the last two sentences are revised to read as follows:

849.107 Audit of prime contract settlement proposals and subcontract settlements.

* * * All other contracting officers located in the VA Central Office and the Office of General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C) to request audits directly from the cognizant agencies. Audit control numbers may be obtained verbally from the Director, Office of Procurement and Supply (93D).

[FR Doc. 87-25635 Filed 11-4-87; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 51]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Denial of petition for reconsideration.

SUMMARY: Standard No. 208, *Occupant Crash Protection,* provides for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars. This phase-in began on September 1, 1986, with full implementation scheduled for September 1, 1989. To encourage the development of a variety of automatic restraint systems, the standard provides that a manufacturer that installs a non-belt automatic restraint system, such as an air bag system, for the driver's position and a manual lap/shoulder belt at the front right passenger's position will receive credit for producing one automatic restraint-equipped car (a "one car credit") during the phase-in period. The Standard also provides that if two-thirds of the population of the United States were covered by effective safety belt use laws, which meet certain minimum requirements, by April 1, 1989, the requirements for passenger cars to be equipped with automatic restraints will no longer apply.

On March 30, 1987, NHTSA published a rule extending the one car credit beyond the phase-in period. This rule provides that, until September 1, 1993, a vehicle can comply with Standard No. 208 if it is equipped with a non-belt automatic restraint system at the driver's position and a *dynamically-tested* manual lap/shoulder belt at the front right passenger's position. By extending the one car credit with this rule, the agency allowed the necessary time for the orderly development and production of passsenger cars with full-front air bag systems, protecting both the driver and the right front passenger.

A petition for reconsideration of this rule was filed on April 29, 1987, by the Public Citizen Litigation Group (PCLG). That petition alleged that there was insufficient evidence in the record to support the extension of the one car credit, that NHTSA failed to consider the decrease in passenger protection that would result from extension of the one car credit, that the agency failed to consider an issue raised by one commenter, and that the manufacturer's promises to install air bag systems are unenforceable. After evaluating this petition, NHTSA has concluded that the petitioner misunderstood much of the rule and that the petition presents no reasons to revise the previously published rule. The petition is therefore denied.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, Room 5320, 400 Seventh Street SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background Prior to March 30, 1987 Final Rule

On July 11, 1984 (49 FR 28962), the Department of Transportation announced its decision on occupant crash protection. The decision provided for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars, beginning on September 1, 1986, with full implementation to take place on September 1, 1989. The requirements of this decision could be met by using any automatic occupant protection technology if the technology selected resulted in the vehicle complying with the requirements of Standard No. 208. That is, vehicle manufacturers could choose to use automatic detachable or nondetachable belts, air bags, passive interiors, or any other systems that would provide the necessary level of occupant protection.

The Department explained its reasoning for not mandating or prohibiting any particular automatic restraint systems as follows:

> By issuing a performance standard rather then mandating the specific use of one device such as airbags or prohibiting the use of specific devices such as nondetachable belts, the Department believes that it will provide sufficient latitude for industry to develop the most effective systems. The ability to offer alternative devices should enable the manufacturers to overcome any concerns about public acceptability by permitting some public choice. If there is concern, for example, about the comfort or convenience of automatic belts, the manufacturers have the option of providing airbags or passive interiors. For those who remain concerned about the cost of airbags, automatic belts provide an alternative. This approach also has the advantage of not discouraging the development of other technologies. For example, the development of passive interiors can be continued and offered as an alternative to those who have objections to automatic belts and airbags. 49 FR 28997; July 17, 1984.

Although manufacturers were free to use any automatic restraint system that complied with the performance requirements of Standard No. 208, the Department wanted to encourage the development of innovative automatic restraint systems. Hence, the July 1984 decision also provided that, during the phase-in period from September 1986 to September 1989, manufacturers that installed a non-belt automatic restraint system, such as an air bag system or passive interiors, for the driver, and any type of automatic restraint system for the right front passenger, would receive credit for producing 1.5 automatic restraint-equipped vehicles. The 1.5 vehicle credit was amended on August 30, 1985 (50 FR 35233) by adding a provision that each vehicle equipped with a non-belt automatic restraint system for the driver and a manual belt system for the right front passenger would receive a one car credit during the phase-in period. The agency stated in that rule its belief that this one-car credit "will encourage the introduction of non-belt technologies into passenger cars earlier than would otherwise occur." 50 FR 35235.

In the August 30, 1985 rule, the agency explained its decision to amend the credit provision for non-belt automatic technology at the driver's position as follows:

> Increasing public awareness of the benefits of a variety of automatic protection techniques is one of the primary objectives of the phase-in and credit provisions. Achieving this objective will depend, therefore, on the availability of an adequate number of cars equipped with non-belt protection of the driver's side. 50 FR 35235.

To encourage earlier introduction of alternative automatic restraint technologies, wider public availability of

such technologies, and more effective marketing of such technologies, the agency adopted the one car credit provision.

The March 30, 1987 Final Rule

Ford Motor Company filed a petition for rulemaking with NHTSA, asking the agency to extend the one car credit for driver-only non-belt automatic restraint systems after September 1, 1989. In responsse to this petition and in accordance with the agency's long-held belief that it should encourage the introduction of non-belt automatic restraint technologies, NHTSA proposed to amend Standard No. 208 on November 25, 1986 (51 FR 42598). This notice proposed to extend until September 1, 1993, the one car credit for vehicles equipped with driver-only non-belt automatic restraint systems. To provide safety belt-wearing passengers in the front seat of vehicles receiving the one car credit with the same level of protection as a passenger in the front seat of vehicles with automatic belt restraint systems, the notice proposed that vehicles receiving the one car credit would be subject to special provisions for the manual belts at the right front passenger's position. That is, a test dummy at that seating position, when restrained by the manual lap/shoulder belt, would have to meet the injury criteria specified in section S6 of Standard No. 208 during the 30 mph barrier test.

This proposed rulemaking was necessary to avoid discouraging manufacturers efforts to offer non-belt automatic restraints in their new passenger cars. The two primary reasons NHTSA believed vehicle manufacturers might be discouraged from pursuing efforts to install non-belt automatic restraints in vehicles were the risks faced by the manufacturers and limits on their engineering resources. The risk that passenger-side air bags or other non-belt automatic restraints could not be designed, tested, and installed in a manufacturer's vehicles by the 1990 model year would force those manufacturers that were considering the installation of non-belt automatic restraint systems in their 1990 model year vehicles to engineer two different passenger-side automatic restraint systems. The first restraint system would be the non-belt automatic restraint system, almost all of which require additional time to resolve technical issues for the passenger side. The alternative restraint system, that would have to be pursued in case the technical issues associated with passenger-side air bags were not resolved in time to be incorporated in 1990 model year vehicles, was an automatic belt system. It was the agency's judgment that manufacturers were unlikely to pursue this dual engineering effort for automatic restraints, given the costs and staff time that would be involved. Hence, most manufacturers would have complied with Standard No. 208 by using their engineering resources to develop automatic belt systems. This result would be contrary to the Department's oft-stated goal of encouraging the availability of the more innovative and technically complex non-belt automatic restraint systems.

Additionally, those manufacturers that were not considering the use of non-belt automatic restraint systems to comply with Standard No. 208 could now consider complying with the standard by means of a driver/side air bag. These manufacturers would know that they would be permitted additional time to develop and test the far more complex passenger-side air bag system in those vehicles. Both Chrysler and Volvo stated in their comments to this proposal that they were now planning to install driver side air bags in most of their 1990 cars if the one car credit were extended; 52 FR 10098, March 30, 1987.

By reducing the risks and use of engineering resources that manufacturers would face if the technical difficulties associated with passenger-side air bag systems were not fully resolved by September 1, 1989, the agency concluded that it was giving manufacturers an incentive to produce more vehicles with driver-side air bag systems. The agency believed that this incentive would lead to *more* vehicles being sold with driver-side air bag systems that would otherwise have been the case. The incentive would also further the Department's goal of facilitating the widespread availability of automatic restraint systems, so that the public would become familiar with the operation and benefits of those systems, particularly the more innovative automatic restraint systems.

After carefully considering all comments on this proposed extension of the one car credit, the agency published a final rule adopting the proposal on March 30, 1987 (52 FR 10096). The preamble to that rule stated:

> The information provided by vehicle manufacturers and automatic restraint system suppliers, which is discussed in detail below, shows that adoption of a limited extension will promote the widespread introduction of non-belt automatic restraint systems, such as air bags, for both the driver and passenger. The information provided by commenters shows that there are a number of technical issues that still need to be resolved before widespread installation of passenger-side air bag systems will occur. In addition, there is a need for suppliers to increase their production capabilities for both driver and passenger air bag systems. The limited extension adopted today will provide the additional time to resolve those technical and supply issues. 52 FR 10096.

The Petition for Reconsideration

On April 29, 1987, the Public Citizen Litigation Group (PCLG), which did not offer any comments on the proposed rule, filed a petition for reconsideration of this final rule, on behalf of Public Citizen, the Center for Auto Safety, the United States Public Interest Research Group, Motor Voters, and the Public Interest Research Groups of California, Florida, Massachusetts, Missouri, and New York. This petition raises a number of issues discussed in detail below, none of which establish any basis for altering the public final rule.

The first assertion in PCLG's petition is that the leadtime until September 1, 1993 is excessive. The petition states that vehicle manufacturers received five years worth of leadtime from the date the July 11, 1984 rule was published until September 1, 1989, when all cars are required to be equipped with automatic restraints at the front outboard seating positions. The petition then alleges that the March, 1987 final rule gives an additional four years of leadtime for those manufacturers to develop passenger-side airbags, and concludes that "there simply is no sound justification for allowing what amounts to an unprecedented nine-year leadtime for manufacturers electing to comply with this safety standard by installing air bags."

These statements by PCLG suggest a possible misunderstanding of Standard No. 208 and the March, 1987 final rule. Standard No. 208 does *not* require manufacturers to install air bags, or any other particular type of automatic restraint system. Instead, the manufacturer is free to choose any automatic restraint system that complies with the performance requirements of Standard No. 208. The March, 1987 final rule did *not* change the fundamental requirement of Standard No. 208 that *all* new passenger cars must have automatic restraint systems by September 1, 1989. If a manufacturer chooses to comply with the standard by means of an automatic belt system in its passenger cars, it must provide automatic belts at both front outboard seating positions in all of those cars manufactured on or after September 1, 1989.

The extension of the one car credit set forth in the March, 1987 final rule

applies only to those vehicles in which the manufacturer chooses to provide non-belt automatic protection for the driver's position. For all such vehicles manufactured on or after September 1, 1989, a non-belt automatic restraint system, e.g., air bags, must be installed at the driver's position. Since almost three-fourths of front seat fatalities consist of drivers, this rule ensures that drivers in cars that receive the one car credit will have the protection of non-belt automatic restraints as of September 1, 1989.

Thus, the only issue posed by this assertion of the petitioner is whether the agency was justified in its decision to allow a four year extension for vehicles to comply with the full requirements of Standard No. 208 by means of non-belt automatic restraints for the right front passenger's position. The agency believes that the record amply supports its decision. The Insurance Institute for Highway Safety (IIHS) perhaps summed this issue up most clearly in its comment on the proposal, when it said:

> Air bags aren't modular components that can simply be tacked on a wide range of car models. Each individual model with an air bag system requires a separate engineering development and crash testing program. It wouldn't be responsible to pace the phase-in of air bags ahead of these constraints. NHTSA Docket No. 74-14-N48-016; December 24, 1986.

In response to the Department's 1984 decision on automatic restraints, most manufacturers planned to comply with the requirements of Standard No. 208 by using automatic belt systems. Since they had no plans to use air bags to comply with Standard No. 208, these manufacturers had no reason to give high priority to the necessary engineering development and crash testing programs for their models to be equipped with air bags. The question the agency had to consider, then, in response to the Ford petition was for how long the one car credit should be extended to encourage the manufacturers to reexamine their choice of automatic restraints to be installed in their cars and to use more non-belt automatic restraint systems.

The technology for driver-side air bags is at a reasonably advanced stage of development at this time. Moreover, there are few technical issues yet to be resolved, because the location of the air bag, the distance to the driver, and the position of the driver remain nearly constant from model to model. Since there were no significant technical or engineering problems to be resolved with respect to driver's side air bags, the final rule did not allow any additional time for manufacturers to use air bags on the driver's side to comply with Standard No. 208.

This is emphatically not the case with respect to passenger-side air bags, however. The Breed Corporation, an air bag supplier, summarized these problems as follows:

> However, passenger side inflators will have to have substantially different capacities depending on the particular car model. Timing on the passenger side inflator is particularly crucial because the volume to be filled by the bag is substantially larger than on the driver side. The passenger must be captured by the air bag before he obtains a substantial velocity relative to the dashboard. This may require a very energetic inflator which has the potential of injuring an out-of-position occupant. Certain technologies offer hope for alleviating this problem, such as the aspirated air bag. To our knowledge, this technology has not been fully developed at this time, and therefore, it may not be desirable to mandate passenger side air bags (especially in large vehicles) at this time. NHTSA Docket No. 74-14-N48-008; December 18, 1986.

Breed estimated later in its comment that from one to two years leadtime would be necessary to resolve these technical issues. Breed also estimated that an additional two years would be needed after a particular air bag design was chosen in order for the supplier to get necessary tooling and provide production components for particular vehicle models. Accordingly, Breed concluded this section of its comment with the statement, "Since we believe that from one to two years are required to finalize the passenger side air bag design, a minimum leadtime of from two to four years would be required to have passenger side air bag models available in production quantities."

PCLG seized on this last quoted sentence, and alleged that NHTSA had extended the one car credit beyond even the far end of the estimate provided by Breed. However, PCLG misread the comment, which addressed only the leadtime necessary for *air bag suppliers* to make passenger side air bags available in production quantities. After the technical problems that currently exist for passenger side air bags are resolved, those vehicle manufacturers that choose to offer passenger side air bags in passenger cars must perform the engineering, design modifications, and crash testing that were described in the IIHS comment quoted above. The preliminary regulatory evaluation prepared for this rule reiterated the leadtime estimates for passenger side air bag installation that were prepared for the July, 1984 final rule. Those estimates were that 36-48 months of leadtime were needed for passenger side air bags, with 48-60 months necessary for small cars. The longer leadtime estimates for small cars were based on the fact that less development work has been done for those vehicles. *See* pages III-6 and III-7 of the July, 1984 Final Regulatory Impact Assessment accompanying Secretary Dole's Decision on Standard No. 208.

Based on the statements in its petition, the agency believes that PCLG was confused about the differing standards for determining the leadtime appropriate for *requiring* vehicle manufacturers to take an action, as opposed to an extension aimed at *encouraging* manufacturers to take an action. If this rule had dealt with a required action under Standard No. 208, the agency would have estimated the *minimum* period of time that is reasonable and necessary to permit manufacturers to certify that all subject vehicles comply with the new requirement. Based on previous estimates, the *minimum* leadtime necessary would have likely resulted in an effective date in either 1991 of 1992 (48 to 60 months after the 1987 final rule).

However, this extension of the one car credit did not present the agency with a leadtime decision for a *requirement.* Standard No. 208 only requires that cars be equipped with automatic restraints. It does *not* require manufacturers to use air bags or any other particular type of automatic restraint system. Instead, the manufacturers are free to choose the particular type of automatic restraint systems that will be installed in their cars in compliance with Standard No. 208.

The question of how much leadtime was necessary to *encourage* manufacturers to install air bags is very different from the question of how much leadtime should be allowed to comply with a new requirement, because the agency is not seeking to estimate the *minimum* period of time needed to take this step. For example, if the one car credit provisions were extended for only the *minimum* period of time necessary to install passenger side air bags, manufacturers would be forced to immediately make a choice of whether to commence a program to install air bags in their cars or whether to use a different type of automatic restraint system to comply with Standard No. 208. Given the unresolved technical issues associated with passenger side air bags at this time and the risks imposed on manufacturers by too short a time frame (double engineering effort, as discussed above), the agency concluded few, if any, manufacturers that had not already chosen to begin a program to comply

with Standard No. 208 by using air bags would reexamine their choice if the extension had been set for only the *minimum* period of time estimated necessary. Similarly, a minimum extension might force manufacturers that have already initiated air bag programs to abandon those programs if unforeseen difficulties arise. To wit, if it takes longer than one or two years to resolve the technical issues associated with passenger side air bags, or if a manufacturer encounters some difficulty modifying a vehicle's design to incorporate passenger side air bags, an extension of the one car credit for the *minimum* period currently estimated as necessary to complete air bag programs would put the manufacturer in the same position as manufacturers were with respect to the 1989 date before the extension of the one car credit, and would likely result in the majority of cars being equipped with automatic belts. Because of this, NHTSA determined that an extension for the *minimum* necessary period would have failed to achieve its purpose of *encouraging* manufacturers to install air bags in their cars. To ensure that the extention of the one car credit would *not* fail to achieve its purpose, NHTSA had to add some period of time in addition to the minimum.

When deciding the period for which the one car credit should be extended, the agency sought to balance the goals of minimizing the risk of noncompliance for manufacturers that plan to use passenger side air bag technology and the goal of limiting the one car credit to the time necessary for manufactures to complete the development and installation of passenger side air bag systems. Too short a leadtime would have put the manufacturers in the same position as they were with respect to the September 1, 1989 date of passenger side air bags, and would have resulted in the overwhelming majority of passenger cars using automatic belts to comply with Standard No. 208. On the other hand, allowing an indefinite extension of the one car credit would reduce manufacturers' incentives to install passenger side air bags in their cars as soon as possible. After a full consideration of these facts, the agency determined that an appropriate balance would be achieved if the one car credit were extended until 1993, one to two years after the minimum leadtime that would be needed. The agency believes this period of leadtime is thoroughly justified by the available evidence, and rejects the petitioner's assertions to the contrary.

As a part of this argument, PCLG also asserted that the agency "failed to respond to the evidence presented by the Center for Auto Safety (CFAS) demonstrating that the technology for passenger side air bags currently exists." The "evidence" to which PCLG refers were simply assertions by CFAS that passenger side air bags must be available for today's vehicles, because the technology was available for late 60's and early 70's passenger cars. If the underlying assumption that the technologies involves were comparable, the assertion would be correct. The assumption is, however, inaccurate with respect to both vehicle and air bag technology.

In the case of vehicles, the passenger cars of the early 70's generally had longitudinally mounted front engines with rear wheel drive and full frames for structural support. Passenger cars of the late 80's will generally be powered by transversely-mounted front or mid-engines with front wheel drive, and will rely on body shell rigidity instead of full frames for structural strength. Further, the passenger cars of the late 80's will have significantly lower vehicle weights than comparable cars of the early 70's These differences account for significantly different crash pulses, and require significantly different methods of managing crash energy to protect occupants.

In the case of passenger side air bags, a hybrid inflator system was used for the early 70's consisting of compressed gas augmented with chemical gas generators. Technological advances now permit current designs to use a single gas generator to inflate the bag. In the early 70's two stages of air bag initiation were programmed into the passenger side system. The "low level" initiation occurred at a barrier-equivalent speed of 10–18 mph, using only part of the entire gas supply system to inflate the air bag. At speeds above 18 mph, a second stage gas generator was ignited to provide increased restraint capability at the higher impact speeds. However, these early passenger side air bags caused concerns about overly aggressive air bag deployment. Manufacturers of current air bags are trying to develop a single stage generator that can avoid these problems. Finally, the early 70's passenger side air bag systems weighed about 20 to 30 pounds. Because of vehicle manufacturers' vehicle weight concerns, current passenger air bag systems may weigh less than 7 pounds. These technical differences in passenger side air bag systems reflect real differences in the safety performance, economics, and practicability of the air bag systems of the early 70's and current air bag systems.

NHTSA did not fail to consider the CFAS suggestion that manufacturers could simply transfer the air bag technology from early 70's vehicles to current vehicles. Instead, the agency concluded that the CFAS suggestion was based on false technical premises and faulty engineering judgment, and explained this is the preamble to the final rule; *see* 52 FR 10101.

The second issue raised in the PCLG petition was that there was no evidence in the record regarding supplier capabilities. PCLG asserted that this was significant, because "the entire underlying premise for the final rule is that air bag *supplies* are incapable of producing and supplying air bags in time for manufacturers to meet the original 1989 deadline for compliance with Standard 208" (emphasis in original). As discussed at length in the preamble to the final rule and above, this was *not* the underlying premise for the final rule. The reasons for extending the one car credit were to permit the necessary time for resolution of the outstanding technical problems associated with passenger side air bags, to allow manufacturers time to make the necessary engineering and design modifications to incorporate passenger side air bags into their new passenger cars, *and* to allow time for air bag suppliers to increase their production capabilities for both driver and passenger air bag systems. PCLG's assertion that supplier capability was the "entire underlying premise" is not supported by any fair reading of the preamble to the final rule.

Perhaps because of its misunderstanding of the significance accorded to supplier capabilities in the decision to extend the one car credit. PCLG asserted that the agency had not done enough to obtain information on the subject of supplier capabilities. Instead of relying on supplier comments on this subject. PCLG argued that the agency should have exercised its discretionary authority to issue special orders to air bag suppliers to gather better information on this subject. The agency saw no reason for it to even consider using its discretion to issue special orders to air bag suppliers in connection with this rule. First, the issue of supplier capabilities was not as significant as PCLG believed. Second, most suppliers commented on the proposed rule. Since they had voluntarily provided information, there was no need to seek to compel them to provide that information. Third,

according to their comments, most vehicle manufacturers had not made final decisions on their automatic restraint plans for vehicles produced after September 1, 1989. Hence, they would not have submitted orders to potential air bag suppliers. The responses to any special orders to current air bag suppliers in these circumstances would have been of very little use to the agency. While information could have been gathered on current overall capacity and potential start-up time if orders for significant amounts of air bags were received, new companies could always enter the market and increase supplier capacity. Thus, the responses to special orders to air bag suppliers would *still* not allow the agency to be substantially more certain of a forecast of the air bag industry's manufacturing capacity by the 1990 model year.

PCLG's third assertion was that NHTSA failed to consider the decrease in passenger protection that may result from its extension of the one car credit. PCLG stated in its petition: "In determining that the amendment to Standard 208 will increase overall protection for drivers, and thereby reduce fatalities because it will ensure that employment of more air bags rather than automatic belts on the driver side, NHTSA failed to evaluate the other side of this equation, i.e., the number of cars that will not have full front seat passive protection, now that the compliance date for the passenger side has been extended four years." Apparently, PCLG believes that the agency's examination of the safety effects of extending the one car credit covered only the driver, and ignored the passenger position completely. This belief is manifestly incorrect.

In both the preliminary and final regulatory evaluations, the agency followed the same practice it has always followed when evaluating the safety effects of particular restraint systems in connection with Standard No. 208. That is, the safety effects for *all* front seat occupants, including the driver and passengers, are analyzed for each type of restraint system being considered in the evaluation. Hence, pages 3 through 9 of the final regulatory evaluation compare the benefits (in terms of net front seat occupant lives saved) of various front seat restraint system combinations. The evaluation shows that safety belt usage in cars equipped with automatic belts must exceed 60 percent before the benefits of front seat automatic belts would equal the benefits of a driver air bag system and manual lap/shoulder belts for the right front passenger. That same evaluation shows that automatic belt usage would have to be greater than 75 percent to exceed the benefits of a driver and passenger side air bag system. Contrary to PCLG's assertion, all estimates in both the preliminary and final regulatory evaluation included an assessment of the safety effects for both drivers and passengers in the front seat having manual belt systems. After considering these data, the agency concluded that a temporary extension of the one car credit would not have an adverse safety effect.

PCLG's fourth assertion was that NHTSA failed to consider a phase-in requirement for non-belt automatic restraints on the passenger side, as suggested by the Center for Auto Safety (CFAS) in its comments on the proposed rulemaking. This assertion was made notwithstanding the following discussion in the preamble to the final rule:

> NHTSA does not believe it is necessary to adopt a new phase-in requirement for passenger side non-belt systems and, as discussed in detail below, does not believe the one car credit should be limited to cars equipped with air bags. The information provided by the vehicle manufacturers and suppliers indicates that those manufacturers that plan to introduce passenger side non-belt systems have already begun the initial stages of the design work. The commitment of the financial and engineering resources to the necessary design and development work and the production of manufacturing facilities will serve as a sufficient incentive for manufacturers to ensure that the final products resulting from those efforts will be placed in cars as quickly as possible. 52 FR 10101.

The agency believes that it fully considered the CFAS comment, but decided that there was no need to adopt it. The extension of the one car credit affects only vehicles that are equipped with non-belt automatic restraint systems at the driver's position. Vehicle manufacturers have stated that air bags are the only type of non-belt automatic restraint system that could be installed in production vehicles during the timeframe addressed in this rule. Hence, the one car credit will affect only vehicles that have air bags installed at the driver's position. To install driver side air bags in vehicles by September 1, 1989, a vehicle manufacturer must have made a substantial investment in those air bag systems, both in terms of capital and engineering resources.

A manufacturer that is seeking to comply with Standard No. 208 by installing air bags on the passenger side must make an additional substantial investment of capital and engineering resources in this program. If a manufacturer is able to introduce passenger side air bags into production before September 1, 1993, it has strong incentives to do so. First, the manufacturer gets no "payoff" on its investment in the passenger side air bag program until it installs passenger side air bags in some production vehicles. Second, early installation of some passenger side air bag systems in some cars would give the manufacturer some experience with those systems before they were installed in all cars that had received the credit. This experience would allow the manufacturers to make any necessary adjustments. Therefore, the agency concluded that there was no need for further incentives for manufacturers to install passenger side air bag systems as quickly as possible.

PCLG then suggested that NHTSA's failure to adopt CFAS suggested phase-in was "entirely inconsistent with the way the agency has dealt with Standard 208 over the last sixteen years." The Department has *not* automatically specified a phase-in period for every amendment on Standard No. 208. When it was dealing with new requirements applicable to all passenger cars, the Department has exercised its discretion to specify a phase-in period for those requirements. In all cases where the Department mandated a phase-in requirement, however, it had concluded that the vehicle manufacturers needed the further incentive of a phase-in requirement to make automatic restraints available in some vehicles sold to the public sooner than if automatic restraints were made available only when they could be installed in all cars.

With respect to this final rule, the agency concluded that it was *not* dealing with a situation where the affected manufacturers might have a reason for delaying the installation of an automatic restraint system. To repeat, the only manufacturers affected by this extension will be those that have chosen to comply with the requirements of Standard No. 208 by installing driver side air bags in some of their cars. Those manufacturers could have complied with Standard No. 208 with a lesser investment by installing automatic belt systems in those cars. Having chosen to make the significant investments required to develop and install air bag systems in its cars, the manufacturer would not appear to need any further incentive to introduce passenger side air bag systems into its cars as soon as possible, as explained above. Since there was no need for a phase-in period, NHTSA did not specify one. PCLG did not explain why it

believes it is inconsistent for the Department to require a phase-in period only when the need for a phase-in has been established, and the agency does not believe its decision with respect to the one car credit was inconsistent with past Departmental decisions on Standard No. 208.

PCLG's final assertion was that the manufacturers' promises to use driver side air bags are unenforceable. PCLG stated that the agency's justification for extending the one car credit "is premised on nothing more than a 'promise' by Ford and the other companies that they will, in fact, employ air bags for the driver side of their cars." This statement is simply false. Standard No. 208 requires that all cars manufactured between September 1, 1989 and September 1, 1992 must have a non-belt automatic restraint system installed on the driver side, if the car has a manual lap/shoulder belt at the right front passenger position. This is a requirement of the standard, not simply a promise by the manufacturer.

PCLG's statement that NHTSA will have no recourse under the final rule to force the installation of air bags is correct, but irrelevant. Standard No. 208 does not now require, nor has it ever required, manufacturers to install air bags in their cars. Instead, Standard No. 208 is a performance standard, and any restraint system that provides the specified performance may be used to comply with the standard. Thus, if some or all of the vehicle manufacturers that are currently planning to install driver side air bags in their 1990 model year cars should change their plans and install automatic belts instead, those manufacturers would not have "tricked" the agency. They would simply be exercising an option they have always had for complying with Standard No. 208.

If a manufacturer chooses to install an automatic belt at the driver's position, Standard No. 208 requires that vehicle also to have an automatic restraint system for the right front passenger. The one car credit applies only to vehicles in which the manufacturer has chosen to install a non-belt automatic restraint system on the driver side. The one car credit was adopted to promote the widespread introduction of non-belt automatic restraint systems, and the currently available information suggests that the rule has increased the likelihood of achieving this objective.

NHTSA has concluded that the PCLG petition has not suggested any reasonable basis for amending the previously published final rule extending the one car credit. The petition is, therefore, denied.

Authority: 15. U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on November 2, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-25676 Filed 11-3-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 70101-7001]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces closure of the fishery for sablefish caught with trawl gear off the coasts of Washington, Oregon, and California, and seeks public comment on this action. This closure is authorized under the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and the 1987 fishing restrictions which prohibit retention or landings of sablefish by trawl gear when the quota for that gear type is reached. The Director, Northwest Region, NMFS (Regional Director) has determined that the 1987 trawl quota of 6,200 metric tons (mt) for sablefish will be reached by November 4, 1987. This closure is intended to avoid overfishing a species which is fully utilized.

DATES: This closure is effective from 0001 hours Pacific Standard Time (PST), November 4, 1987, until 2400 hours PST, December 31, 1987, unless modified, superseded, or rescinded. Comments will be accepted until November 20, 1987.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140; or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: Under the regulations implementing the FMP at § 663.22(a)(3), the fishing restrictions imposed at the beginning of 1987 allocate the sablefish optimum yield (OY) quota of 12,000 mt, 52 percent (6,200 mt) to trawl gear and 48 percent (5,800 mt) to fixed (nontrawl) gear, and provide for additional fishing restrictions, if needed, to avoid reaching the trawl quota prior to the end of the fishing year. When the quota for either gear type is reached, retention of landings of sablefish by that gear type must be prohibited as provided for in §§ 663.21(b) and 663.23. If the overall OY for sablefish is reached, further landings of sablefish by all gear types must be prohibited until January 1, 1988 (52 FR 790, January 9, 1987).

On October 2, 1987, a trip limit was imposed on trawl-caught sablefish of 6,000 pounds or 20 percent of all legal fish on board (round weights), whichever is greater, to slow landings and delay attainment of the trawl quota (52 FR 37466, October 7, 1987). On October 22, 1987, the fixed gear fishery for sablefish was closed due to attainment of the 5,800 mt fixed gear quota (52 FR 41304, October 27, 1987).

Based on the best available information as of October 26, 1987, and in cooperation with the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, and the Pacific Fishery Management Council (Council), the Regional Director determined that the 6,200 mt quota for sablefish caught with trawl gear will be reached by November 4, 1987. Accordingly, closure of the trawl fishery for sablefish is effective at 0001 hours PST on November 4, 1987. Washington, Oregon, and California will close state ocean waters at the same time.

This action is automatic and non-discretionary and modifies previous restrictions for sablefish caught with trawl gear (52 FR 790, January 9, 1987; 52 FR 11473, April 9, 1987; 52 FR 37466, October 7, 1987).

Secretarial Action

For the reasons stated above, the Secretary of Commerce announces that:

(1) It is unlawful for any person to retain or land sablefish caught with trawl gear.

(2) Trawl gear includes bottom trawls, roller or bobbin trawls, pelagic trawls, and shrimp trawls.

(3) This restriction applies to all sablefish caught with trawl gear in ocean waters (0-200 nautical miles) offshore of Washington, Oregon, and California. All sablefish caught with trawl gear that are possessed 0-200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0-200 nautical miles offshore of

Washington, Oregon, or California, unless otherwise demonstrated by the person in possession of those fish.

(4) The fixed gear (nontrawl) fishery has taken its 5,800 mt quota and was prohibited from taking and retaining, or landing, sablefish on October 22, 1987 (52 FR 41304, October 22, 1987). Consequently, the 12,000 mt OY for sablefish has now been reached, and no sablefish may be taken and retained, or landed, by any gear type until January 1, 1988.

Classification

The determination to prohibit further trawl landings of sablefish is based on the most recent data available. The aggregate data upon which this action is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

This action is taken under §§ 663.22(a)(3) and 663.23 and the notice at 52 FR 790, January 9, 1987, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Because of the immediate need to prohibit further trawl landings of sablefish and thereby prevent inequitable and excessive harvest that could otherwise result, the Secretary finds that advance notice and public comment on this closure are impracticable and not in the public interest, and that no delay should occur in its effective date. The public was notified at the Council's September 1987 meeting that trawl landings of sablefish could reach the quota for that gear type before the end of the year. The public had the opportunity to comment at meetings of the Groundfish Select Group, Groundfish Management Team, and Council in August, September, and October 1987. Public comments also will be accepted for 15 days after publication of this notice in the **Federal Register**. The Secretary therefore finds good cause to waive the 30-day delayed effectiveness provision of § 663.23(c).

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: November 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-25669 Filed 11-2-87; 4:11 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 214
Thursday, November 5, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE
Bureau of Economic Analysis

15 CFR Part 806
[Docket No. 70872-7172]

BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1987

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 4(b) of the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended) requires that a benchmark survey of foreign direct investment in the United States be conducted covering 1987 and every fifth year thereafter. These proposed rules will revise 15 CFR 806.17 to set forth the reporting requirements for the survey covering 1987 and to delete the rules now in § 806.17, which were for the last benchmark survey covering 1980. They will also amend 15 CFR 806.15 to change the year of coverage of this next benchmark survey from 1985, as was specified in the original legislation authorizing the survey, to 1987, as now specified by amendment to that legislation (see Pub. L. 97-33 and Pub. L. 97-70).

DATE: Comments on the proposed rules will receive consideration if submitted in writing on or before December 21, 1987.

ADDRESS: Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 607, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments received will be available for public inspection in Room 607, Tower Building, between 8:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Acting Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: These proposed rules set forth the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1987. This survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter . . . In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

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

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

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

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

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

The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States. The data from the survey will be used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment. They will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

As proposed, the survey will consist of an Instruction Booklet; a Form BE-12(X), which is to be used to determine the reporting status of those to whom the survey packet is sent; a Form BE-12(LF), a long form for reporting by

nonbank U.S. affilitates with assets, sales, or net income of more than $20 million; and a Form BE-12(SF), a short form for reporting by U.S. affiliates with $20 million or less of assets, sales, or net income, and by U.S. affiliates that are banks. Although the survey is intended to cover the universe of foreign direct investment in the United States, in order to minimize the reporting burden, U.S. affiliates are exempt from reporting on Form BE-12(LF) and Form BE-12(SF) if their assets, sales, and net income are $1 million or less.

Primarily to minimize the reporting burden on respondents, BEA is proposing a number of major changes between the 1980 and 1987 benchmark surveys. Proposed changes in the reporting requirements for the survey, which require revisions in the rules, are:

1. Introduction of the BE-12(SF), the short form for reporting by U.S. affiliates with $20 million or less of assets, sales, or net income, and by U.S. affiliates that are banks. In the 1980 benchmark survey, in contrast, smaller nonbank affiliates had to report on the 1980 equivalent of the long form. Thus, the short form will significantly reduce the reporting burden for these smaller affiliates and for the survey as a whole. The short form will also be utilized by banks, whereas there was a separate form for banks in 1980.

2. Introduction of the BE-12(X), Determination of Reporting Status. This form would replace the exemption claim form used in the 1980 survey. It allows companies to determine if they must file the long form or the short form or if they are exempt for filing altogether. This form will be placed first in the survey packet and should give reporters a quick, easy way to determine their reporting status at the outset. The proposed rules to revise 15 CFR 806.17 would implement the above changes in reporting requirements for the survey.

Other changes in the content of the survey forms and in the instructions to the forms, which do not require changes in the rules, are also being proposed by BEA. In making these changes, consideration was given to comments from the business community and from interagency data users. BEA held a meeting on July 21, 1987, with a Task Force of the Business Council on the Reduction of Paperwork to discuss their comments on an earlier draft of the survey. In addition, BEA sent a draft of the survey to interagency users of the data for their input. Some of the major changes since the 1980 benchmark survey include:

1. Elimination on Form BE-12(LF) of the detail on number of production workers, their hours worked, and wages and salaries, by industry, for companies with manufacturing activities.

2. Elimination on Form BE-12(LF) of the detail on merchandise exports and imports by whose product the goods are, and reduction in the detail on imports by intended use to one type of use instead of four. In addition, the level below which reporters do not need to disaggregate exports and imports by country was raised from $100,000 to $500,000.

3. In the disaggregation of data by State on the BE-12(LF), elimination of the data for wages and salaries and acres of land owned by use, and reduction from eight columns to five in the detail on the gross book value of property, plant, and equipment by use.

4. Elimination of data for the close of the prior year in the section on the composition of external finances.

5. Addition of data on the number of manufacturing employees by State, a disaggregation of sales into the portion that is goods and the portion that is services, and a question on whether there is foreign government ownership of 5 percent or more in a U.S. affiliate.

6. Revision of the section of the Instruction Booklet on the use of estimates in reporting, so as to identify specific areas where BEA recognizes estimates may be necessary because precise data are not normally maintained in companies' accounting records. Also, revision of the certification on the forms themselves to clearly indicate that such estimates are acceptable to BEA.

Other items are being dropped, combined, modified, or added, and some instructions are being revised, primarily for clarification purposes.

In designing the proposed survey forms, BEA attempted to weigh the needs of data users for the information against the need to minimize the reporting burden on respondents. BEA feels that, in the proposed survey, an appropriate balance has been struck. However, in its discussions with respondents and data users, certain data areas were of particular concern. Respondents considered these data areas to be "soft" because the information is of a type, or at a level of detail, not normally maintained in their accounting records. They indicated that to provide this information would impose an undue burden on them and that the accuracy of the resulting data would be questionable. They also questioned whether the need for the information for U.S. Government policy purposes justified the burden and asked that BEA consider further reductions in these areas.

The Government users of the data, in contrast, indicated that these data areas were ones in which there is considerable U.S. Government policy interest. They felt that detailed information in these areas is essential and that the policy need for the information outweighs the reporting burden. They asked that no further reductions in these areas be made and that BEA consider re-inserting some detail that it has omitted from the proposed survey.

The data areas of particular concern are:

(1) Data on U.S. merchandise exports and imports of U.S. affiliates by product, by country of origin or destination, by whose product the goods are, and, for imports, by intended use. BEA has proposed to retain the detail by product and by country of origin or destination collected in the 1980 benchmark survey, but to eliminate the detail by whose product the goods are and reduce the detail on imports by intended use to one type of use instead of four.

2. Data on sales of goods and services disaggregated by industry of sales, by whether the sales are of goods or of services, and, for services sales, detail by transactor. BEA has proposed to retain the data collected in the 1980 benchmark survey on sales by industry of sales. Based on needs expressed by policy agencies engaged in conducting U.S. negotiations on trade in services, BEA has proposed to add detail on the portion of sales that is goods and the portion that is services and, for services sales, to add detail on the portion of such sales that is to U.S. persons, to foreign parents, to foreign affiliates of the U.S. affiliate, and to other foreign persons.

3. Data by State. As indicated earlier, BEA has proposed to eliminate State detail for wages and salaries and for acres of land owned by use. It has proposed that the State detail on the gross book value of property, plant, and equipment by use be reduced from eight columns to five; the result would be improved data on real estate but less detail on other industries. BEA has proposed to add State detail for employment in manufacturing.

4. Data on employment, wages and salaries, and hours worked, of production workers in manufacturing by industry of sales. BEA has proposed to eliminate the detail by industry of sales for these items.

BEA would particularly welcome further public comment on these data areas. Data users should indicate, as specifically as possible, the level of detail needed for policy purposes and

the uses to which the data will be put. Respondents should indicate, as specifically as possible, the problems they would encounter in providing the information and the cost involved.

A copy of the proposed survey may be obtained from: Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

In addition to revising 15 CFR 806.17 to set forth the reporting requirements for the 1987 benchmark survey, these proposed rules would also amend 15 CFR 806.15 to change the year of coverage of this next benchmark survey from 1985 to 1987. The original legislation authorizing the survey required that a benchmark survey be conducted at least once every 5 years. Because a benchmark survey covering 1980 was conducted, the original legislation would have implied that the next survey cover 1985. However, amendments to the original legislation made in 1981 (see Pub. L. 97-33 and Pub. L. 97-70) now require the conduct of "a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter." The postponement of this next survey from 1985 to 1987 was done in order to place it on the same 5-year cycle as the Census Bureau's economic censuses. As a consequence, it will be possible to link the enterprise data reported to BEA in its benchmark surveys, and the establishment data reported to the Census Bureau in its economic census, for those U.S. companies that are in the foreign direct investment universe.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information is necessary to secure data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States for use in measuring the economic significance of, and formulating U.S. Government policy on, such investment. A request has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on this collection of information requirement should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and most that are will be excluded from reporting on Form BE-12 (LF) and Form BE-12 (SF) by the $1 million exemption level below which reporting on these forms is not required. Also, under these proposed rules, companies with assets, sales, or net income above $1 million, but not above $20 million, would report on the much more abbreviated BE-12 (SF), rather than on the BE-12 (LF). This provision will significantly reduce the burden on smaller businesses.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting requirements.

Dated: August 17, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

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

PART 806—DIRECT INVESTMENT SURVEYS

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

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. Section 805.15(j)(1) is amended by deleting "at least once every five years" and inserting in its place "in 1980, 1987, and every fifth year thereafter."

3. Section 805.15(i) is amended by deleting "at least once every five years" and inserting in its place "in 1980, 1987, and every fifth year thereafter."

4. Section 806.17 is revised by deleting the existing rules contained therein and substituting the following:

§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1987.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1987. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given below.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12 Benchmark Survey of Foreign Direct Investment in the United States—1987, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning Form BE-12(X) within 30 days of its receipt and, if applicable, by completing and returning Form BE-12(LF) or Form BE-12(SF) by May 31, 1988.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent of more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1987 fiscal year. A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE-12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1987, Determination of Reporting Status, must be completed and filed within 30 days of its receipt by each U.S. business enterprise that was a U.S. affiliate of a

foreign person at the end of its 1987 fiscal year and that is not fully consolidated, or in the case of real estate investments, aggregated on a Form BE-12(X) of another U.S. affiliate. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond by completing and returning Form BE-12(X) within 30 days of its reciept, even if the person does not meet the requirements for reporting on Form BE-12(LF) or BE-12(SF), as contained in § 806.17(c)(2) and (3) of this section.

(2) Form BE-12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1987 (Long Form) must be completed and filed by May 31, 1988, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year, if:

(i) It is *not* a bank or bank holding company, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $20 million (positive or negative) at the end of, or for, its 1987 fiscal year:

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

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

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

(3) Form BE-12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1987 (Short Form) must be completed and filed by May 31, 1988, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year, if:

(i) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million (positive or negative), but no one item exceeded $20 million (positive or negative) at the end of, or for, its 1987 fiscal year:

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

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

(C) Net income after provision for U.S. income tax, or if:

(ii) The U.S. affiliate *is* a bank or a bank holding company, and one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million (positive or negative) at the end of, or for, its 1987 fiscal year:

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

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

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

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

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE-12(LF) or Form BE-12(SF) if each of the following three items for the U.S. affiliate (not the foreign parent's share) did not exceed $1 million (positive or negative) at the end of, or for, its 1987 fiscal year:

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

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

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

(2) If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE-12(LF) or Form BE-12(SF) because it falls below the exemption level, then it must complete and file a Form BE-12(X) with item 3 marked and the information requested in item 3 filled in.

(f) *Due date.* A fully completed and certified Form BE-12(LF) or Form BE-12(SF) is due to be filed with BEA not later than May 31, 1988. In addition, Form BE-12(X) must be completed (including the certification) and filed within 30 days of the date is was received.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1615

Enforcement of Nondiscrimination on the Basis of Handicap in Equal Employment Opportunity Commission Programs

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Equal Employment Opportunity Commission. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps and establishes a complaint mechanism for resolving allegations of discrimination.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 7, 1987. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Cynthia Matthews, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Washington, DC 20507.

Comments received will be available for public inspection and copying at the Commission's second floor library at 2401 "E" Street, NW., Washington, DC between the hours of 9:00 am and 5:30 pm Monday through Friday. Copies of this notice are available on tape for those with impaired vision. They may be obtained from Janet Dorsey, Handicap Program Manager, Rm. 392, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Washington, DC 20507 (202) 634-6260; TDD (202) 634-7057.

FOR FURTHER INFORMATION CONTACT: Irene L. Hill, Assistant Legal Counsel for Coordination, at (202) 634) 634-7581. EEOC's TDD number is (202) 634-7057.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Equal Employment Opportunity Commission. As amended by the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States. * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency

shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794)

The substantive nondiscrimination obligations of the Commission, as set forth in this proposed rule, are identical, or the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *Id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *Id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis,* 442 U.S. 397 (1979), and the subsequent circuit court desisions interpreting Davis and section 504 See *Dopico* v. *Goldschmidt,* 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis,* 655 F.2d 1272 (D.C. Cir. 1981) *(APTA); see* also *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority,* 718 F.2d 490 (1st Cir. 1983)

These language differences are also supported by the recent decision of the Supreme Court in *Alexander* v. *Choate,* 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its duration limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *Id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 for federally assisted programs are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*Id.,* n. 21) (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the courts: The Supreme Court in *Davis,* subsequent lower court cases interpreting *Davis,* and the Supreme Court in *Alexander;* therefore their language does not reflect the interpretation on section 504 provided by the Supreme Court and by the various circuit courts. Of course these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Commission believes that there are not significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. It has also been reviewed by the Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section by Section Analysis

Section 1615.101 Purpose.

Section 101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, which amended section 504 of the Rhabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1615.102 Application.

The proposed regulation applies to all programs or activities conducted by the Commission. Under this section, a federally conducted program or activity is, in simple terms, anything the Commission does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by the Commission for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Commission's facilities. Activities in the second category include programs that provide Federal services or benefits.

Section 1615.103 Definitions.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 1615.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Commission." For purposes of this regulation "Commission" means the Equal Employment Opportunity Commission.

"Complete complaint." The definition of "complete complaint" enables the Commission to determine the beginning of its obligation to investigate a complaint (*see* § 1615.170(g)). The definition is necessary because the 180 day period for the Commission's investigation begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs 29 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Commission regardless of whether the facility in which they are conducted is owned, leased, or used on some other

basis by the Commission. The term "facility" is used in §§ 1615.149, 1615.150 and 1615.170(f).

"Individual with handicaps" The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program (except employment) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *Id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Commission. The Commission is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Commission does not offer. Although the revised definition allows exclusion of some individual with handicaps people form some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The definition of "qualified individual with handicaps" also has been revised to make it clear that the Commission has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Commission must follow the procedures established in § 1615.150(a)(2) and § 1615.160(d), which was discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Chairman of the Commission or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Chairman determines that an action would result in a fundamental alteration, the Commission must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, an individual with handicaps is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Qualified individual with handicaps" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1615.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the Commission and not to programs or activities to which it provides Federal financial assistance.

Section 1615.110 Self-evaluation.

The Commission shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Individuals and groups with information to offer the agency concerning its self-evaluation study may contact Janet Dorsey, Handicap Program Manager, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Washington, DC 20507, (202) 634-6260, TDD (202) 634-7057.

Section 1615.111 Notice.

Section 1615.111 requires the Commission to disseminate sufficient information to employes, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Commission's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 1615.130 General prohibitions against discrimination.

Section 1615.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs

or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1615.130 establish the general principles for analyzing whether any particular action of the Commission violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the Commission has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 1615.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits the denial of equal opportunities for individuals with handicaps to participate in or benefit from Commission programs as well as overt denial of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its programs simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Exclusion of an individual with handicaps from a program or activity based on stereotyped characterizations of persons with his or her handicap is prohibited. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligiblity requirements for participation in the activity in question.

Section 504, however, prohibits more than just exclusionary practices. As the Supreme Court recognized in *Alexander*, in enacting section 504, Congress intended to reach some conduct, such as the maintenance of architectural barriers, that have a discriminatory effect upon individuals with handicaps. 464 U.S., at 297. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 1615.150–1615.151) and communications (§ 1615.160) are specific applications of this principle.

Paragraph (d) mandates that the Commission administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps. Paragraph (b)(1)(iv) permits the agency to develop separate or different aids, benefits, or services only when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Commission from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Commission from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Commission from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits explicit denials of opportunities to benefit from Commission programs due to handicap. It also prohibits nonessential policies and practices that are neutral on their face, but that operate to deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 1615.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the Commission. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Commission, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to a Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals.

Section 1615.140 Employment.

Section 1615.140 prohibits discrimination on the basis of handicap in employment. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 1615.140 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, § 1615.170(b) (Compliance Procedures) of this regulation specifies that the Commission will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes governmentwide standards on nondiscrimination in employment on the basis of handicap.

Section 1615.149 Program accessibility: Discrimination prohibited.

Section 1615.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 1615.150 and 1615.151.

Section 1615.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the

existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 1615.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. However, § 1615.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 1615.150(a)(2)). The regulation also makes clear that the Commission is not necessarily required to make each of its existing facilities accessible (§ 1615.150(a)(1)).

Paragraph (a)(2) generally codifies case law that defines the scope of the Commission's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirements the Commission is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1615.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since Davis, Circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

In *Dopico* the United States Court of Appeals for the Second Circuit looked at the potential expenditure of $6 million of New York City's total federal capital and operating subsidy for mass transit of $490 million for 1980 and concluded that "[w]hile this is a considerable sum of money, it is not 'massive' either in absolute terms or relative to the City's total receipt of mass transportation * * *." 687 F.2d at 650.

Paragraph (a)(2) and § 1615.160(d) are also supported by *Alexander. Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination prohibited by section 504 or its implementing regulation (*Id.* at 299).

Relying on *Davis*, the Court said that section 504 guarantees qualified individuals with handicaps "meaningful accesss to the benefits that the grantee offers" (*id.* at *301*) and that "reasonable adjustments in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program' ". (*Id.*, n.20) (citations omitted).

Paragraph (a)(2) supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain modifications for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the modifications is not discriminatory. Thus failure to include such an "undue burden" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Commission of all obligations to individuals with handicaps. Although the Commission is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 1615.150(a) would in most cases not result in undue financial and administrative burdens on the Commission. In determining whether financial and administrative burdens are undue, all Commission resources available for use in the funding and operation of the conducted program or activity are to be considered. The burden of proving that compliance with § 1615.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Commission. The decision that compliance would result in such alteration or burdens must be made by the Chairman of the Commission and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Chairman's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1615.170. Finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Commission must still take action, short of that outer limit, that will open participation in the Commission program to disabled persons to the fullest extent possible.

Paragraph (b)*(1)* sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Commission shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Commission's program accessible. The Commission may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Commission must make any necessary structural changes in facilities as soon as practicable, but in no event later than

three years after the effective date of this regulation.

Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 1615.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792) and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1615.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101.19.600 to 101.19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Commission after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 1615.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 1615.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Commission believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985) the Ninth circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The Rose court did not address the issue of whether section 504 likewise requires accessibility as a condition of the lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The Commission may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 1615.160 Communications.

Section 1615.160 requires the Commission to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1615.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Commission's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the Commission (§ 1615.160(a)(1)(i)). The Commission shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1615.160(d). That paragraph limits the obligation of the Commission to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra*, preamble § 1615.150(a)(2)). Unless not required by § 1615.160(d), the Commission shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion under § 1615.150, Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the Commission's obligation to comply with § 1615.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Commission intends to make clear to the public (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Commission's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Commission shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Commission. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Commission may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Commission need not provide devices of a personal nature (§ 1615.160(a)(1)(ii)). For example, the Commission need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the Commission to provide wheelchairs to persons with mobility impairments. Readers will be provided if necessary, to make program materials accessible. Readers will not be available for reading nonprogram materials.

Paragraph (b) requires the Commission to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Commission to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 1615.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Commission will process employment complaints according to procedures established in its existing regulations (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the official responsible for coordinating the implementation of § 1615.170.

Paragraph (d) requries complainants to file section 504 complaints within 180 days of the alleged discriminatory act unless they show good cause for a delay in filing. One hundred and eighty days is a time period that the Commission has recommended that other agencies could

use in setting up complaint procedures. It is also consistent with the time period for filing charges pursuant to Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amened (in areas without a state or local deferral Commission).

The Commission is required to accept and investigate all complete complaints (§ 1615.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 1615.170(e)).

Paragraph (f) requires the Commission to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the Commission to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 1615.17)(g)). One appeal within the Commission shall be provided (§ 1615.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 1615.170(i)).

Paragraph (l) permits the Commission to delegate its authority for investigating complaints to other Federal agencies or to contract for such investigations with non-Federal entities. However, the statutory obligation of the Commission to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 29 CFR Part 1615

Blind, Buildings, Civil rights, Deaf, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Signed at Washington, DC this 22nd day of Oct., 1987.

For the Commission.

Clarence Thomas,

Chairman.

For the reasons set forth in the preamble, Chapter 14, Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

Part 1615 is added to read as follows:

PART 1615—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sec.

1615.101 Purpose.
1615.102 Application.
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1615.140 Employment.
1615.141–1615.148 [Reserved]
1615.149 Program accessibility: Discrimination prohibited.
1615.150 Program accessibility: Existing facilities.
1615.151 Program accessibility: New construction and alterations.
1615.152–1615.159 [Reserved]
1615.160 Communications.
1615.161–1615.169 [Reserved]
1615.170 Compliance procedures.
1615.171–1615.999 [Reserved]

§ 1615.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. (These regulations are to be interpreted so as to implement the congressional intent to require Federal agencies to live up to the same nondiscrimination obligations with respect to qualified handicapped persons as are imposed on recipients of Federal financial assistance under 29 U.S.C. 794 and its implementing regulations, 28 CFR Part 41. The regulations incorporate the substantive and procedural requirements of sections 501 and 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 and 794a, and implementing regulations at 29 CFR Part 1613, to apply to complaints of discrimination in Federal employment under section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. 794.)

§ 1615.102 Application.

This part applies to all programs or activities conducted by the Commission.

§ 1615.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Commission" means the Equal Employment Opportunity Commission.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Commission's actions in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, is possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy,

epilepsy, musclar dystraphy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or had been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having such an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Commission program or activity (except employment) under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Commission can demonstrate would result in a fundamental alteration in its nature. (In determining whether a modification would result in fundamental alteration in the nature of a program, the Commission shall apply the procedures set forth in § 1615.150(b)(2).)

(2) With respect to any other program or activity except employment an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified individual with handicaps" is defined for purposes of employment in 29 CFR 1613.702(f) which is made applicable to this part by § 1615.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 1615.104-1615.109 [Reserved]

§ 1615.110 Self-evaluation.

(a) The Commission shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Commission shall proceed to make the necessary modifications.

(b) The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self evaluation process by submitting comments (both oral and written).

(c) The Commission shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1615.111 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Chairman of the Commission finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1615.112-1615.129 [Reserved]

§ 1615.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not directly or through contractual, certifying, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicaps; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a

program or activity with respect to individuals with handicaps.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1615.131-1615.139 [Reserved]

§ 1615.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements, and procedures of section 501 of the Rehabiliation Act of 1973 (29 U.S.C. 791), as established by this Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 1615.141-1615.148 [Reserved]

§ 1615.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 1615.150 and 1615.151, no qualified individual with handicaps shall, because the Commission's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

§ 1615.150 Program accessibility: Existing facilities.

(a) *General.* The Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with section 150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration burdens must be made by the Chairman of the Commission after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such alteration such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignments of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its program or activities readily accessible to and usable by individuals with handicaps. The Commission is not required to make structural changes in the existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section within sixty days after the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years after the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Commission shall provide an opportunity to interested persons, including individuals with handicaps and organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its progams or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

§ 1615.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR Subpart 101-19.6, apply to buildings covered by this section.

§§ 1615.152-1615.159 [Reserved]

§ 1615.160 Communications.

(a) The Commission shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Commission shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission shall give primary consideration to the requests of the individual with handicaps.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of personal future.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Commission shall ensure that interested persons, including persons with impaired vision or heating, can obtain information as to the existence and location of accessible services, activities and facilities.

(c) The Commission shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with section 160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman of the Commission after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1615.161-1615.169 [Reserved]

§ 1615.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Equal Employment Opportunity Staff.

(d) The Commission shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed with the Director, Equal Employment Opportunity Staff. 2401 "E" Street, NW., Washington, DC 20507, within one hundred and eighty calendar days of the alleged act of discrimination. A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received in the Office of the Director. The Commission shall extend the time period for filing a complaint upon a showing of good cause. For example, the Commission shall extend this time limit if a complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits. A technically incomplete complaint shall be deemed timely if the complainant cures any defect upon request.

(e) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Commission shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Commission shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law:

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed with the Chairman of the Commission by the complainant within ninety calendar days of receipt from the Commission of the letter required by § 1615.170(g). The Commission shall extend this time for good cause when a complainant shows that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of an appeal within the prescribed time limit. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Chairman, 2401 "E" Street, NW., Washington, DC 20507. It should be clearly marked "Appeal of section 504 decision" and should contain specific objections explaining why the person believes the initial decision was factually or legally wrong. Attached to the appeal letter should be a copy of the initial decision being appealed.

(i) Timely appeals shall be decided by the Chairman of the Commission unless the Commission determines that an appeal raises a policy issue which should be addressed by the full Commission. The full Commission shall then decide such appeals.

(j) The Commission shall notify the complainant of the results of the appeal within sixty days of the receipt of the request. If the Commission determines that it needs additional information from the complainant, it shall have sixty days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, or may contract with non-Federal entities to conduct such investigations except that the authority for making the final determinations may not be delegated.

§§ 1615.171-1615.999 [Reserved]

[FR Doc. 87-25596 Filed 11-4-87; 8:45 am]
BILLING CODE 6570-06-M

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, 676, and 682

National Direct Student Loan Program, College Work-Study Program, Supplemental Educational Opportunity Grant Program, and Guaranteed Student Loan Program

AGENCY: Department of Education.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: The Secretary of Education withdraws a notice of proposed rulemaking (NPRM) for the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs (the Campus-Based Programs) and an NPRM for the Guaranteed Student Loan Program (GSLP). No final regulations will be issued based on these NPRMs. The Secretary takes this action to inform the public that development of the regulations described in the NPRMs is no longer being considered.

DATE: The NPRMs are withdrawn effective November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Campus-Based Programs: Margaret Henry, Campus-Based Policy Section, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4018, ROB-3), Washington, DC 20202. Telephone: (202) 732-4490 Guaranteed Student Loan Program: Larry Oxendine, Acting Chief, Guaranteed Student Loan Program, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4310, ROB-3), Washington, DC 20202. Telephone: (202) 732-4242.

SUPPLEMENTARY INFORMATION: In the NPRM published for the Campus-Based Programs on September 26, 1983 (48 FR 44054), it was proposed that participating institutions treat Veteran's Educational Assistance Program (VEAP) benefits in the same manner a Bureau of Indian Affairs education grants when awarding financial aid under the affected programs. The Secretary proposed this treatment of VEAP benefits as an incentive for persons to enlist in the Armed Services.

On the basis of the comments received on the NPRM and the revised treatment of VEAP benefits under the Uniform Methodology for the 1984-85 and subsequent award years, and under Part F of the Higher Education Amendments of 1986, Pub. L. 99-498, the Secretary withdraws the NPRM. The proposed rules will not be issued as final regulations.

The NPRM published on February 8 1985 (50 FR 5539) for the GSLP concerned provisions affecting Authorities issuing tax-exempt obligations in order to secure funds to make, purchase, or provide financing for loans under the GSLP and PLUS Program. Certain provisions in these proposed regulations were superseded by statutory amendments in the Higher Education Amendments of 1986, Pub. L. 99-498, enacted October 17, 1986, and will not be issued as final regulations. Other provisions may be included in future notices of proposed rulemaking.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84-033; National Direct Student Loan Program, 84-038; Guaranteed Student Loan Program, 84-032)

Dated: November 2, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-25672 Filed 11-4-87; 8:45 am]

BILLING CODE 4000-01-M

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Proposed regulation; extension of comment period.

SUMMARY: On October 19, 1987, proposed revisions to Part 1607, the Legal Services Corporation's ("LSC") regulations prescribing the requirements for recipient governing bodies, were published in the **Federal Register** at 52 FR 38900. Because of public request, the comment deadline of November 18, 1987, will be extended to December 10, 1987, in order to allow relevant bar associations and other organizations interested in submitting comments to consult their membership and governing bodies. Further, as a matter of discretion, LSC will accept and consider comments submitted within a reasonable time after the December 10, 1987 deadline but before its December 17-18, 1987 Board of Directors' meeting.

In view of requests to extend the comment period, and considering the proposed rule's provision requiring an implementation date of September 30, 1988 or, with waiver, December 31, 1988, LSC particularly invites comments on the feasibility of affected organizations' meeting the proposed implementation deadline if the comment period is further extended.

Although the comment deadline has been enlarged until December 10th, the Operations and Regulations Committee of the LSC Board may commence consideration of the proposed changes and entertain public comment at its November 19, 1987 meeting in Philadelphia, Pennsylvania. However, no final committee action will be taken at that time.

DATES: Comments on proposed regulations are to be submitted on or before December 10, 1987.

ADDRESSES: Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1823.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1823.

Timothy B. Shea,

General Counsel.

[FR Doc. 87-25683 Filed 11-4-87; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-110; RM-4776]

Radio Broadcasting Services; Willcox, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of proposal.

SUMMARY: This document denies a petition filed by Rex K. Jensen, licensee of Station KWCX-FM (Channel 252A), Willcox, AZ, which requested the substitution of Class C Channel 300 for Channel 252A and modification of his license accordingly, based on the Mexican Government's failure to concur in the proposal. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order*, MM Docket No. 85-110, adopted October 7, 1987, and released October 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's

copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25618 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-472, RM-5946]

Radio Broadcasting Services; Cedar Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by BayMedia, Inc. which proposes to allot Channel 274A to Cedar Key, Florida, as a first FM service.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultants, as follows: Heidi P. Sanchez, Fly, Shuebruk, Gaguine, Boros, and Braun 1211 Connecticut Avenue, NW., Washington, DC 20554 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 87-472, adopted October 7, 1987, and released October 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25611 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-473, RM-5954]

Radio Broadcasting Services; Sylvester, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Thomas W. Lawhorne, Sr., proposing to allot Channel 291A to Sylvester, Georgia, as a second FM service.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays and Handler, 1575 Eye Street, NW., Washington, DC 20005, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-473, adopted October 7, 1987, and released October 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25609 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-471, RM-5920]

Radio Broadcasting Services; Lynnville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Illinois Bible Study Group which proposes to allot Chennel 296A to Lynnville, Illinois, as a first FM service.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays and Handler, 1575 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-471, adopted October 7, 1987, and released October 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (Room 230), 1919 M Street, NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW; Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibilty Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rule governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25608 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-475, RM-5905]

Radio Broadcasting Services; Broken Arrow, OK and Coffeyville, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KCMA, Inc. proposing the substitution of Channel 221C2 Channel 221A at Broken Arrow, OK, and the modification of its license for Station KCMA(FM) to specify operation on the higher powered channel and the substitution of Channel 255A for Channel 221A at Coffeyville, KS, and the modification of Station KQQF(FM)'s license to specify the new Class A allotment. Channel 221C2 can be allocated to Broken Arrow in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.7 kilometers (12.4 miles) west to avoid a short-spacing to Station KKEG, Channel 221A, Fayetteville, Arkansas. Channel 255A can be allocated to Coffeyville in compliance with the Commission's minimum distance separation requirements and used at Station KQQF(FM)'s present transmitter site. In accordance with § 1.420 of the Commission's Rules, petitioner will not be required to demonstrate the availability of an additional equivalent channel at Broken Arrow for use by other interested parties and the Commission will not accept competing expressions of interest in use of the channel there. Petitioner is requested to furnish a study concerning the preclusive effect on Channels 220C1 and 220C if Channel 221C2 is allocated to Broken Arrow. An *Order to Show Cause* is directed to FM 92, Inc., licensee of Station KQQF(FM), Coffeyville, and to Midwest Broadcasting Company, Inc., proposed assignor of Station KQQF(FM), seeking its consent to the modification of its license to specify Channel 255A.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filling comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Neal J. Friedman, Esq., Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-475, adopted October 7, 1987, and released October 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW.; Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25610 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-468, RM-6009]

Radio Broadcasting Services; Easton, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clark Broadcasting Company, proposing the substitution of FM Channel 244B1 for Channel 244A at Easton, Maryland, and modification of the license of Station WCEI-FM, to specify operation on Channel 244B1.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Daniel F. Van Horn, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036-5339 (Counsel for Clark Broadcasting Company)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-468, adopted October 7, 1987, and released October 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.1415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25615 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-474, RM-5855, RM-5878, RM-5915]

Radio Broadcasting Services; Springdale, AR and Aurora, Carthage and Willard, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on three petitions for rule making seeking modification of facilities in the states of Arkansas and Missouri, as follows: (1) *Springdale, AR*—seeks to substitute Channel 285C2 for Channel 285A. This proposal also seeks to substitute Channel 250A for Channel 285A at Carthage, MO (RM-5855); (2) *Carthage, MO*—seeks to substitute Channel 286C2 for Channel 285A (RM-5878); (3) *Aurora, MO*—seeks to substitute Channel 263C2 for Channel 261A. This proposal also seeks to substitute Channel 286C2 for Channel 263A at Willard, MO, to accommodate petitioner's modification plans (RM-5919).

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

David G. Rozelle, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Ave., NW., Suite 400, Washington, DC 20036, (Counsel for Moran Broadcasting Company)

Richard J. Hayes, Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553, (Counsel for Carthage Broadcasting Co., Inc.)

Dale Hendrix, Aurora Broadcasting, Inc., 126 S. Jefferson, Aurora, MO 65605

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-474, adopted October 7, 1987, and released October 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The three mutually-exclusive petitions were filed by (1) Moran Broadcasting Company ("MBC"), licensee of Station KCIZ(FM) (Channel 285A), Springdale, AR, requesting the substitution of Channel 285C2 for Channel 285A and modification of its license to specify operation on Channel 285C2, as that community's first wide coverage area FM service. This proposal can be accommodated at a restricted transmitter site 27.3 kilometers northwest of Springdale. This proposal also seeks to substitute Channel 250A for Channel 285A at Carthage, MO. (2) Carthage Broadcasting Company ("CBC"), licensee of Station KRGK(FM) (Channel 285A), requesting the substitution of Channel 286C2 for Channel 285A and modification of its license to specify operation on Channel 286C2, as that community's first expanded coverage area FM station. Channel 286C2 can be accommodated at Carthage with a site restriction 4.4 kilometers north of the community. (3) Aurora Broadcasting, Inc., ("ABI") licensee of Station KELE(FM) (Channel 261A), requesting the substitution of Channel 263C2 for Channel 261A and modification of its license to specify operation on the higher powered frequency, to provide that community with its first wide coverage area FM station. Channel 263C2 can be allotted to Aurora with a site restriction 20.9 kilometers northwest of the community. Additionally, petitioner seeks to substitute Channel 286C2 for Channel 263A at Willard, which could provide that community with the opportunity to receive its first expanded coverage capability. Channel 286C2 can be allotted to Willard at a restricted site 11.0 kilometers west.

This *Notice* invites comments from all proponents and requests further showings to demonstrate a preference among the respective upgrade proposals. Since all proponents seek to increase their existing service (or potential service), as represented by the modification requests, they will be considered under our existing allotment priorities. Therefore, petitioners are requested to provide comparison studies to reflect potential service to any currently unserved or underserved areas within their proposed primary service areas, as well as other public interested matters.

We are provisionally proposing allotments at all communities pending an evaluation of the comments and showings received.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25607 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-467, RM-5959]

Radio Broadcasting Services; Ennis, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Big M Broadcast Associates, requesting the allocation of FM Channel 254C2 to Ennis, Montana, as that community's first FM broadcast service.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: C. Howard McDonald, President, Big M Broadcast Associates, P.O. Box 710, Ennis, Montana 59729.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-467, adopted October 7, 1987, and released October 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25614 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-469, RM-5976]

Radio Broadcasting Services; Kirksville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Admiral Broadcasting Corporation, proposing the substitution of FM Channel 229C2 for Channel 228A at Kirksville, Missouri, and modification of the license of Station KTUF (FM), to specify operation on Channel 229C2.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Fisher, Wayland, Cooper & Leader, 1255—23rd Street NW., Suite 800, Washington, DC 20037. (Counsel for Admiral Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-469, adopted October 7, 1987, and released October 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25616 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-470, RM-5960]

Radio Broadcasting Services; Marlette, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by D. J. Fox, requesting the allocation of FM Channel 223A to Marlette, Michigan, as that community's first FM broadcast service. There is a site restriction 9.4 kilometers southeast of the community and Canadian concurrence is required for the allotment of Channel 223A at Marlette.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: D. J. Box, P.O. Box 10223, Lansing, Michigan 48901-0223.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-470, adopted October 7, 1987, and released October 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25617 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-469, RM-5485; 5761]

Radio Broadcasting Services; Hilton Head Island and Bluffton, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests further comments on a petition filed by Jesse N. Williams to substitute Channel 291C2 for Channel 288A at Hilton Head Island, SC, and modification of its permit for a new station to specify the higher powered frequency. The Commission also requests comments on a counterproposal filed by Hilton Head Broadcasting Corp. to (1) substitute Channel 291C2 for Channel 292A at Hilton Head Island, SC, and modification of its license for Station WHHR to substitute the higher powered channel and (2) substitute Channel 300C2 for Channel 288A at Hilton Head Island and modify Williams' permit to specify the higher powered channel. In addition, this document proposes the substitution of Channel 295C2 for Channel 296A at Bluffton, South Carolina, and the modification of the construction permit of Station WOLW, as sought by the permittee, Dohara Associates. The Commission does not proposed to modify either of the Hilton Head Island stations to Channel 300A absent a statement by either party agreeing to such modification. Since the modification of either Hilton Head Island station to specify Channel 300C2 represents a non-adjacent channel upgrade, competing expressions of interest in use of the channel will be accepted. Should such statements be received, the Commission will consider the allocation of Channel 300C2 to Hilton Head as its third local FM service and refuse to modify either of the Class A stations. Channels 291C2 and 300A or 300C2 can be allocated to Hilton Head Island in compliance with the Commission's minimum distance separation requirements and used at the transmitter site jointly used by Williams and Hilton Head Broadcasting Corp. Channel 295C2 can be allocated to Bluffton and used at Station WOLW's transmitter site in compliance with the Commission's minimum distance separation requirements if Channel 292A is deleted from Hilton Head.

DATES: Comments must be filed on or before December 21, 1987, and reply comments on or before January 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to Williams); Mark J. Prak, Esq., Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, P.O. Box 1151, Raleigh, North Carolina (Counsel to Hilton Head Broadcasting Corp.); and Howard W. Simcox, Jr., Esq., Borsari & Paxson, 2100 M Street NW., Suite 610, Washington, DC 20037 (Counsel to Dohara Associates).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 86-469, adopted September 28, 1987, and released October 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25613 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 87-275]

Maritime Radio Services; Amendment to Designate VHF Marine Channel 13 for Bridge-to-Bridge Communications on the Great Lakes

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending time.

SUMMARY: The Order extends the reply comment period in PR Docket No. 87-275 (52 FR 33610, September 4, 1987) from October 28, 1987 to November 9, 1987 in response to a request from the U.S. Coast Guard. This extension will allow the U.S. Coast Guard to prepare more meaningful reply comments.

DATE: Reply comments are extended to November 9, 1987.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR INFORMATION CONTACT: James Shaffer, Federal Communications Commission, Washington, DC 20554 (202) 632-7197.

SUPPLEMENTARY INFORMATION: List of Subjects in 47 CFR Part 80 Bridge-to-bridge, Canada, Great Lakes.

Order

Adopted: October 28, 1987.
Released: October 29, 1987.
By the Acting Chief, Private Radio Bureau.

1. The U.S. Coast Guard has requested that the Chief, Private Radio Bureau extend the time for filing comments and reply comments eight working days.

2. The U.S. Coast Guard indicates that the purpose of the extension is to coordinate with its Canadian counterparts and the Saint Lawrence Seaway Development Corporation to prepare more meaningful reply comments.

3. We find that the public interest will be served by granting the brief extension of time requested in order to permit full and thorough preparation of comments of interested parties. In view of the above and pursuant to the authority contained in § 0.331 of the Commission's Rules, the U.S. Coast Guard's request for extension of time is

granted. The date for filing reply comments in this proceeding is extended to November 9, 1987.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Private Radio Bureau.

[FR Doc. 87-25612 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392 (Sub-No. 1)]

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of time and establishment of comment reply date.

SUMMARY: The Commission recently reopened this proceeding published on October 6, 1987 at 52 FR 37350 and sought comments on whether these rules allow sufficient opportunity for public review of certain transactions. Comments were due November 5, 1987. The requests by certain parties for a 2-week extension of the due date is granted in part and the Association of American Railroads request that there be an opportunity for reply to the comments filed is granted.

Comments will be available in the Commission's docket file room (Room 1221). The Commission will compile a service list, and replies must be served on all parties on that list. The due date for comments is extended 1 week.

DATES: Comments are due November 12, 1987 and replies are due December 7, 1987.

ADDRESSES: Replies must be served on commenting parties, and an original and 10 copies sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

Authority: 49 U.S.C. 10321, 10505, and 10901; and 5 U.S.C. 553.

Decided: October 30, 1987.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 87-25664 Filed 11-4-87; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 214
Thursday, November 5, 1987

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

Office of the Secretary

[Doc. No. 4741S]

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Systems of Records maintained by the Federal Crop Insurance Corporation (FCIS), titled "USDA/FCIC-1—Accounts receivable, USDA/FCIC." This action is necessary in order to: (1) Provide for the implementation of the provisions of 31 U.S.C. 3720A, the authority under which Federal agencies refer delinquent debts to the Department of the Treasury for collection by offset against tax refunds owed to named persons; and (2) refer information regarding indebtedness to the Defense Manpower Data Center (DMDC), Department of Defense, for use in a computer match to assist in colleciton of debts by salary offset as provided by the Debt Collection Act of 1982 (Pub. L. 97-365).

Implementation of tax refund offset and salary offset initiatives is essential for effective Federal debt collection and the integrity of Federal programs. This notice is intended to provide FCIC with the means for effective money management and debt collection by amending the appropriate sections of the system notice.

DATE: This notice will be adopted without further publication in the Federal Register on December 7, 1987, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before December 7, 1987, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Ralph F. Satterfield, Federal Crop Insurance Corporation, Room 4606, South Building, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 382-9714.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to amend the routine uses contained in USDA/FCIC-1—Accounts Receivable, to provide for (1) referral of information regarding policyholder indebtedness to the Department of the Treasury for collection by offset against tax refunds owed to named persons under the authority established in 31 U.S.C. 3720A; and (2) referral of information to Defense Manpower Data Center, Department of Defense for use in computer matches to assist in collection of indebtedness by salary offset.

The provisions of 31 U.S.C. 3720A establish a tax refund offset program by which agencies can request that tax refunds of persons indebted to it be reduced by the amount of the debt with the amount offset being paid instead to the creditor agency. The Department of Agriculture is participating in this program.

Because prior collection efforts have failed, it has been determined that a listing of those insureds who continue to owe past-due legally enforceable debts to the Department of Agriculture will be referred to the Internal Revenue Service for offset of the debt against any tax refund due.

FCIC, along with other Federal agencies, plans to participate in a computer matching program utilizing the system of records entitled "USDA/FCIC-1—Accounts Receivable, USDA/FCIC." Information from this system will be computer matched against Federal agency payroll files to identify delinquent debtors who are current or former Federal employees.

The Debt Collection Act authorizes an offset of a Federal employee's salary to satisfy debts owed to the Government. The computer match to be conducted by DMDC will assist FCIC in collecting debts owed to it by Federal employees. The proposed routine use is compatible with the purpose of USDA/FCIC-1 to maintain information on individuals indebted to FCIC to ensure efficient collection of those debts.

In accordance with requirements of the Debt Collection Act, the creditor agency, FCIC, USDA, will notify the debtor of his/her due process rights with respect to the debt and give the individual the opportunity to resolve the claim through repayment of the debt on an installation basis before salary offset is initiated.

The computer matches will be conducted in accordance with OMB's revised Supplemental Guidelines for Conducting Computer Matching Programs (47 FR 21656, May 19, 1982). The USDA has signed an agreement with the matching agency requiring that the information disclosed by USDA under this computer matching program be used only for making computer matches and compiling statistical data about the results of any match. The parties have agreed to safeguard the information provided from unauthorized disclosure.

Accordingly, notice is hereby given that USDA amends its System of Records maintained by the Federal Crop Insurance Corporation (FCIC) titled "USDA/FCIC-1—Accounts Receivable, USDA/FCIC", to read in its entirety as set forth below.

Signed at Washington, DC, on October 29, 1987.

Richard E. Lyng,
Secretary.

USDA/FCIC-1

SYSTEM NAME:

Accounts receivable, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131. A copy is also maintained in the applicable Field Operations Office for the State(s), and the Service Office for the county(ies) of the Federal Crop Insurance Corporation, as well as the ASCS County Offices of the United States Department of Agriculture. Addresses of these field offices may be obtained from the Director, Field Operations Division, FCIC, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to the Federal Crop Insurance Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

System consists of a master list of indebtedness by county and individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501-1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of laws, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosures may be made from this system with respect to delinquent debts to a credit reporting agency consistent with the provisions of 31 U.S.C. 3701, 3702, 3711–3720A, and the Federal Claims Collection Standards, 4 CFR 102.2.

(4) Referral of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS) to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402–6T, Offset of Past-Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

(5) Referral to a collection agency, when FCIC determines such referral is appropriate for collecting the debtor's account as provided for in U.S. Government contracts with collection agencies.

(6) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(7) Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or 31 U.S.C. 3701(a)(3)).

(8) Referral of commercial credit information, which is filed in the sytem, to a commercial credit reporting agency for it to make the information publicly available. 7 CFR 3.35.

(9) Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the Federal Crop Insurance Corporation in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer printouts, magnetic tape, microfiche, and also in a card index in county ASCS offices.

RETRIEVABILITY:

Records are indexed by State, county, and name of individual.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are maintained until the indebtedness is paid. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the service office. Addresses of locations where records are maintained may be obtained from the Director, Field Operations Division, FCIC, Washington, DC 20250. The request for information should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number, if known.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the Director, Field Operations Division, FCIC, Washington, DC 20250.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual debtor.

[FR Doc. 87–25601 Filed 11–4–87; 8:45 am]
BILLING CODE 3410–08–M

State of Wisconsin Private Sewage System Replacement or Rehabilitation Program

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all state payments under the State of Wisconsin Private Sewage System Replacement or Rehabilitation Program are primarily for the purposes of water conservation and protecting or restoring the environment. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1979 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Revenue Service (IRS).

FOR FURTHER INFORMATION CONTACT: Director, Bureau of Water Grants, Wisconsin Department of Natural Resources, P.O Box 7921, Madison, Wisconsin 53707, (608) 266–7555; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Correction Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made

under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The State of Wisconsin Private Sewage System Replacement or Rehabilitation Program is authorized under s. 144.245, Wisconsin Statutes. It is funded through annual state appropriations to provide financial assistance to eligible owners of failing private sewage systems to help them rehabilitate of replace their private sewage systems. Cost-share paymens accomplish the purpose of protecting or restoring the environment by eliminating the discharge of sewage to surface water or groundwater resources.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

A state of Wisconsin Private Sewage System Replacement or Rehabilitation Program "Primary Purpose Determination for Federal Tax Purposes, Record of Decision," has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013; or the Director, Bureau of Water Grants, Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707, (608) 266-7555.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulation, and operation procedures of the State of Wisconsin Private Sewage System Replacement or Rehabilitation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are primarily for the purpose of water conservation and protecting or restoring the environment.

Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the State of Wisconsin Private Sewage System Replacement or Rehabilitation Program.

Signed at Washington, DC, on October 29, 1987.

Richard E. Lyng,

Secretary.

[FR Doc. 87-25600 Filed 11-4-87; 8:45 am]

BILLING CODE 3410-16-M

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time And Place: 8:00 a.m. at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia.

Status: Open.

Matters to be Considered: On November 16 the Commission will review previous work to identify or review such conclusions as may have been reached. The Commission will review regional variations in production and consumption, including the effect of California milk pricing on milk output. On November 17, the Commission will review economic forecasts of the dairy industry under alternative economic assumptions, and work to arrive at a conclusion with respect to dairy product promotion efforts.

Written Statements May be Filed Before or After the Meeting With: Contact person named below.

Contact Person for More Information: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW., Suite 1100, Washington, DC, 20005, (202) 638-6222.

Signed at Washington, DC, this 30th day of October 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87-25595 Filed 11-4-87; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council Executive Committee; Closed Meeting

A meeting of the President's Export Council (PEC) Executive Committee November 23, 1987, 9:30 a.m.-2:00 p.m., Room 4832, Department of Commerce, 14th and Constitution, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: 9:30 a.m.-2:00 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. trade laws, GATT negotiations, monetary policy, export control issues and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Laureen Daly, (202) 377-1125, Room 3213, U.S. Department of Commerce, Washington, DC 20230.

Date: October 30, 1987.

Wendy H. Smith,

Director, Preisident's Export Council.

[FR Doc. 87-25585 Filed 11-4-87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Receipt of a Petition for Rulemaking; Bering Sea Fishermen's Association

NOAA announces receipt of a petition for rulemaking to enforce provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) in international waters of the North Pacific Ocean and Bering Sea.

The Bering Sea Fishermen's Association has petitioned the United States Department of Commerce to adopt a rule prohibiting foreign fishing for anadromous species in the international waters of the North Pacific Ocean and the Bering Sea. The rule submitted by petitioners provides for observer coverage and a permit system, and would define foreign fishing for anadromous species to include fishing by a foreign fishing vessel for squid, pollock, and other nonanadromous species in the international waters of the

North Pacific Ocean and Bering Sea at times of the year and with gear that can reasonably be expected to result in the taking of anadromous species.

Copies of the petition and the rule suggested by the Bering Sea Fishermen's Association are available and may be obtained by contacting Marilyn F. Luipold, Attorney Advisor, Office of General Counsel, NMFS, Universal South Building, 1825 Connecticut Ave., NW., Rm. 611, Washington, DC 20235, telephone (202) 673-5206. Comments on the need for such a regulation, its objectives, alternative approaches to the issues addressed in the petition, as well as other comments on the petition may be addressed to William E. Evans, Assistant Administrator for Fisheries, NMFS, Universal South Building, Rm. 1011. NOAA is particularly interested in receiving information and comments on the relationship between directed fishing for nonanadromous species and the interception of anadromous species. Comments will be accepted for 60 days and will be considered by the Secretary in determining whether to undertake rulemaking.

Dated: October 30, 1987.

Carmen J. Blondin,

Special Associate for Trade, National Marine Fisheries Service.

[FR Doc. 87-25572 Filed 11-4-87; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Scientific and Statistical Commitee will convene its 41st public meeting, November 12-13, 1987, at 1164 Bishop Street, Room 602, Honolulu, HI (telephone: 808-523-1368), to review and provide comments for the National Marine Fisheries Service's program development plan for ecosystems monitoring and fisheries management; review and recommend to the Western Pacific Council a new conservation standard defined as a "threshold" level at which acceptical biological catch must equal zero, for the revised Code of Federal Regulations, Part 603, guidelines for fishery management plans; review and recommend to the Western Pacific Council guidelines for approving experimental gillnet fishing permit applications in the pelagics fishery; review (and recommend to the Western Pacific Council if necessary), reports on cost and return analysis of the Northwestern Hawaiian Islands (NWHI) lobster fleet and economic analyses of alternative management strategies for the NWHI lobster fishery, and review and recommend to the Western Pacific Council certain management strategies for the Precious Corals Fishery Management Plan.

For more information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: October 29, 1987.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-25681 Filed 11-4-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Ocenco Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Ocenco Incorporated of Northbrook, Illinois an exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6-943,347. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-25588 Filed 11-4-87; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before December 7, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regualtory Affairs, Attention: Desk Office, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 2, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Vocational and Adult Education

Type of Review: New
Title: Application for Grants for Adult Education for the Homeless
Agency Form Number: C30-3P
Frequency: Annually
Affected Public: Individuals or households; State or local governments; non-profit institutions
Reporting Burden: Responses: 57; Burden Hours: 570
Recordkeeping: Recordkeepers: 0; Burden Hours: 0

Abstract: This form will be used by State educational agencies to apply for funds under the Stewart B. McKinney Act. The Department uses the information collected to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Performance Report for the Desegregation of Public Education Program
Agency Form Number: ED 296-2
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden: Responses: 61; Burden Hours: 122
Recordkeeping: Recordkeepers: 61; Burden Hours: 122

Abstract: This performance report will be submitted by grantees. The Department uses the information collected to monitor grantees compliance with the terms and conditions of grant awards.

Type of Review: Extension
Title: Application under Chapter 2 of the Education Consolidation and Improvement Act
Agency Form Number: ED 1000
Frequency: Every three years
Affected Public: State or local governments
Reporting Burden: Responses: 52; Burden Hours: 1560
Recordkeeping: Recordkeepers: 0; Burden Hours: 0

Abstract: This application will be used by State educational agencies to apply for grants under Chapter 2 of the Education Consolidation and Improvement Act, as amended. The Department uses the information to make grant awards under the Education Consolidation and Improvement Program, Chapter 2.

Type of Review: New
Title: Christa McAullife Fellowship Program
Agency Form Number: A10-13P
Frequency: Annually
Affected Public: Individual or households; State or local governments
Reporting Burden: Responses: 288; Burden Hours: 456
Recordkeeping: Recordkeepers: 0; Burden Hours: 0

Abstract: These recommendation forms will be used by statewide fellowship selection panels in order to participate in the Christa McAullife Fellowship Program. The Department will use the information collected on these forms to make fellowship awards.

[FR Doc. 87-25637 Filed 11-4-87; 8:45 am]

BILLING CODE 4000-01-M

Invitation; Applications for New Awards Under the Bilingual Education; Academic Excellence Program for Fiscal Year 1988 (CFDA No. 84.003G)

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with LEAs for projects to disseminate exemplary programs of transitional bilingual education, developmental bilingual education, or special alternative instruction.

Deadline for Transmittal of Applications: February 12, 1988.

Deadline for Intergovernmental Review Comments: April 13, 1988.

Applications Available: November 12, 1987.

Available Funds: $3,500,000.

Estimated Range of Awards: $100,000-$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 28.

Project Period: 36 Months.

Applicable Regulations: (a) The Bilingual Education: Academic Excellence Program, (34 CFR Part 524), and (b) the Education Department General Administrative Regulations 34 CFR Parts 74, 75, 77, 78, and 79.

Additional Factors: In accordance with 34 CFR 524.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 524.32(a) as follows: (1) Historically underserved (6 points); (2) Geographic distribution (6 points); (3) Relative number and proportion of children from low-income families (3 points).

For Applications or Information Contact: Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 421, Reporters Building), Washington DC 20202. Telephone: (202) 245-2609.

Program Authority: 20 U.S.C. 3231(a)(4).

Dated: November 2, 1987.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87-25673 Filed 11-4-87; 8:45 am]

BILLING CODE 4000-01-M

Invitation; Applications for New Awards Under the Law-Related Education Program for Fiscal Year 1988 (CFDA No. 84.123)

Purpose: To provide persons with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based.

Deadline for Transmittal of Applications: December 21, 1987.

Deadline for Intergovernmental Review Comments: February 22, 1988.

Applications Available: November 12, 1987.

Available Funds Anticipated: The Department has requested $3 million for this program for fiscal year 1988. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Awards: $10,000-$500,000.

Estimated Average Size of Aqards: $100,000.

Estimated Number of Awards: 30.

Project Period: 12 months.

Competitive Priority: In accordance with 34 CFR 75.105(c)(2)(ii), the Secretary will give competitive preference to projects that support the institutionalization of existing model law-related education programs in elementary and secondary school classrooms. In addition to the points awarded under selection criteria listed in § 241.31, the Secretary will award up to 10 additional points to applications that address the priority for elementary and secondary school classrooms.

Invitational Priorities: Under 34 CFR 75.105(c)(1), the Secretary also invites applications for (1) projects that provide

assistance from established law-related education programs to other State and local educational agencies to enable them to institutionalize successful law-related education programs; and (2) to support projects to develop, test, demonstrate, and disseminate new approaches or techniques in law-related education that can be used or adapted and eventually institutionalized by other agencies or institutions.

Applicable Regulations: (a) The Law-Related Education Program Regulations, 34 CFR Part 241, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Alice T. Ford, U.S. Department of Education, 400 Maryland Avenue SW., Room 2065, FOB-6, Washington, DC 20202. Telephone: (202) 732-4358.

Program Authority: 20 U.S.C. 3851.

Dated: November 2, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-25674 Filed 11-4-87; 8:45 am]

BILLING CODE 4000-01-M

Invitation; Applications for New Awards Under the Women's Educational Equity Act Program for Fiscal Year 1988 (CFDA No: 84.083)

Purpose: To promote education equity for women and girls through the development of educational materials and model programs.

Deadline for Transmittal of Applications: February 16, 1988.

Deadline for Intergovernmental Review Comments: April 12, 1988.

Applications Available: December 14, 1987.

Available Funds: It is estimated that approximately $2,900,000 will be available for fiscal year 1988 awards under this competition. However, applicants should note that the Congress has not yet completed action on the fiscal year 1988 appropriation.

Estimated Range of Awards:

Challenge Grants $20,000-$40,000
General Grants $150,000-$200,000

Estimated Number of Awards:

Challenge Grants—15
General Grants—15

Project Period: 12 months.

Priorities: In accordance with 34 CFR 745.22, each year the Secretary selects one or more of the program's five priorities and allocates funds to each selected priority. For fiscal year 1988, the Secretary has selected the priority for model projects to eliminate persistent barriers to educational equity for women in 34 CFR 745.25 and plans to allocate to that category 30% of the funds available for both general and challenge grants. The remaining 70% of the funds will be allocated for "other authorized activities" in 34 CFR 745.20. Applicants may submit applications under either the priorities or other authorized activities. If an applicant submits an application under the priority for model projects to eliminate persistent barriers to educational equity for women, it may not submit that same application for review under the priority for "other authorized activities."

Invitational Priority: Pursuant to 34 CFR 75.105(c)(1), the Secretary particularly invites applications that propose to develop model projects to reduce secondary school dropouts among women and girls. The Secretary notes that a substantial number of women and girls are economically disadvantaged. Many of them have diminished their opportunities for employment and personal success by terminating their education before completing high school. Increasing the number of economically disadvantaged women and girls who succeed in school will help to reverse the trend that has been described as "the feminization of poverty." To promote this goal, the Secretary particularly invites applications that propose to create educational programs designed for economically disadvantaged girls and women who are enrolled in secondary school, or who have discontinued their education, to encourage them to complete their high school education. An application that responds to this invitational priority does not receive any absolute or competitive preference over other applications.

Applicable Regulations: (a) The Women's Eductional Equity Act Program regulations, 34 CFR Part 745, and (b) the Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Ms. Alice T. Ford, Women's Educational Equity Act Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 2053, FOB-6, Washington, DC 20202. Telephone (202) 732-4351.

Program Authority: 20 U.S.C. 3341-3348.

Dated: October 28, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-25675 Filed 11-4-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER88-56-000]

Filing; Bangor Hydro-Electric Co.

October 30, 1987.

Take notice that on October 23, 1987, Bangor Hydro-Electric Company (Bangor) tendered for filing an initial rate schedule for full requirements firm service to a new customer, Isle au Haut Electric Power Company (Isle au Haut) to be effective on November 23, 1987, or as soon thereafter that the appropriate meter readings can be made. Bangor states that the purpose of this filing is to provide service to Isle au Hunt which will no longer be provided by its previous electric power supplier, Stonington and Deer Isle Power Company.

Bangor states that a copy of this initial rate schedule filing was mailed to Isle au Haut.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25660 Filed 11-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-125-001]

Tariff Filing; Transco Gas Supply Co.

October 30, 1987.

Take notice that Transco Gas Supply Company (Gasco) on October 22, 1987 tendered for filing Second Substitute Seventh Revised Sheet No. 106 to Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date is October 1, 1987.

Gasco states that on August 31, 1987, if filed in Docket No. RP87-125-000 certain tariff sheets which established

an Annual Charge Adjustment (ACA) Provision and also established the initial ACA charge of $0.0021 per Mcf of gas purchased.

Gasco states that by order issued September 30, 1987, in RP87-125-000, the Commission accepted Gasco's ACA Provision filed August 31, 1987, subject to Gasco's filing revised tariff sheets in compliance with Order No. 472-B, issued on September 16, 1987, which provided for specific provisions to be inlcuded in the ACA tariff provisions. Gasco also states that the tariff sheet mentioned above is being filed in compliance with such condition.

Gasco states that copies of the filing have been served upon Transco, and for informational purposes, upon each of Transco's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests should be filed on or before November 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25661 Filed 11-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-117-001]

Tariff Filing; Transcontinental Gas Pipe Line Corp.

October 30, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on October 21, 1987 tendered for filing Substitute Second Revised Sheet No. 258 to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date is October 1, 1987.

Transco states that on August 31, 1987, if filed in Docket No. RP87-117-000 certain tariff sheets which established an Annual Charge Adjustment (ACA) Provision and also established the initial ACA charge of $0.0020 per dt in the commodity portion of Transco's sales and transportation rates.

Transco states that on September 29, 1987, the Commission issued "Order of the Director Accepting Annual Charge Adjustments" in Algonquin Gas Transmission Company, *et al.* in RP87-109-000, *et al.* Such order accepted Transco's ACA Provision filed August 31, 1987 in Docket No. RP87-117-000, subject to certain conditions. One of the conditions is that Transco file revised tariff sheets in compliance with Order No. 472-B, issued on September 16, 1987, which provided for specific provisions to be inlcuded in the ACA tariff provisions. Transco also states that the tariff sheet mentioned above is being filed in compliance with such condition.

Transco states that copies of the filing have been mailed to each of its customers and State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25662 Filed 11-4-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100049; FRL-3287-6]

Transfer of Data; Lawrence Johnson & Associates, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted claims for indemnification and disposal of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Lawrence Johnson & Associates, Inc. (LJA) has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA. Some of this information may have been claimed to be confidential business information (CBI) by submitters and may be entitled to confidential treatment. Contractor access to FIFRA CBI is authorized by 40 CFR 2.307(h). This action will enable LJA to fulfill the obligations of the contract and serves to notify affected persons.

DATE: LJA will be given access to this information no sooner than November 10, 1987.

FOR FURTHER INFORMATION CONTACT: By mail:

Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4460).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-02-4290, LJA will assist EPA in processing of claims for indemnification and requests for Federal disposal of stocks of canceled pesticides, such as dinoseb and 2,4,5-T/Silvex. This contract involves no subcontractors.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with LJA prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, LJA is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to LJA by EPA for use in connection with this contract will be returned to EPA when LJA has completed its work.

Dated: October 23, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-25656 Filed 11-4-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3287-7]

Sole Source Designation of the Newberg Area Aquifer; Snohomish County, WA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Correction of final determination.

A notice of determination was printed in the **Federal Register** (52 FR 37215) on October 5, 1987. The first paragraph under the heading "Description of the Newberg Area Aquifer" gave the correct general location and approximate area for the designated sole source aquifer and recharge area. However, that paragraph described the boundaries of the area which was originally petitioned., instead of the larger sole source area that was finally designated. The following is a correct description of the designated sole source aquifer and recharge area boundaries.

The western boundary of the designated sole source area is formed by the Pilchuck River, and comprises the reach that begins at the junction with Dubuque Creek (Section 21, T29N, R6E) and extends northward about six miles to a point about one mile west of the Town of Granite Falls (Section 23, T30N, R6E). North of this reach, the boundary extends to the northeast approximately one mile, to the drainage divide between the Pilchuck River and the South Fork Stillaguamish River—about one-half mile northwest of the Town of Granite Falls (near the center of Section 13, T30N, R6E). The boundary then follows the drainage divide eastward for about one mile, into Section 18, T30N, R7E. From Section 18, the boundary turns southeastward and follows the border between the areas of unconsolidated glacial deposits at the surface (to the west), and a really extensive bedrock (to the east and south). This boundary extends southeast along the east side of Anderson Road (about six miles), then roughly follows Lake Roesiger Road south, part of Carpenter Creek southwest, then Roesiger, Dubuque, and Carlson Roads sequentially further westward. In the southwest corner of the designated sole source area, the boundary extends due west from the most westward bedrock outcrop in Section 23, T29N, R6E, to the Dubuque Creek drainage basin boundary in Section 27. From that point it follows the Dubuque Creek basin boundary northward (less than one mile) to the junction with the Pilchuck River, the point of beginning.

The designated sole source aquifer and recharge area boundaries are depicted in detail on a map contained in the Support Document for the Newberg Area Aquifer, prepared by the EPA Region 10 Office of Ground Water. The document is available to the public for inspection during normal business hours at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington, or any of the following city libraries: Granite Falls, Washington; Lake Stevens, Washington; Everett, Washington; Marysville, Washington.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams at (206) 442-1541 or FTS 399-1541.

Dated: October 23, 1987.

William A. Mullen,

Chief, Region 10, Office of Ground Water.

[FR Doc. 87-25657 Filed 11-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 28, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634-1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None

Title: Proposed § 22.930(b), (f), and (g)—Special Provisions for Alternative Cellular Technologies and Auxiliary Services

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 7 Responses; 280 Hours

Needs and Uses: This proposal will allow cellular radio licensees to employ alternative cellular technologies and auxiliary services. To ensure that interference to other cellular systems is not created, the licensees will be required to submit certain technical data, calculations, and documentation to the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-25604 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 26, 1987.

The Federal Communications Commission has submitted the following information collection requirement of OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0059

Title: Statement Regarding The Importation of Radio Frequency Devices Capable of Causing Harmful Interference

Form Number: FCC 740

Action: Revision

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 300,000 Responses; 25,200 Hours

Needs and Uses: FCC Form 740 is submitted to the Commission upon importation of a shipment of radio frequency devices, such as transmitters, receivers, walkie talkies, computers, wireless telephones, etc., subject to FCC Rules. The Commission then checks the FCC Laboratory records to ascertain whether FCC equipment authorization is required and if so, whether it has been granted. If it is ultimately determined that such authorization has not been granted, FCC requests U.S. Customs Service to issue redelivery notice to the importer. This is to enforce the FCC import

regulations. If the importer does not redeliver the radio frequency devices to Customs, the importer is subject to fines, imposed by the Customs Service. The data is used by FCC staff to ensure that radio frequency devices imported into the U.S. and its custom territory comply with applicable FCC rules and regulations.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-25625 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

Technical Subgroup of Radio Advisory Committee; Meeting November 17 and December 2, 1987

The Technical Subgroup of the Radio Advisory Committee on Radio Broadcasting will meet on Tuesday, November 17 and Wednesday, December 2, 1987 at the McCullough Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC. Both meetings will convene at 10 a.m.

At those meetings, the Technical Subgroup will continue its work on the following matters:

—Improvement of the AM radio broadcast service;
—Use of synchronous transmitters;
—Preparation for the 1988 Regional Administrative Radio Conference on the use of the expanded AM band (1605–1705 kHz); and
—Other business.

The Subgroup's meetings are continuing ones, and may be resumed after the above-stated dates at such times and places as may be decided by the participants at those meetings. All meetings of the Technical Subgroup are open to the public. All interested persons are invited to participate in these meetings.

For further information, please call Wilson La Follette at the FCC. His telephone number is (202) 632-5414.

Federal Communications Commission.

William Tricarico,

Secretary.

[FR Doc. 87-25606 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1687]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

October 30, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Automated Reporting Requirements for Certain Class A and Tier 1. Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules. (CC Docket No. 86-182). Number of petitions received: 9.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-25605 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-461, File Nos. BPH-860916 MB et al]

Applications for Consolidated Hearing; A B.C.D. Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. A B.C.D. Broadcasting Company	Enfield, CT	BPH-860916MB	87-461
B. Casey Radio Company	Enfield, CT	BPH-860916MC	
C. Son-Burst Communications	Enfield, CT	BPH-860917MA	
D. DBC Woodside Associates Limited Partnership	Enfield, CT	BPH-860917ME	
E. Robinson Communications Corporation	Enfield, CT	BPH-860917ML	
F. Susan Marie Beth Romaine	Enfield, CT	BPH-860917MM	
G. Manuel and Maria Angelo	Enfield, CT	BPH-860917MN	
H. Eastco Enfield FM Limited Partnership	Enfield, CT	BPH-860918ME	
I. United Broadcasting Corporation	Enfield, CT	BPH-860918MZ	
J. Enfield Associates	Enfield, CT	BPH-860918NE	
K. Enfield Radio Associates, Incorporated	Enfield, CT	BPH-860918NG	
L. FM Enfield Limited Partnership	Enfield, CT	BPH-860918NM	
M. Broadbrook Communications	Enfield, CT	BPH-860918NR	
N. Enfield Area Radio, Inc.	Enfield, CT	BPH-860918NT	
O. Franklin D. Graham	Enfield, CT	BPH-860918NX	
P. Enfield Broadcasting Company	Enfield, CT	BPH-860918OA	
Q. Airwave Communications, Inc.	Enfield, CT	BPH-860918OC	
R. John A. McMullin	Enfield, CT	BPH-860918OG	
S. Laura B. Goldenberg	Enfield, CT	BPH-860918OJ	
T. Wescon Communications	Enfield, CT	BPH-860918ON	
U. Enfield Broadcasting Company	Enfield, CT	BPH-860918OP	
V. Enfield Broadcasting Limited Partnership	Enfield, CT	BPH-860918OT	
W. Connecticut Broadcasting Limited Partnership	Enfield, CT	BPH-860918OW	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. (See Appendix)	A
2. Financial Qualifications	R
3. Air Hazard	C, D, F, H, K, L, N, P, Q, S, V, W
4. Comparative	All
5. Ultimate	All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is

available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. (a) To determine, in light of the facts and circumstances surrounding the issue raised in the Bakersfield, California proceeding, MM Docket No. 84-969, whether Burke's proposed facility would have provided the required 3.16 mV/m signal over the entire community of Bakersfield, California, in accordance with 47 CFR 73.315(a).

(b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Burke misrepresented facts to, or concealed information from, the Commission.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Burke and thus A (ABCD) possess the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 87-25622 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-402; File Nos. BPH-860515MG et al]

Applications for Consolidated Hearing; Nevada Number One Radio Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Nevada Number One Radio Co	Las Vegas, Nevada	BPH-860515MG	87-462
B. Irene Escalante	Las Vegas, Nevada	BPH-860519MD	
C. Walter-Wilson Broadcasters, Limited Partnership	Las Vegas, Nevada	BPH-860519MF	
D. L V Cm, Ltd	Las Vegas, Nevada	BPH-860519MG	
E. Allum & Patton Broadcasting Associates	Las Vegas, Nevada	BPH-860519MH	
F. Las Vegas First Broadcasting Company	Las Vegas, Nevada	BPH-860519MI	
G. Wayne Newton Communications, Inc	Las Vegas, Nevada	BPH-860519MJ	
H. FM Las Vegas Limited Partnership	Las Vegas, Nevada	BPH-860519MK	
I. Patmor Broadcasting Group	Las Vegas, Nevada	BPH-860519ML	
J. Recreation Radio, Inc	Las Vegas, Nevada	BPH-860519MM	
K. B J Broadcasting Limited	Las Vegas, Nevada	BPH-860519MO	
L. Mark Morris	Las Vegas, Nevada	BPH-860519MP	
M. Accretion Broadcasting	Las Vegas, Nevada	BPH-860519MQ	
N. Frances Murrietta, Steve Lehman, Paul Freeman and Harold Wrobel, d/b/a COSTA A COSTA COMMUNICACIONES, a California Limited Partnership.	Las Vegas, Nevada	BPH-860519MR	
O. Blackjack Broadcasting Company	Las Vegas, Nevada	BPH-860519NB	
P. Toiyabe Broadcasting Corportion	Las Vegas, Nevada	BPH-860519MN	(Dismissed)

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Environmental	E, L
2. (See Appendix)	N
3. Air Hazard	I, M
4. Comparative	A-O
5. Ultimate	A-O

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1(a) To determine the facts and circumstances of Los Angeles Broadcasting Company's ("LA") filing of a falsely executed amendment to its application under the name of Tate Smith in violation of § 73.3513 of the Commission's rules and regulations.

1(b) To determine whether LA misrepresented and/or was lacking in candor in its disclosures to the Commission, of the corporate shareholders of Ms. Maria Alfaro, Ms. Dolores Gardner and Ms. Frances Murrietta.

1(c) To determine whether LA made misrepresentations and/or was lacking in candor by submitting an amendment which reported the removal of Ms. Maria Alfaro as an officer, director and/or shareholders by January 9, 1985.

1(d) To determine, in light of the facts adduced pursuant to issues (a), (b) and (c) above, whether LA misrepresented facts to, or concealed information from the Commission.

1(e) To determine, in light of the facts adduced pursuant to issues (a), (b) and (c) above, whether LA and hence N (Costas) possess the basic qualifications to be a licensee of the facilities sought here.

[FR Doc. 87-25623 Filed 11-4-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No.: FEMA-REP-3-WV-1]

The West Virginia Radiological Emergency Response Plan Site-Specific for the Beaver Valley Power Station; Certification of FEMA Findings and Determination

In accordance with the Federal Emergency Management Agency (FEMA) rule, 44 CFR Part 350, the State of West Virginia formally submitted its plan relating to the Beaver Valley Power Station to the Director of FEMA Region III on September 20, 1983, for FEMA review and approval. On August 13, 1987, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Beaver Valley Power Station, evaluation of the full-

participation exercise conducted on November 19, 1986, in accordance with § 350.9 of the FEMA rule, and a public meeting held on July 27, 1983, to discuss the site-specific aspects of the State and local plans around the Beaver Valley Power Station in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters' staff, I find and determine that the State and local plans and preparedness for the Beaver Valley Power Station are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. On December 27, 1985, the adequacy of the public alert and notification system was verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission/FEMA criteria of NUREG-0654/FEMA-REP-1, Rev. 1, and FEMA-43 "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (now published as FEMA-REP-10).

FEMA will continue to review the status of offsite plans and preparedness associated with the Beaver Valley Power Station in accordance with the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-3-WV-1.

Dated: October 29, 1987.

For the Federal Emergency Management Agency.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87-25603 Filed 11-4-87; 8:45 am]

BILLING CODE 6718-01-M

GENERAL SERVICES ADMINISTRATION

Change in Method of Award for Procurement of Copiers

Notice is hereby given that the General Services Administration, Federal Supply Service is contemplating a contracting change in the method of award for copiers having copy speeds ranging from 30 copies per minute (cpm) to 55 cpm (purchase only). These machines, presently included under the purchase category of Multiple Award Schedule FSC Group 36, Part IV, will be included on Single Award Schedule FSC Group 36, Part IV, Section A. The contract period for this schedule is 7-1-88 through 6-30-89.

Agency and industry comments are to be directed to: Nicholas Economou, General Services Administration, Federal Supply Service, Office Equipment Division (FCGE), Room 810, Crystal Mall Bldg. 4, Washington, DC 20406. Copies of proposed Commercial Item Descriptions covering copiers in the 30-55 cpm speed range, may be obtained by calling William Daugherty at (703) 557-5135.

Dated: October 20, 1987.

Nicholas M. Economou,

Director, Office Equipment Division.

[FR Doc. 87-25639 Filed 11-4-87; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Treatment Development and Assessment Research Review Committee, NIMH; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, effective November 1, 1987 of the following committee: Treatment Development and Assessment Research Review Committee, NIMH.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Date: November 2, 1987.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-25659 Filed 11-4-87; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Community Response to a Cluster of Suicides; Meeting

Time and Date: 8:00 a.m.-5:15 p.m.—November 16, 1987; 8:30 a.m.-3:00 p.m.—November 17, 1987.

Place: Hilton Gateway Hotel, Gateway Center, 810 McCarter Highway at Raymond Boulevard, Newark, New Jersey 07102.

Status: Open to public, limited only by the space available.

Matters To Be Discussed: CDC is convening a public meeting with citizens of various communities, suicide researchers, State health officials, Federal agency representatives, and other interested parties regarding experience to date with the responses of various communities throughout the United States to occurrences of suicide clusters. The purpose of the meeting is to assist CDC in developing recommendations for preventive actions that may be taken by communities when suicide clusters occur.

For Further Information Contact: Stuart T. Brown, M.D., Director, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephones: FTS: 236-4690, Commercial: (404) 454-4690.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-25587 Filed 11-4-87; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

National Cancer Institute (President's Cancer Panel); Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, November 20, 1987, at The National Institutes of Health, Building 31, Conference Room 11A-10, Bethesda, MD 20892.

This meeting will be open to the public on November 20 from 9:30 a.m. to 11:30 a.m. Attendance will be limited to space available. Agenda items include reports by the Chairman, President's Cancer Panel, and members of the Executive Committee, National Cancer Institute.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members, and substantive program information upon request.

Dated: October 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-25629 Filed 11-4-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Advisory

Board meeting which was published in the **Federal Register** (52 FR 41326–41327) on October 27, 1987.

The notice is hereby amended to include the meeting of the Subcommittee on Planning and Budget, November 16, immediately following the recess of the National Cancer Advisory Board meeting at approximately 5 p.m. The meeting of the Subcommittee on Planning and Budget will be held in Building 31C, Conference Room 7, Bethesda, Maryland 20892.

The meeting will be open to the public for the discussion of the National Cancer Advisory Board portion of the NIH Director's Biennial Report.

Dated: October 29, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-25630 Filed 11-4-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Organ Systems Program, National Cancer Institute, December 3, 1987, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

The entire meeting will be open to the public on December 3, from 8:30 a.m. to 5 p.m. to discuss issues and develop recommendations for the Organ Systems Program. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Andrew Chiarodo, Executive Secretary, Subcommittee on Organ Systems Program, National Cancer Advisory Board, National Cancer Institute, Blair Building, Room 722A, National Institutes of Health, Bethesda, Maryland 20892 (301/427-8818) will furnish substantive program information, upon request.

Dated: October 29, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-25631 Filed 11-4-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Digestive Diseases Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on November 23, 1987, from 8:30 a.m. to approximately 5 p.m. at the Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 29, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-25632 Filed 11-4-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on November 30 and December 1, 1987, from 8:30 a.m. to approximately 5 p.m. on November 30 and from 8 a.m. to approximately 4 p.m. on December 1, at the Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852, (303) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 29, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-25633 Filed 11-4-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Electric Power Research Institute; Chemical and/or Physical Processes Involved in Reaction of Compressed Air With Minerals

AGENCY: Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a collaborative effort between the U.S. Geological Survey and the Electric Power Research Institute has been granted to study and describe chemical and/or physical processes involved in the reaction of compressed air with minerals that may lead to a loss of oxygen.

DATES: This action is effective as of September 24, 1987, for a duration of 12 months.

ADDRESSES: Copies of the Memorandum of Agreement are available for inspection upon request at the following location: U.S. Geological Survey, Branch of Geochemistry, Box 25046, MS 973, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. W. Ian Ridley of the U.S. Geological Survey, Branch of Geochemistry, at the address given above; telephone 303/236-1805, (FTS) 776-1805.

Date: October 27, 1987.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 87-25640 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[MT-020-08-4410-02]

Miles City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Miles City District Advisory Council will be held Thursday, December 10, 1987, at 10 a.m. in the Conference Room at the Miles City District Office, Garryowen Road, West

of Miles City, Montana 59301. The agenda is as follows:

1. Approve minutes of last meeting
2. Review results of Powder River and Fort Union Regional Coal Team meetings and their impact on the District
3. Coal beneficiation research
4. Update on budget and priorities
5. Status of wild horse program
6. New Business
7. Opportunity for public comment
8. Adjourn.

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written statements for the Council's consideration. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Date: October 28, 1987.

Mat Millenbach,

District Manager.

[FR Doc. 87-25589 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-DN-M

[AA-230-07-4310-87]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Telephone 202-395-7340, Washington, DC 20503.

Title: Free Use Application Permit

Abstract: This form is used to provide for proper management of material disposal when product sale is not feasible or in the best interest of the Government.

Bureau Form Number: 5510-1

Frequency: One for each permit

Description of Respondents: Settlers, residents, miners and nonprofit groups

Annual Responses: 100

Annual Burden Hours: 8

Bureau clearance officer (alternate): Rick Iovaine, 202-653-8853

Dated: October 19, 1987.

Dean E. Stepanek,

Assistant Director for Land and Renewable Resources.

[FR Doc. 87-25643 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-84-M

[NV-040-08-4321-12]

Public Hearing to Discuss the Routine Use of Helicopters and Motorized Vehicles to Gather Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Ely District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses during FY 88 and subsequent years.

SUMMARY: In accordance with Pub. L. 92-195, as amended by Pub. L. 94-579 and Pub. L. 95-514, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Ely District during FY 88 and subsequent years.

The hearing will convene at 2:00 p.m. on Wednesday, January 6, 1988, in the Conference Room of the Ely District BLM Office, Pioche Highway, Ely, Nevada.

The hearing is open to the public. Interested persons may make oral or written statements. Anyone wishing to make oral comments should contact Robert E. Brown, Ely District Wild Horse Specialist, by December 30, 1987. Written statements must be received by this date also.

DATE: January 6, 1988.

ADDRESS: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Robert E. Brown, (702) 289-4865.

Dated: October 27, 1987.

Kenneth G. Walker,

District Manager.

[FR Doc. 87-25684 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-HC-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 99-463 that a field trip and meeting of the Bureau of Land Management, Medford District Advisory Council will be held December 11, 1987.

On December 11, the field trip will begin at 8:00 a.m., followed by a meeting in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The field trip will be to illustrate forest fire damage, rehabilitation and timber salvage. The agenda for the meeting will include:

Discussion of the District's timber protest and appeal procedure, smoke management, FY 1988 budget allocations and planning for the 1990s, a Resource Management Plan workshop.

The field trip and meeting are open to the public. Persons planning to attend the field trip must provide their own transportation. Persons interested in making oral statements during the Council meeting, may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration.

Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business December 10, 1987. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 26, 1987.

David A. Jones,

District Manager.

[FR Doc. 87-25645 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-07-5410-10-ZBJD; CA 20447]

Realty Action; Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825 (916) 978-4815.

Serial Number: CA 20447

Mount Diablo Meridian

T. 28 S., R. 33 E.,

Sec. 31, Parcel 1, Portion of W½W½ SE¼, (shown on Parcel Map No. 2815). The area described contains approximately 11.00 acres in Kern County. A specific legal description and Parcel Map No. 2815 are available for inspection at the California State Office in Sacramento.

Mineral Reservations—All

Upon publication of this Notice of Realty Action in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of filing of the application, whichever occurs first.

Dated: October 26, 1987.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 87-25647 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-5410-10-ZBJJ; CA 20869]

Realty Action; Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Conveyance of the Reserved Mineral Interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825, (916) 978-4815.

Serial Number: CA 20869

Mount Diablo Meridian

T. 30 S., R. 34 E.,
Sec. 32, SW¼.
T. 31 S., R. 34 E.,
Sec. 2, lots 1, 2, 3, 5 through 16, inclusive;
Sec. 3, lots 5 through 16, inclusive;
Sec. 4, lots 3 through 10, inclusive;
Sec. 5, lots 1 through 8, inclusive;
Sec. 6, lots 1, 10;
Sec. 10, all.

1,575.93 acres

Upon publication of this Notice of Realty Action in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of filing of the application, whichever occurs first.

Dated: October 26, 1987.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 87-25648 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-40-M

[M-74199 (ND); MT-030-06-4212-13]

Realty Action; Exchange of Public and Private Lands; Bowman County, ND; Correction

AGENCY: Bureau of Land Management, Dickinson District, Interior.

ACTION: Exchange of public and private lands in Bowman County, North Dakota corrected.

SUMMARY: This notice corrects the legal description given in a previous Notice of Realty Action, Case M-74199 (ND), published in the **Federal Register**, Vol. 52, No. 141, Page 27733, issue of July 23, 1987 (FR Doc. 87-16748).

The land description, Sec. 3, SE¼NW¼, SE¼SW¼, NE¼SW¼, is corrected to read; Sec. 3, SE¼NW¼, NE¼SW¼, S½SW¼.

Dated: October 23, 1987.

William F. Krech,

District Manager.

[FR Doc. 87-25685 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-DN-M

[WY-010-08-4410-08]

Availability of Proposed Washakie Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Wyoming, Interior.

ACTION: Notice of availability of the proposed Washakie Resource Management Plan and Final Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the proposed Washakie Resource Management Plan and Final Environmental Impact Statement (RMP/EIS), including the proposed Designation of an Area of Critical Environmental Concern (ACEC). The proposed RMP describes the future management direction for 1,234,000 acres of public land and 1,603,000 acres of Federal mineral estate in the Washakie Resource Area, which encompasses portions of Big Horn, Washakie, and Hot Springs counties in the Big Horn Basin of north central Wyoming.

The proposed designation of the Spanish Point Karst Area of Critical Environmental Concern (ACEC) is adddressed in the Proposed RMP. The ACEC is an area of about 11,200 acres of BLM administered public surface and mineral estate within the Trapper, Dry Medicine Lodge, and Medicine Lodge Creek watesheds.

Within the boundaries of the proposed ACEC are lands in the national forest system and privately owned surface. The ACEC designation would pertain to the surface and mineral estate managed by the BLM and to the BLM administered Federal mineral estate under private and national forest system lands. The non-BLM administered surface would not be affected by the designation of the ACEC. BLM's proposed ACEC management prescriptions optimize watershed opportunities over other resource concerns in the area, due to recharge areas for the Madison Acquifer and the existence of regional and nationally important caves. The proposed management prescriptions for the ACEC include closure to mineral leasing, withdrawal from mineral location, and various restrictions on surface disturbing actions and land uses that would affect water quality and recharge of acquifers.

The Draft Washakie RMP/EIS, including the Draft Wilderness Environmental Impact Statement supplement, was made available for public review and comment in November of 1986. Comments received

on the Draft RMP/EIS were considered in preparing the proposed RMP/Final EIS. The comments made on the Draft Wilderness EIS will be addressed in the Final Wilderness EIS, which is scheduled to be published late in 1988. All parts of the proposed Resource Management Plan may be protested by parties who participated in the planning process and who have an interest which is or may be adversely affected by the adoption of the plan.

A protest may raise only those issues which were submitted for the record during the planning process.

DATES: Protests on the proposed Plan/Final EIS must be postmarked on or before December 7, 1987.

ADDRESS: Protests on the proposed Plan/Final EIS should be sent to: Director (202), Bureau of Land Management, 18th & C Streets NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Roger D. Inman, Washakie Area Manager, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, Phone: (307) 347-9871.

SUPPLEMENTARY INFORMATION: The Proposed Washakie Resource Management Plan/Final Environmental Impact Statement has been prepared in an abbreviated format. That is, the alternatives considered in the Draft RMP/EIS, and the environmental effects of those alternatives, have not been reprinted in the Proposed Plan/Final EIS. It is necessary, therefore, to use both the Draft and Final RMP/EIS documents for a complete review of the EIS.

Copies of the draft RMP/EIS and the proposed Plan/Final EIS can be obtained from the Washakie Resource Area Manager at the above address.

The proposed plan is a complete, comprehensive management proposal. It is a refinement of the preferred alternative presented in the draft RMP/EIS. Comments from the public, review by BLM staff, and new information developed since the distribution of the draft have prompted some changes in the preferred alternative. The environmental effects of the proposed plan are not substantively different from those of the preferred alternative.

The proposed plan focuses on the resolution of four key resource management issues that were identified with public involvement early in the planning process. These issues are: (1) Affects on vegetative resources; (2) special designations; (3) affects on water resources; and (4) adequacy of resource accessibility and manageability.

In accordance with the provisions of 36 CFR Part 800, parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the archaeological and historical resource aspects addressed in the proposed plan, are requested to identify themselves. Through contacting the Worland BLM District Office at the above address, you will be placed on a future contact list.

David J. Walter,

Acting State Director.

October 27, 1987.

[FR Doc. 87-25644 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-08; 4111-11; W-102285]

Proposed Conversion of Unpatented Oil Placer Mining Claims (Eagle No. 5 and Eagle No. 7) to Noncompetitive Oil and Gas Lease; Wyoming

October 28, 1987.

Pursuant to section 31 and 17(c) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) as amended by Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97-451), a petition for conversion of unpatented oil placer mining claims has been timely filed. The proposed lease has been assigned serial number W-102285. The claims to be converted are the Eagle No. 5 and the Eagle No. 7 unpatented oil placer mining claims located in Hot Springs County, Wyoming. The description of the land is as follows: T. 43 N., R. 92 W., 6th Principal Meridian, Wyoming, Tracts 51 A,B,C,D,G, containing 203.36 acres m/1.

This notice explains the reasons for the proposed conversion of the mining claims to a noncompetitive oil and gas lease. The unpatented oil placer mining claims were validly located prior to February 25, 1920, they are currently producing oil, and they were deemed conclusively abandoned for failure to timely file instruments as required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744). The statutory date of abandonment was December 30, 1985. Texaco Inc., on behalf of itself and others, has petitioned for the conversion.

When issued, the lease will be in the name of Texaco Inc., et al. The lessees have agreed to three special lease terms in addition to the normal lease terms of a noncompetitive oil and gas lease. They include:

1. Standard BLM Stip No. 1, 2a, and 2b.

2. Payment of royalty shall be not less than 12½% on production removed or sold from the unpatented oil placer mining claims including royalty on production since December 30, 1985.

3. Payment of rental of not less than $7 per acre, or fraction of an acre per year, including back rentals accruing from December 30, 1985. Rental is due annually in addition to royalty.

The lessee has paid the required $500 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice. In addition, all back rental and royalty will be paid from December 30, 1985, current to the date the lease is issued.

Royalty from October 1986, current to the date the lease is issued, still needs to be submitted. This will be paid before the lease is issued. Rental is due in addition to royalty at $7 per acre, or fraction thereof, per year.

Since the lessee has met all the requirements for conversion of the unpatented oil placer mining claims as set out in the laws referenced above, the Bureau of Land Management is proposing to issue lease W-102285 effective December 30, 1985.

Patricia J. Wattles,

Acting Chief, Leasing Section.

[FR Doc. 87-25646 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Semiannual Gas Well Test Report, Form MMS-1870

Abstract: Respondents submit Form MMS-1870 to the Minerals

Management Service's Regional Supervisors so they can evaluate the results of well tests to ascertain if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. The form is designed to present current well data on a semiannual basis to permit the updating of permissible producing rates and provide the basis for estimates of currently remaining recoverable gas reserves.

Bureau Form Number: Form MMS-1870

Frequency: Semiannually

Description of Respondents: Federal oil and gas lessees performing offshore production operations

Annual Responses: 6,000

Annual Burden Hours: 12,000

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Date: October 9, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-25590 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Well Potential Test Report, Form MMS-1868.

Abstract: Respondents submit Form MMS-1868 to the Minerals Management Service's (MMS) Regional Supervisors so MMS can determine the maximum production rate for an oil or gas well.

Bureau Form No.: Form MMS-1868.

Frequency: On occasion.

Description of Respondents: Federal oil and gas lessees performing offshore production operations.

Annual Responses: 4,000.

Annual Burden Hours: 8,000.

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Date: October 21, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-25649 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7313, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Request for Well Maximum Production Rate (MPR), Form MMS-1867.

Abstract: Respondents submit Form MMS-1867 to the Minerals Management Service's (MMS) Regional Supervisors so MMS can determine the well and reservoir involved in a request for a maximum production rate to establish the maximum daily rate at which oil and gas may be produced from a specific well completion.

Bureau Form Number: Form MMS-1867.

Frequency: On occasion.

Description of Respondents: Federal oil and gas lessees performing offshore production operations.

Annual Responses: 4,000.

Annual Burden Hours: 1,000.

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Date: October 14, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-25650 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Document Prepared for Proposed Oil and Gas Operations on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability of environmental document prepared for an OCS minerals plan of exploration on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and § 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for the following oil and gas exploration activity proposed on the Pacific OCS.

Activity/Operator

Texaco USA, Inc., Exploration , OCS-P 0512, block 54N, 82W

Location

Three and one-half miles (5.6 km) west-southwest of the coast near Point Conception, California

Date

October 16, 1987

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EAs and FONSIs prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Leasing and Environment, Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Mail Stop 300, Los Angeles, CA, 90017, telephone (213) 894-6775.

SUPPLEMENTARY INFORMATION: The MMS prepares EAs and FONSIs for proposals which relate to exploration for and the development/production of oil and gas resources on the Pacific OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not aproval of the proposal constitutes major Federal actions that

significantly affect the quality of the human environment in the sense of NEPA 102(2)(c). A FONSI is prepared in those instances where the 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 EA.

This notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Date: October 26, 1987.

William E. Grant,

Regional Director.

[FR Doc. 87-25591 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Arco Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Arco Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4009, Block 128, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice Louisiana.

DATE: The subject DOCD was deemed submitted on October 28, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: October 29, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-25592 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Placid Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Placid Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6172, Block 232, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore based located at Galveston, Texas and Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on October 28, 1987. Comments must be received on or before November 20, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 29, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-25593 Filed 11-4-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-266]

Certain Reclosable Plastic Bags and Tubing; Commission Determination Not To Review Initial Determination Joining Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination (ID) joining two respondents to the investigation.

SUMMARY: Notice is hereby given that the Commission has determined not to review the ID of the presiding administrative law judge (ALJ) amending the complaint and notice of investigation in the above-captioned investigation to join Keron Industrial Co., Ltd. (Keron), and Daewang International Corp. (Daewang) as respondents.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0375.

SUPPLEMENTARY INFORMATION: On September 3, 1987, complainant Minigrip, Inc., moved (Motion 266–19) to amend the complaint and notice of investigation to add Keron and Daewang as respondents to the investigation. The ALJ issued an ID granting the motion on October 8, 1987. No petitions for review of the ID nor comments from other Government agencies were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are 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, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 29, 1987.

[FR Doc. 87–25580 Filed 11–4–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB–292 (Sub-No. 1X) and AB–55 (Sub-No. 210X)]

Alabama and Florida Railroad Co.; Discontinuance of Service in Crestview, FL, and Lockhart, AL; and CSX Transportation, Inc.; Abandonment; in Crestview, FL, and Lockhart, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of service by The Alabama & Florida Railroad Company over, and the abandonment by CSX Transportation, Inc., of, approximately 27.9 miles of line in Crestview, FL, and Lockhart, AL, subject to standard labor protective conditions.

DATES: This exemption will be effective on December 5, 1987. Petitions to stay must be filed November 20, 1987, and petitions for reconsideration must be filed by November 30, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–292 (Sub-No. 1X) and Docket No. AB–55 (Sub-No. 210X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives:

Deborah A. Phillips, 1350 New York Avenue, NW., Washington, DC 20005–4797

Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: October 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 87–25518 Filed 11–4–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31138]

KKR Associates; Control Exemption; Jefferson Warrior Railroad Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from prior approval requirements of 49 U.S.C. 11343 the acquisition of control by KKR Associates of the Jefferson Warrior Railroad Company, through its parent Jim Walter Corporation.

DATES: This exemption will be effective on November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

[TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: October 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–25628 Filed 11–4–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31141]

Galveston Railway, Inc.; Lease and Operation of Rail Lines of Galveston Wharves; Exemption

Galveston Railway, Inc. (GRI), a noncarrier, has filed a notice of exemption to lease and operate approximately 38 miles of rail line and right-of-way, under agreement with Galveston Wharves (GW), in and around the Port of Galveston, TX. GW is an agency of the City of Galveston, TX. GRI will purchase locomotives, radios, generators, tools and other railroad equipment from GW. After consummation of the purchase and lease agreement, GRI will operate as a rail common carrier, serving shippers located on and off the involved lines in origin, switching, and delivery service, as well as through interchange with other carriers.

Any comments must be filed with the Commission and served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 29, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–25797 Filed 11–4–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Webster and Dudley, Massachusetts

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Town of Webster and United States v. Town of Dudley* has been lodged with the United States District Court for the District of Massachusetts. The consent decree addresses violations by the Town of Webster and the Town of Dudley of the Clean Water Act in regard to their sewerage systems.

The proposed Consent Decree requires the Town of Webster and the Town of Dudley to jointly construct an advanced wastewater treatment facility. It also requires the Town of Webster to submit and implement a staffing plan, to implement organic load equalization, to submit and implement a pretreatment program, and to study alternatives for and select a sewage sludge disposal method for the advanced treatment facility. In addition, the decree provides that the Town of Webster will pay a civil penalty of $25,000 and the Town of Dudley will pay a civil penalty of $12,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Town of Webster and United States v. Town of Dudley*, D.J. Ref. 90-5-1-1-2811.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to *United States v. Town of Webster and United States v. Town of Dudley*, D.J. Reference #90-5-1-1-2811 and enclose a check in the amount of $2.70 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-25594 Filed 11-4-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on November 19, 1987, from 9:15 a.m.-5:30 p.m. in room M0-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

October 28, 1987.

[FR Doc. 87-25651 Filed 11-4-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 50-254]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Commonwealth Edison Co.

United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-29 issued to Commonwealth Edison Company (the licensee), for operation of Quad Cities, Unit 1 located in Rock Island County, Illinois.

Pursuant to 10 CFR 50.90, Commonwealth Edison Company (CECo, the licensee) has proposed an amendment of Facility Operating License DPR-29 which would revise certain license conditions and Technical Specifications (TS) in order to provide for Cycle 10 operation of Quad Cities Nuclear Power Station (QCNPS), Unit 1.

The Unit 1 Reload 9/Cycle 10 replacement reactor fuel is of the GE8x8EB extended burnup fuel design, which has some different mechanical and nuclear features than the Cycle 9 fuel. Although this fuel type has not been employed at QCNPS before, Reload 9 is by and large considered a normal reload with no unusual core features or characteristics. The GE8x8EB fuel design described in Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel" (GESTAR II), has been previously reviewed and approved by the NRC for generic applications and extended burnup operations. Utilization of GE8x8EB fuel was recently approved for other non-CECo plants (e.g., Fitzpatrick Peach Bottom, Limerick, and Millstone).

In general, the proposed license amendment would delete certain license conditions and revise the TS to incorporate new Cycle 10 reload fuel operating limits, expand operating domains (including operation with equipment out of service), and change jet pump surveillance core flow evaluation methodology. Proposed TS changes specifically related to the Cycle 10 reload fuel operating limits and analyses include: (a) Revising the maximum allowable Linear Heat Generation Rate (LHGR) to be fuel type specific, and establishing a LHGR limit for the new GE8x8EB reload fuel, (b)

adding Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limit curves for the new reload fuel, (c) increasing the Rod Block Monitor (RBM) setpoint, and (d) revising the Minimum Critical Power Ratio (MCPR) limit and associated 20% insertion scram time value. Other TS and license condition changes in this amendment that resulted form analyses performed by GE for CECo to expand the unit operating region, and allow for operation with certain equipment out-of-service include the following: (e) Deletion of existing License Condition requirements for Single Loop Operation (SLO) and incorporation of similar SLO requirements into the TS, (f) change the analyzed operating region to include increased core flow (ICF) and feedwater temperature reduction (FTR), (g) revision of the Automatic Pressure Relief Subsystem TS to require action only when two or more relief valves are inoperable, and (h) deletion of the license operating restriction for coastdown to 40% power and coastdown with off-normal feedwater (FW) heating.

Concurrent with the aforementioned TS changes, several administrative and editorial revisions were proposed for continuity. Furthermore, applicable TS bases and references were updated to reflect new information, fuel type, analyses, computer models, operating domains, and Limiting Conditions of Operation (LCOs).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 7, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and the extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportuntiy to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Isham, Lincoln, and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 18, 1987, as supplemented October 13, 1987, which is available for public isnpection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC; the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Bethesda, Maryland, this 30th day of October 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87-25671 Filed 11-4-87; 8:45 am]

BILLING CODE 7590-01-M

Low-Level Waste Disposal Facility; Availability and Request for Public Comment on a Branch Technical Position Paper Concerning Environmental Monitoring

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a branch technical position paper which describes the NRC's position on the development and implementation of an acceptable environmental monitoring program adequate to meet the requirements of 10 CFR 61.53. This publication is intended to provide guidance to States and interested parties on environmental monitoring and to meet the requirements of the Low-Level Radioactive Waste

Policy Amendments Act of 1986. NRC is requesting public comment on this document to include the interests of affected parties during the development of this document.

DATES: The comment period expires December 15, 1987. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comment received before this date.

ADDRESSES: Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of the branch technical position paper and comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Copies of the draft branch technical position paper may be obtained by calling R. John Starmer on (301) 427–4088 or by writing to R. John Starmer, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: R. John Starmer, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 427–4450.

SUPPLEMENTARY INFORMATION: To discharge the requirements of the Low-Level Radioactive Waste Policy Amendments Act of 1986, the NRC staff is developing further guidance on environmental monitoring for low-level radioactive waste disposal facilities to meet the requirements of 10 CFR 61.53. The main objective of this paper is to provide to the applicant an approach for developing an acceptable environmental monitoring program. Because future low-level radioactive waste disposal facilities will be sited in areas with varying climatic, geologic, and hydrologic conditions, the staff considers it inappropriate to require specific monitoring activities that will necessarily meet the requirements of the 10 CFR 61.53. Therefore, the paper is nonprescriptive and outlines concepts that should be considered when designing the monitoring program.

NRC staff is requesting comments from interested parties during the development of this position. The staff recognizes that monitoring requirements for humid disposal sites will likely vary from requirements for arid sites, and that the various monitoring programs will have to emphasize surveillance of different release pathways. Therefore, the NRC staff requests that comments focus on suggestions for whether NRC should emphasize or de-emphasize specific pathway monitoring at sites with the expected range of environmental conditions.

In order for comments to be considered for incorporation into the final position paper, they must be docketed before the expiration date. The final branch technical position paper is planned for publication in January 1988.

Dated at Silver Spring, Maryland, this 23rd day of October, 1987.

For The Nuclear Regulatory Commission.

R. John Starmer,

Acting Chief, Technical Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 87–25440 Filed 11–4–87; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Procedures for Giving Notice of Meetings and Actions

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Final policy.

SUMMARY: At a regularly scheduled meeting held in Idaho Falls, Idaho on September 9–10, 1986, the Northwest Power Planning Council adopted the following procedures for giving notice of its meetings and actions.

FOR FURTHER INFORMATION CONTACT: Copies of this notice which includes the procedures may be obtained by contacting Dulcy Mahar, Director of Public Information and Involvement, at Northwest Power Planning Council, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, or at (503) 222–5161, or (toll-free) 1–800–222–3355 (in Montana, Idaho or Washington) or 1–800–452–2324 (in Oregon).

SUPPLEMENTARY INFORMATION:

Background

A. Meeting Notices

Section 4(a)(4) of the Northwest Power Act requires the Council to observe the federal laws relating to open meetings and advisory committees "to the extent appropriate". Both the open meetings law (5 U.S.C. 552b(e)(3)) and the advisory committee law (5 U.S.C. Appendix 1, 1–4) require that meeting notices be published in the **Federal Register.**

B. Rulemaking Notices

The Northwest Power Act requires that the Council follow the informal hearing process of the federal Administrative Procedure Act in some instances, but does not specifically require that the Council publish rulemaking notices or final rules in the **Federal Register.** Section 9(e)(15) of the Act, however assures that some notice of final actions affecting the power plan or fish progam will appear in the **Federal Register**, since publication in the **Federal Register** starts the 60-day challenge period for such actions.

A proposed policy to establish procedures for giving notice of its meetings and actions was published in the **Federal Register** on June 18, 1987 (52 FR 23224), and public comment was requested. No comments were received by the Council for consideration in approving the final policy. The Council has now adopted a formal policy for giving notice of its meetings and actions.

The adopted procedure is as follows:

Notice Procedures

The Council will use the following procedures for handling the publication of notices for Council meetings, meetings of the Council's advisory committees and the initiation and conclusion of plan and program amendment proceedings.

Meeting Notices

1. Notice of the date, time, and place, of all regularly scheduled Council and advisory committee meetings will appear monthly in *Update!* at least seven days prior to the date of the meeting, together with a notice stating that copies of the meeting agendas are available by calling the Council's toll-free numbers.

2. Together with the meeting notices, *Update!* will inform its readers that the meeting schedule and agendas are subject to change and that persons desiring to confirm meeting dates or to confirm that a particular item will be considered at a meeting should call the Council's toll-free telephone numbers.

3. In the event that a meeting date is moved or canceled or a new meeting is scheduled, and the change in schedule will occur before the next issue of *Update!* will reach the subscribers, notice of the change will be mailed to interested parties. Notice of changes in Council meetings will be mailed at the

earliest practicable time to all parties who are on the mailing list for Council agendas. Notice of changes in advisory committee meetings will be sent to all parties who are on the mailing list for the advisory committee. If there is no reasonable likelihood that the notice of the change in schedule will reach interested parties by mail prior to the change in schedule, notice will be given by the most practical alternative means.

4. Whenever a new advisory committee is formed, or an existing advisory committee has its charter extended, a notice will appear in the next issue of *Update!* acknowledging the creation or extension of the committee, and stating that those persons who want to be informed of the meeting schedule for the committee should contact the Public Information and Involvement Division.

5. At least once a year, the Council will publish in the **Federal Register** a notice including the names of each of the advisory committees and stating that notices of the meeting schedule for the Council and its advisory committees may be obtained from the Public Information and Involvement Division.

Notice of Plan or Program Amendments

1. At the beginning of each proceeding to amend the Power Plan or Fish and Wildlife Program, the Council will publish in the **Federal Register** a notice containing a summary of the nature of the proposed amendment.

2. Upon adoption of a final amendment, the Council will publish in the **Federal Register** a notice containing a summary of the amendment as adopted.

Public Involvement

1. In addition to the notices described above in the notice procedure, the Council will continue to encourage widespread public involvement in its decision-making process through use of the media and Council publications.

Edward Sheets,

Executive Director.

[FR Doc. 87-25634 Filed 11-4-87; 8:45 am]

BILLING CODE 0000-00-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information of the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Prior Service Reports.

(2) *Form(s) submitted:* AA-15, AA-2p(R), G-85.

(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) *Frequency of use:* On occasion.

(5) *Respondents:* Individuals or households, Businesses or other for-profit.

(6) *Annual responses:* 690.

(7) *Annual reporting hours:* 207.

(8) *Collection description:* Railroad service prior to 1937 which can be used to determine entitlement to and amount of annuity under the RRA is not carried on Board records. The reports obtain verification of such records, or in the absence of such records, obtain information from the applicant to support the claim.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87-25652 Filed 11-4-87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25077 File No. SR-NYSE-87-39]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.; Continued Interim Effectiveness of Policy for Reviewing Combinations Among Specialist Units

Pursuant to section 19(b)(1) of the Securities Exchange Act Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 28, 1987, the New York Stock Exchange Inc. ("NYSE" 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 self-regulatory organization. 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

(a) The proposed rule change amends the Exchange's specialist concentration policy by extending its interim effectiveness through December 31, 1987.[1] The Exchange has designated the policy as a Rule of the Board of Directors of the Exchange.

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 self-regulatory organization 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 Items IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to extend the interim effectiveness of the policy through December 31, 1987 in order to afford time for the Exchange to complete preparation of a filing seeking permanent approval. The purpose of the policy is to provide the Exchange with a mechanism for reviewing proposed mergers, acquisitions and other combinations between or among specialist units that may lead to a level of concentration within the specialist community that is detrimental to the Exchange and the quality of its markets.[2]

(2) Statutory Basis

The Basis under the Act for the proposed rule change is section 6(b)(5): the Exchange will be able to monitor tendencies towards concentration in the specialist community and intervene to

[1] *See*, Securities Exchange Act Rel. No. 24411 (April 29, 1987), 52 FR 17870 (SR-NYSE-86-37).

[2] *See*, SR-NYSE-86-37 for a detailed explanation of this purpose.

prevent undue concentration. This serves to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed rule change also comports with section 11A(a)(1)(C), which states Congress's finding that fair competition among brokers and dealers serves and fosters the public interest, investor protection and fair and orderly markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

As more fully described in SR-NYSE-86-37, the Exchange believes that this proposed rule change will not impose any burden on competition and, in fact, creates a mechanism that will help ensure competition among specialist units.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Exchange believes there is good cause for accelerated effectiveness of an extension of the policy's interim effectiveness in order to avoid a hiatus in the effectiveness of the policy during the Exchange's preparation of a filing seeking permanent approval. Although no new combinations have been proposed since the policy became effective, the present period of extreme market volatility and year-end tax considerations may prompt proposals.

The Exchange expects to file for permanent approval within the next several weeks. Accelerated effectiveness of this extension will not require the Commission to forego thorough consideration of, and additional public comment on, the request for permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by November 27, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6.

The Commission finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof in that such approval will provide the Exchange with additional time to prepare a rule filing requesting permanent approval of its concentration policy, while at the same time allowing the pilot to remain in effect without interruption.[4]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 29, 1987.

[FR Doc. 87-25597 Filed 11-4-87; 8:45 am]

BILLING CODE 8010-01-M

[3] *See, generally,* SR-NYSE-86-37 for comments received from Exchange members and various Exchange Committees during the policy's development.

[4] The Exchange has indicated that it will submit to the Commission a request for permanent approval during the extended pilot period. In filing for permanent approval, we expect the NYSE to discuss any experience the Exchange has had in the application of the policy which may aid the Commission in making its final determination. We also continue to expect the NYSE filing to contain a thorough analysis of the basis for the chosen threshold levels and for the use of a presumption against a combination at the higher level, particularly in light of the capital needs of specialists highlighted during the market volatility experienced during the week of October 19, 1987. In this regard, the Commission notes, that, in considering permanent approval of the Exchange's concentration policy, we will need to carefully examine any impact the concentration policy could have upon the capital needs of NYSE specialist units in light of current volatile market conditions.

[Rel. No. IC-16101; 812-6752]

Application for Exemption; Arcadia BIDCO Corp.

Octoer 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Arcadia BIDCO Corporation ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant, organized for the purpose of promoting the economic welfare of the State of Michigan under the Michigan 'BIDCO" Act and subject to the prevasive regulatory scheme of the BIDCO Act, seeks an order exempting it from all provisions of the 1940 Act pursuant to section 6(c).

Filing Date: The application was filed on June 5, 1987, and amended on October 20, 26, and 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 19, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Suite 440, Comerica Building, 151 South Rose Street, Kalamazoo, Michigan 49007.

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Carson G. Frailey (202) 272-3015, or Special Counsel Karen L.

Skidmore (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from etiher the SEC's Public Reference Branch in person, or the SEC's commercial copier, who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, organized under the laws of Michigan in April, 1987, is seeking to be licensed by the Financial Institutions Buerau of the Michigan Department of Commerce ("Bureau") as a "business and industrial development corporation" ("BIDCO") under Act No. 89 of the Michigan Public Acts of 1986 ("BIDCO Act"). The Bureau is the agency that charters and examines, among other institutions, state banks and savings and loan associations in Michigan. The BIDCO Act and Applicant's licensure thereunder are the implementation of a policy of legislative and administrative initiatives for economic development within the State of Michigan. For this purpose, Applicant will engage in debt financing, equity financing and leasing transactions designed to furnish innovative financing to deserving business firms which may not otherwise quality for conventional bank financing. Applicant anticipates it will provide financial and management assistance principally to entities doing business in Michigan.

2. Applicant will have the power to make loans, invest in securities, and own real and personal property and lease the same to other businesses in rendering financial assistance to businesses. Except in limited circumstances, primarily to protect an existing investment, the Applicant is prohibited from controlling another business. Applicant anticipates that the majority of its investments will be in medium term loans, substantially similar to commercial loans. Unlike typical investment companies regulated under the 1940 Act, Applicant's investments in securities will be almost exclusively limited to direct acquisitions from the issuer in transactions not involving any public offering. Other than obligations of the United States, and highly rated debt obligations of publicly-held domestic corporations acquired for temporary investment, Applicant does not propose to acquire any significant investments in securities in public trading markets. Applicant expressly represents that it will not make any investments in the voting securities of any Small Business Investment Company ("SBIC") licensed under the Small Business Investment Act, unless such SBIC limits its investments to those in businesses located primarily in Michigan.

3. Applicant will operate as a for-profit corporation, having a single class of voting common stock issued and outstanding. The authorized capital stock of the Applicant consists of 1,000,000 shares of common stock, par value $1.00. Applicant's shares of common stock are to be distributed initially in two interrelated offerings of BIDCO Common: (1) $3,999,960 pursuant to a limited offering (the "Limited Offering"), and (2) $2,000,000 to the Michigan Strategic Fund ("Strategic Fund"), a government agency of the State of Michigan providing funds for business development. Each of the two offerings will be conditioned upon the grant of a license under the BIDCO Act and the successful completion of the other offering. The offerings are being made pursuant to exemption from registration provided by Regulation D under section 4(2) of the Securities Act of 1933 ("1933 Act"). The Strategic Fund has committed to purchase 200,000 shares of BIDCO Common at $10.00 per share. The shares issued to the strategic Fund will be subject to an agreement detailing certain rights and restrictions, e.g., such shares will be non-voting; non-transferable for six years, and the fund may require the Applicant to repurchase such shares after six years. The shares issued to the Strategic Fund, although subject to those rights and restrictions, will not constitute a separate class of stock under Michigan law.

4. The shares of BIDCO Common offered pursuant to the Limited Offering will be offered primarily to Michigan residents; a small number of shares will be offered to residents of Massachusetts, Nevada and Illinois. Subscribers for its shares in these offerings will be required to represent that they are acquiring the shares for purposes of investment and not for resale. The shares of common stock will be subject to substantial restrictions on transfer, will bear a restrictive legend to that effect, and no public active trading market is expected to develop for such shares absent a distribution registered under the 1933 Act. Applicant will offer 600,000 common shares, $1.00 par value, at a price of $10.00 per share. Holders of the common shares will have one vote for each share held, and will elect all of Applicant's directors.

5. The Limited Offering is being made in conjunction with an offering by Arcadia Financial Corporation (the "Holding Company") of 338,004 shares of its common stock ("HC Common"), pursuant to an agreement between the Applicant and the Holding Company to sell their shares in a package. The Holding Company was incorporated in Michigan in January, 1987 as a bank holding company for the Purposes of forming and being the sole shareholder of Arcadia Bank and Arcadia Investment Corporation. Although investors will not be permitted to subscribe separately for shares of the Applicant, or the Holding Company, the shares of Applicant and the Holding Company will, after completion of the offering, be independently transferable (subject to applicable restrictions of Federal and State securities law). Other attributes of the shares, including voting, dividend, and distribution rights, will be wholly separate and distinct. The decision to offer HC Common and BIDCO Common was a marketing decision made by the promoters of Applicant and the Holding Company. The promoters were of the opinion that investment in BIDCO Common was riskier than investment in HC Common and that combining the risk and return of these two investments would make them more appealing to prospective investors, and, therefore, facilitate the raising of capital. The description of the Holding Company's proposed sale of HC Common is included in the application solely to provide a full description of the Applicant. The Applicant is not seeking, nor is the Commission expressing, any comment, opinion, review, or exemptive relief as to either the status of the Holding Company or its offering under the securities laws.

6. Applicant does not have any present intention to make a subsequent public offering of its common stock or other securities, and any subsequent offering of the Applicant's common stock or other securities will be made in compliance with the provisions of the 1933 Act or applicable exemptions therefrom. Applicant represents that in any public offering registered under the 1933 Act it will implement reasonable procedures designed to limit purchasers in such offering, and purchasers in any secondary trading market which might develop, to those who would be deemed to be sophisticated investors who are capable of understanding and assuming the risks involved in a investment in Applicant's securities.

Applicant's Legal Conclusions

1. Applicant may fall within the definition of an investment company in section 3(a) of the 1940 Act because the loans and investments Applicant expects to make will be represented by debt, equity and other securities issued

by businesses to which Applicant will render management and financial assistance, and the value of such securities acquired by Applicant may exceed 40% of the value of Applicant's total assets. Applicant anticipates having more than 100 beneficial owners of its common shares, and would, accordingly, not expect to remain excepted by section 3(c)(1) of the 1940 Act from the 1940 Act definition of investment company after closing the initial capitalization private offerings described above.

2. The exemption of Applicant from all provisions of 1940 Act is appropriate in the public interest and consistent with the protection of investors and the purposes and policies of the 1940 Act. Applicant is subject to pervasive regulation by the State of Michigan designed to protect investors in, and lenders to, Applicant, including the Michigan Uniform Securities Act. Such regulation also includes supervisory control by the Bureau under the BIDCO Act of (i) the character, fitness and financial standing of Applicant's directors, officers and controlling persons; (ii) minimum capital requirement; (iii) conflicts of interest; (iv) the acquisition of other businesses; (v) dividend policy; (vi) the redemption of Applicant's shares; (vii) change in control of, or disposition of, Applicant's business; and (viii) financial soundness of the Applicant. In addition, Applicant will be required to file annual, audited financial reports with the Bureau, and may be required to submit other periodic reports. Applicant will also be subject to annual examinations of its business and assets by the Bureau.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-25666 Filed 11-4-87; 8:45 am]

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[Rel. No. IC-16102; 812-6605]

Application for Exemption; First Investors Natural Resources Fund, Inc., et al.

October 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Investors Natural Resources Fund, Inc. ("Natural Resources Funds"), First Investors International Securities Fund, Inc. ("International Fund"), First Investors Corporation ("First Investors"), and First Investors Single Payment and Periodic Payment Plans for the Accumulation of Shares of First Investors Natural Resources Fund, Inc. ("Plan").

Relevant 1940 Act Sections: Approval requested for exchange of shares under sections 11(a) and 11(c); exemption requested under section 17(b) from the provisions of section 17(a) as to sale and purchase of shares; permission for joint transactions under section 17(d) and Rule 17d-1 thereunder; and approval requested under section 26(b) for the substitution of underlying securities of a unit investment trust.

Summary of Application: Applicants seek an order to approve the exchange of the shares of Natural Resources Fund for the shares of International Fund pursuant to an Agreement (as defined herein), to approve the resulting substitution of shares of International Fund for shares of Natural Resources Fund as the underlying investment for the Plan, and to effect certain affiliated transactions in connection therewith.

Filing Dates: The application was filed on January 27, 1987, and amended on October 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 19, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicants, 120 Wall Street, New York, New York 10005. Attention: Andrew J. Donohue, Secretary and General Counsel of First Investors Corp.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, (202) 272-2190 or Brion R. Thompson, Special Counsel, (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Natural Resources Fund and International Fund are open-end, diversified, management investment companies registered under the 1940 Act. The primary investment objective of Natural Resources Fund is to achieve capital appreciation and secondly to earn current income, by investing at least 80% of its assets in companies engaged in or serving the natural resources industry. Natural Resources Fund is also permitted to make foreign investments. The primary investment objective of International Fund is to achieve long term capital appreciation, and secondly to earn current income, by investing in securities of all types issued by companies and government instrumentalities of any nation with generally no more than 35% in securities issued by U.S. companies or U.S. government instrumentalities.

2. First Investors is organized under the laws of the State of New York and is registered as a broker-dealer under the Securities Exchange Act of 1934. First Investors' primary business is as co-underwriter of the First Investors group of mutual funds, which include Natural Resources Fund and International Fund, and as sponsor and underwriter of the Plan and as sponsor, depositor and underwriter for other single payment and periodic payment plans for investment in certain registered investment companies that are members of the First Investors group of mutual funds.

3. The Plan, which was formed on June 11, 1954, is organized as a unit investment trust and is registered as such under the 1940 Act. The Plan provides for long-term investment programs through single payment plans, periodic payment plans and periodic payments plans with insurance for investment in, and accumulation of shares of, Natural Resources Fund. Purchase payments for accounts established under the Plan, net of charges and expenses applicable at the time of purchase, are invested in shares of Natural Resources Fund at the current net asset value of such shares. Holders of the Plan ("Planholders") receive disclosure information required under the 1940 Act about the Plan, as well as about Natural Resources Fund. Planholders are advised of, and have voting privileges at, meetings of Natural Resources Fund. If the voting privilege of a Planholder is not exercised, First Investors (the Plan's sponsor) will advise the Plan's custodian to vote such

Planholder's shares of Natural Resources Fund in proportion to the shares of those Planholders who did exercise their voting privileges.

4. The Board of Directors of Natural Resources Fund and International Fund have each determined that due to the relatively small size of both funds their continued separate existence is uneconomical for their shareholders and management. The combination of the assets of Natural Resources Fund and International Fund, however, would permit expenses to be spread over a wider asset base and further result in a reduction of certain expenses applicable to both funds. The net effect would be a savings of costs to the combined fund and a reduction in the per share expenses applicable to its shareholders, including those of Natural Resources Fund.

5. On December 18, 1986, Natural Resources Fund and International Fund entered into an Agreement and Plan of Reorganization ("Agreement") which provided for the transfer of substantially all of the assets of Natural Resources Fund to International Fund in exchange for shares of International Fund having the same aggregate net asset value, the distribution of such shares to Natural Resources Fund shareholders, and the subsequent dissolution of Natural Resources Fund. The Board of Directors of International Fund and of Natural Resources Fund each unanimously approved the Agreement as being in the best interests of the respective fund shareholders, after having considered the objectives and policies of each Fund, the assets and liabilities of each fund, the operations of the business and management of the two funds, the prospects of each fund individually and combined, and the fairness to the respective shareholders of each fund as a result of the exchange of shares being done on a net asset value basis. Other factors considered include the following: (a) International Fund's historical performance has been superior to that of Natural Resources Fund; (b) there will be a substantially larger asset base upon integration of the funds resulting in greater portfolio diversification, less risk exposure, and better overall investment performance over a broader range of market conditions; (c) the funds have compatible investment objectives and policies; (d) the consummation of the proposed reorganization will be done on a tax-free basis; (e) the proposed reorganization will allow Natural Resources Fund shareholders to maintain without interruption their investment in a capital appreciation fund managed by the same investment adviser, First Investors Management Company, Inc; and (f) International Fund has available the same range of services currently provided to Natural Resources Fund shareholders which, with the consolidation of the operations of the funds, can be done more efficiently and at less net cost.

6. Although the annual management fee for International Fund (one percent of average daily net assets) is higher than that charged to Natural Resources Fund (.75 percent of average daily net assets), such fee is otherwise reasonable and customary, and is justified by the additional management services necessary for the investment adviser to make informed investment decisions on a global basis for a wide scope of permissible investments, the elimination of a significant portion of brokerage costs and the equal or lower expense ratio expected to result from the integration of the two funds.

7. Further, the Board of Directors of First Investors has determined unanimously that the best course of action for Planholders under the Plan is to provide for a continuity of their long-term investment objectives through the continuance of the Plan via a substitution of the shares of International Fund for the shares of Natural Resources Fund in accordance with the above described Agreement. In determining to approve the substitution, the Board of Directors of First Investors took into account all of the factors considered by the respective Boards of Directors of Natural Resources Fund and International Fund, including the following: (a) The otherwise impossibility of Planholders to continue to invest in securities previously purchased by them; (b) the disadvantage to Planholders if there is a liquidation of Natural Resources Fund and termination of the Plan; (c) the similarity of investment objectives and policies between the funds; (d) if the substitution is permitted, all the Planholders' rights would continue under the Plan without any changes whatsoever; (e) the substitution would be subject to Planholder approval and, therefore, would not be at the discretion of First Investors; (f) the Planholders have adequate votings rights and full disclosure in connection with the proposed reorganization and substitution; (g) there is an underlying exchange of shares in connection with the proposed reorganization and substitution; (h) the substitution would be done on a tax-free basis to Planholder; (i) the differences in which the funds involved seek to achieve their common investment goals and objectives is justified by the fact that the substitution will result in Planholders' investments being in securities that have a greater diversity and better performance record; (j) First Investors will remain as the Plan sponsor; and (k) after the substitution of shares, the only other change to the Plan would be the change of its name to First Investors Single Payment and Periodic Payment Plans for the Accumulation of Shares of First Investors International Securities Fund, Inc., to reflect the substituted securities of International Fund.

8. Natural Resources Fund shareholders and Planholders received adequate disclosure in the form of the then current prospectus of International Fund, and proxy statement for Natural Resources Fund, including a comparison of the two funds, their respective fees and all fees associated with the transaction, so that their vote could be rendered on a fully informed basis after due consideration of all factors. The Agreement was approved by a majority of the shareholders of Natural Resources Fund as well as by a majority of the Planholders. Natural Resources Fund shareholders and the Planholders not in favor of the reorganization have the option of redeeming their shares. Upon consummation of the Agreement, Natural Resources Fund will file an application to terminate its registration as an investment company under the 1940 Act.

9. Each fund has agreed to assume its own expenses in connection with the Agreement and will bear the share expenses of reorganization in proportion to the total net assets of each fund because in the opinion of their Board of Directors, the reasonable expectation of the substantial cost savings and added efficiency to a unified fund will in the long term accrue as a substantial benefit to the shareholders of both funds. All such expenses to be assumed by the funds are customary and appropriate to the transaction in question, and it is anticipated that these fees shall be reasonable in amount and not out of the ordinary. Any expenses and charges involved in the substitution, other than proper transfer taxes and/or charges customarily charged to shareholders by State or local authorities will be borne by First Investors. There are no back end sales loads charged in connection with this investment.

Applicants' Legal Conclusions

1. Applicants believe section 11(b) of the 1940 Act is controlling in this case since a majority of shareholders involved approved the reorganization, and thus, sections 11(a) and 11(c) of the

1940 Act are not applicable. However, to the extent that sections 11(a) and (c) of the 1940 Act are deemed to be applicable because of an exchange of shares between open-end, management investment companies and the shares of a unit investment trust, Applicants request the Commission's approval thereunder.

2. The prohibitions of section 17 of the 1940 Act against transactions by a registered investment company and affiliates thereof, may apply since the transactions in question involve "affiliated persons" as that term is defined in the 1940 Act. However, Applicants believe they are entitled to rely on Rule 17a-8 under the 1940 Act, have complied with the conditions thereof, and, therefore, are entitled to an exemption from section 17(a) of the 1940 Act. Furthermore, Applicants contend that the exchange of shares is not a joint transaction, and as a result, section 17(d) of the 1940 Act is not applicable. Nevertheless, to the extent that the Commission deems Applicant's reliance on Rule 17a-8 of the 1940 Act to be otherwise inappropriate, and further finds section 17(d) of the 1940 Act to be applicable to the reorganization, Applicant requests an order pursuant to section 17(b) of the 1940 Act exempting them from section 17(a), and pursuant to section 17(d) of the 1940 Act and Rule 17d-1 thereunder for permission to effect the proposed reorganization and the resulting exchange of securities.

3. The proposed exchange of shares requires the sponsor (First Investors) of a registered unit investment trust (the Plan) holding the security of a single issuer (Natural Resources Fund) to substitute another security (International Fund). Therefore, Applicants request an order under section 26(b) of the 1940 Act approving such substitution.

4. For the reasons listed above and set forth more fully in the application, Applicants submit that the SEC should issue the order requested under: (i) Sections 11(a) and 11(c) of the 1940 Act since the proposed exchanges are done on the basis of relative net asset values of the investment companies; (ii) section 17(b) of the 1940 Act since the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any party concerned, and the proposed transaction is consisent with the policies of the investment companies involved and with the general purposes of the 1940 Act; (iii) section 17(d) and Rule 17d-1 thereunder since the proposed transaction is consistent with the provisions, policies and purposes of the 1940 Act and the participation of the registered investment companies is on a basis no different from or less advantageous than any other participant; and (iv) section 26(b) of the 1940 Act since the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-25667 Filed 11-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—16103; 812-6903]

Application for Exemption the Rodney Square Multi-Manager Fund et al.

October 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Rodney Square Multi-Manager Fund ("Fund"), Rodney Square Management Corporation ("RSMC"), and Tremont Partners, Inc. ("Tremont").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 15(a).

Summary of Application: Applicants seek an order permitting Tremont to serve as investment adviser to the Fund pursuant to an interim contract, approved by the Fund's Board of Trustees, until the next annual meeting of Fund shareholders.

Filing Date: The application was filed on October 16, 1987 and amended on October 30, 1987.

Hearing or Notification Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 19, 1987. Request a hearing in writing, giving the nature of your interest the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. The Fund and RSMC, Rodney Square North, Wilmington, Delaware 19890, and Tremont, 880 Canal Street, Stamford, Connecticut 06902.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3037, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Fund, an open-end, diversified management investment company, currently consists of three separate portfolios. Segments of each portfolio, under the supervision of RSMC, are managed by different portfolio advisers, each manager utilizing its own investment strategies. RSMC provides asset management consulting services and supervision to the Fund. RSMC is a registered investment adviser and currently acts as an investment adviser to two other registered investment companies. Tremont is a registered investment adviser that has provided portfolio adviser evaluation, adviser selection services, and supervisory services to consulting clients since 1984.

2. A consulting agreement ("Former Agreement") between and among Applicants was entered into on January 30, 1987. The Former Agreement required Tremont to advise the Fund on asset allocation and investment objective planning, and to make ongoing recommendations concerning current and potential portfolio managers. For these services, RSMC paid Tremont a fee in respect to each portfolio of the Fund at the annual rate of .10 of 1% of the average daily net asset value of that portfolio. Pursuant to section 15(a)(4) of the Act, the Former Agreement also provided that it would automatically terminate upon "assignment," as defined in the Act.

3. On September 30, 1987, Lynch Corporation ("Lynch") purchased all of the issued and outstanding shares of Tremont's capital stock. As a result of this sale, the Former Agreement was automatically terminated. At a meeting held on October 9, 1987, the Board of Trustees of the Fund, including a majority of members who were not "interested persons" of RSMC or Tremont as that term is defined in section 2(a)(19) of the Act, approved an Interim Consulting Agreement ("Interim Agreement") between and among the

Fund, RSMC, and Tremont. The Interim Agreement will remain in effect only until the next meeting of Fund shareholders, which the Fund intends to hold wihtin 180 days of the termination of the Former Agreement. If the meeting of Fund shareholders is not held within 180 days of the termination date, Tremont will not thereafter charge the Fund any fees for its services under the Interim Agreement.

4. The terms of the Interim Agreement are substantially identical to those of the Former Agreement. The fee schedule in the Interim Agreement is identical to that of the Former Agreement, except that under the Interim agreement, Tremont will receive only .05 of 1% of net assets in excess of $200 million. All fees earned by Tremont under the Interim Agreement from the date of the order sought in the application will be placed into escrow and released to Tremont only upon ratification of the Interim Agreement by Fund shareholders. If the shareholders fail to ratify the Interim Agreement, all funds in escrow will revert immediately to the Fund. Under the Interim Agreement, Tremont has agreed to bear all costs and fees associated with preparation and filing of the exemptive application, up to the amount of fees it receives under the Interim Agreement.

5. Applicants will not rely on any exemptive order prior to its issuance, as authority for Tremont's serving as investment adviser to the Fund. Further, Tremont will not charge the Fund any fees for its services from the date of the assignment until the earlier of the date of the Commission's exemptive order or approval by the Fund's shareholders of the Interim Agreement.

Applicants' Legal Conclusions

The requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the following reasons.

1. The Interim Agreement will be identical in all material respects to the Former Agreement, except for the modifications previously described. Furthermore, the sale of Tremont to Lynch did not result in any change in the officers or employees of Tremont. Accordingly, the Fund will receive, during the period of the Interim Agreement, the same investment advisory services, provided in the same manner and at the same price, by the same personnel as it received prior to the sale of Tremont.

2. The Board of the Fund determined that, in its judgment, retention of Tremont as an interim investment adviser, together with the administrative and managerial personnel to be retained by Tremont, is in the best interests of the Fund and its shareholders. The Board also determined that Tremont is qualified to continue providing the advisory and administrative services needed by the Fund. Tremont is familiar with the Fund and its current group of advisers, and is able to provide necessary service at a favorable price to the Fund. The Board also believes it is in the best interests of the Fund and its shareholders to obtain a prompt and orderly resolution of the advisory issue. Prompt resolution will benefit the shareholders of the Fund by avoiding the disruption of services which would result from a lengthy transition period, and will minimize any uncertainties caused by the possible loss of Tremont's advisory services.

3. It has not been practical for the Fund to obtain shareholder approval of a new consulting agreement prior to the sale of Tremont. The timing of the sale transaction was governed largely by the needs and desires of Lynch. Tremont's negotiations with Lynch occurred over a very short period of time, and, accordingly, the Fund had little advance notice of the transaction. As it was consummated, the transaction fell approximately six months prior to the 1988 annual meeting of Fund shareholders. The Interim Agreement has been unanimously approved by the Fund's Board, including all of the disinterested trustees. Furthermore, the terms of the Interim Agreement, including the provisions relating to services to be performed and compensation to be received by Tremont, are no less favorable to the shareholders of the Fund than those of the Former Agreement, which was previously approved by both the initial sole shareholder of the Fund and the Board of Trustees of the Fund, and which has been described to all current Fund shareholders in the Prospectus and Statement of Additional Information.

4. Fees payable to Tremont under the Interim Agreement will be held in escrow, and will be paid over to Tremont only upon ratification of the Interim Agreement by a majority of Fund shareholders. Absent shareholder ratification the money held in escrow will revert to the Fund, and Tremont will relinquish all claims to these fees. Applicants thus believe the shareholders will enjoy the full benefit of the protections afforded by section 15(a) and are not likely to suffer any detriment under the Interim Agreement.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-25668 Filed 11-4-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 45165]

Seattle/Portland-Japan Service Review Case; Notice Regarding Prehearing Conference

October 30, 1987.

For the parties' benefit, I offer my tentative conclusions based on the prehearing conference submissions.

1. Grant all petitions for leave to intervene and all motions to consolidate applications.

2. Adopt Pan Am's procedural dates, modified to have rebuttal exhibits on February 1, 1988 and to start the hearing on February 9, 1988.

3. Incorporate by notice the testimony and evidence of the previous record.

4. Limit cross-examination by parties who were in the previous case to matter newly introduced in this case. For parties who were not in the previous case, cross-examination of the noticed evidentiary and testimonial matter will be limited to matter and witnesses identified by such parties when they file rebuttal exhibits.

5. Adopt the evidence request changes proposed by American, and grant American's request that United be considered an "incumbent carrier." So, too, should Delta, and whether it is a party or not Delta should provide whatever kind of data that United is asked to provide.

6. Limit direct exhibits [1] to an update of those filed in the previous case.

7. Limit the subject of rebuttal exhibits [1] to direct exhibits filed in this, not the previous, case.

8. Grant the MEC's request that the record contain answers to the questions posed by MEC.

These tentative conclusions are offered to expedite the discussion at the prehearing conference.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 87-25658 Filed 11-4-87; 8:45 am]

BILLING CODE 4910-62-M

[1] This limitation would not apply to parties new to this proceeding.

Federal Aviation Administration

Airworthiness Approval of LORAN-C Navigation Systems for Use in the U.S. National Airspace System (NAS) and Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of advisory circular (AC) and request for comment.

SUMMARY: This proposed advisory circular identified as AC-20-121-A, establishes an acceptable means, but not the only means, of obtaining airworthiness approval of a LORAN-C navigation system for use under VFR (visual flight rules) and IFR (instrument flight rules) within the conterminous United States, Alaska, and surrounding U.S. waters. Like all advisory material this advisory circular is not, in itself, mandatory and does not constitute a regulation. It is issued for guidance purposes and to outline one method of compliance with airworthiness requirements. As such, the terms "shall" and "must" used in this advisory circular pertain to an applicant who chooses to follow the method presented. The guidelines provided in this proposed Advisory Circular supersede those of AC 90-45A for LORAN-C navigation equipment.

DATE: Comments must identify the AC file number and be received on or before February 29, 1988.

ADDRESS: Send all comments on the proposed advisory circular to: Federal Aviation Administration, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, File No. AC-20-121-A, 800 Independence Avenue SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Nickolus O. Rasch, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9569.

Comments received on the proposed advisory circular may be examined, before and after the comment closing date at Room 335, FAA Headquarters Building (FOB-10A) 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to comment on the proposed AC revision listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final AC.

Background

The proposed revision AC-20-121-A will include information for airworthiness approval of a LORAN-C navigation system for use under VFR (visual flight rules) and IFR (instrument flight rules) within the conterminous United States, Alaska, and surrounding U.S. waters.

Related FARS

Federal Aviation Regulations (FAR) Parts 23, 25, 27, 29, 43, and 91.

Related Reading Materials

a. Federal Aviation Administration/ Technical Standard Order (TSO) C60b, "Area Navigation Equipment Using LORAN-C Inputs."

b. Radio Technical Commission for Aeronautics (RTCA), Document No. RTCA/DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," Documents No. RTCA/DO-178A, "Software Considerations in Airborne Systems and Equipment Certification", and Document No. RTCA/DO-194, "Minimum Operational Performance Standards for Airborne Area Navigation Equipment using LORAN-C Inputs."

c. Advisory Circular 90-82, "Random Area Navigation Routes."

d. Advisory Circular 27-1, "Certification of Normal Category Rotorcraft." This document should be referenced to determine if considerations beyond those contained in this advisory circular are necessary when installing a LORAN-C area navigation system in a normal category rotorcraft. If necessary, AC 27-1 will address those items peculiar to rotorcraft installations.

e. Advisory Circular 29-2, "Certification of Transport Category Rotorcraft." This document should be referenced to determine if considerations beyond those contained in this advisory circular are necessary when installing a LORAN-C area navigation system in a transport category rotorcraft. If necessary, AC 29-2 will address those items peculiar to transport category rotorcraft installations.

How to Obtain Copies

A copy of the proposed AC-20-121-A revision may be obtained by contacting the person under "For Further Information Contact." AC-20-121-A references to Technical Standard Order (TSO) C60b, "Airborne Area Navigation Equipment using Multi-Sensor Inputs." Copies of the TSO may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, Aircraft Engineering Division, AWS-100, 800 Independence Avenue SW., Washington, DC 20591.

The proposed AC incorporates Radio Technical Commission for Aeronautics (RTCA), Document No. RTCA/DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," Document No. RTCA/DO-178A, "Software Considerations in Airborne Systems and Equipment Certification," and Document No. RTCA/DO-194, "Minimum Operational Performance Standards for Airborne Area Navigation Equipment Using LORAN-C Inputs." Copies may be purchased from the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005.

Advisory Circular 90-82, "Random Area Navigation Route," copies may be obtained from the Department of Transportation, Subsequent Distribution Unit (M-494-3), Washington, DC 20591.

Advisory Circular 27-1, "Certification of Normal Category Rotorcraft," and Advisory Circular 29-1, "Certification of Transport Category Rotorcraft." Copies may be ordered from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Issued in Washington, DC, on October 28, 1987.

John K. McGrath,

Acting Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87-25598 Filed 11-4-87; 8:45 am]

BILLING CODE 4910-13-M

Airworthiness Approval of OMEGA/ VIF Navigation Systems for Use in the U.S. National Airspace System and Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of advisory circular (AC) and request for comment.

SUMMARY: This proposed advisory circular identified as AC-20-101C, establishes an acceptable means, but not the only means, of obtaining airworthiness approval of an Omega/ VIF navigation system for use under

VFR (visual flight rules) and IFR (instrument flight rules) within the conterminous United States, Alaska, and surrounding U.S. waters. Like all advisory material, this advisory circular is not, in itself, mandatory and does not constitute a regulation. It is issued for guidance purposes and to outline one method of compliance with airworthiness requirements. As such, the terms "shall" and "must" used in this advisory circular pertain to an applicant who chooses to follow the method presented. The guidelines provided in this proposed Advisory Circular supersede those of AC 90-45A for Omega/VIF navigation equipment.

DATE: Comments must identify the AC file number and be received on or before February 29, 1988.

ADDRESS: Send all comments on the proposed advisory circular to: Federal Aviation Administration, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, File No. AC-20-101C, 800 Independence Avenue SW., Washington, DC 20591.

or Deliver Comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Nickolus O. Rasch, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9569.

Comments received on the proposed advisory circular may be examined, before and after the comment closing date at Room 335, FAA Headquarters Building (FOB-10A) 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC revision listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the revised AC.

Background

The proposed revision AC 20-101-C will include information for airworthiness approval of an Omega/VIF navigation system for use under VFR (visual flight rules) and IFR (instrument flight rules) within the conterminous United States, Alaska, and surrounding U.S. waters.

Related FARS

Federal Aviation Regulations (FAR) Parts 23, 25, 27, 29, 43, and 91.

Related Reading Materials

a. Federal Aviation Administration/ Technical Standard Order (TSO) C94a, "Omega Receiving Equipment Operating Within the Radio Frequency Range 10.2 to 13.6 kilohertz," and TSO-C120, "Airborne Area Navigation Equipment Using Omega/VIF Inputs."

b. Radio Technical Commission for Aeronautics (RTCA), Document No. RTCA/DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," Document No. RTCA/DO-164A, "Airborne Omega Receiving Equipment," Document No. RTCA/DO-178A, "Software Considerations in Airborne Systems and Equipment Certification", and Document No. RTCA/DO-190, "Minimum Operational Performance Standards for Airborne Area Navigation Equipment using Omega/VLF Inputs."

c. Advisory Circular 90-82, "Random Area Navigation Routes."

d. Advisory Circular 27-1, "Certification of Normal Category Rotorcraft." This document should be referenced to determine if considerations beyond those contained in this advisory circular are necessary when installing an Omega/VLF navigation system in a normal category rotorcraft. If necessary, AC 27-1 will address those items peculiar to rotorcraft installations.

e. Advisory Circular 29-2, "Certification of Transport Category Rotorcraft." This document should be referenced to determine if considerations beyond those contained in this advisory circular are necessary when installing an Omega/VLF navigation system in a transport category rotorcraft. If necessary, AC 29-2 will address those items peculiar to rotorcraft installations.

How to Obtain Copies

A copy of the proposed AC-20-101C Revision may be obtained by contacting the person under "For Further Information Contact."

AC-20-101C references to Technical Standard Order (TSO) C120, "Airborne Area Navigation Equipment Using Omega/VLF Inputs" and TSO-C94a, "Omega Receiving Equipment Operating Within the Radio Frequency Range 10.2 to 13.6 kilohertz." Copies of these TSO's may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, Aircraft Engineering Division, AWS-100, 800 Independence Avenue, SW., Washington, DC 20591.

AC-90-82, "Random Area Navigation Routes." Copies may be obtained from the Department of Transportation, Subsequent Distribution Unit (M-49403), Washington, DC 20591.

AC-27-1, "Certification of Normal Category Rotorcraft," and AC-29-2, "Certification of Transport Category Rotorcraft." Copies may be ordered from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Also the proposed AC revision incorporates Radio Technical Commission for Aeronautics (RTCA), Document No. RTCA/DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," Document No. RTCA/DO-164A, "Airborne Omega Receiving Equipment," Document No. RTCA/DO-178A, "Software Considerations in Airborne Systems and Equipment Certification," and Document No. RTCA/DO-190, "Minimum Operational Performance Standards for Airborne Area Navigation Equipment using Omega/VLF Inputs." Copies may be purchased from the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005.

Issued in Washington, DC, on October 28, 1987.

John K. McGrath,

Acting Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87-25599 Filed 11-4-87; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Delano, California, on Tuesday and Wednesday November 17-18, 1987, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the VOA Delano Relay Station, Melcher Road near Garces Highway, Delano, California 93215. The meeting will begin at 3 p.m. on November 17 and will continue through 5 p.m. on November 18. Point of contact for the meeting is Cathy Haynes, telephone (202) 485-4048.

This meeting will include reports from senior members of the VOA management and engineering staff on

the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the procurement and testing of high frequency broadcasting antennas, the status of site negotiations and major construction projects, and other technical and regulatory issues relating to VA modernization.

This meeting will be closed to the public because issues relating to future site negotiations for VOA relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)).

Charles Z. Wick,

Director.

Date: October 19, 1987.

[FR Doc. 87-25653 Filed 11-4-87; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) a description of the need and its use, (5) how often the form letter must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form letter, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 7, 1987.

Dated: October 30, 1987.

By direction of the administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. School Attendance Report.
3. VA Form Letter 21-674b.
4. This information is used to confirm enrollment by a child for whom a VA Form 21-674, Request for Approval of School Attendance, was recieved prior to the start of the enrollment period.
5. On occasion.
6. Individuals or households.
7. 36,000 responses.
8. 3,000 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Application for Release from Personal Liability to the Government on a Home Loan.
3. VA Form Letter 26-6381.
4. This information is used to make determinations for release of liability and substitutions of entitlement of veteran-sellers to the government on guaranteed, insured and direct loans.
5. On occasion.
6. Individuals or households; and Businesses or other for-profit.
7. 5,677 responses.
8. 946 hours.
9. Not applicable.

[FR Doc. 87-25636 Filed 11-4-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 214
Thursday, November 5, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., November 10, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–25749 Filed 11–3–87; 3:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., November 10, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–25750 Filed 11–3–87; 3:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., November 17, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Mercantile Exchange for designation as a contract market in options on Australian Dollars
Application of the Chicago Mercantile Exchange for designation as a contract market in options on Gold futures
Application of the New York Cotton Exchange for designation as a contract market in Five-Year Treasury Note options
Quarterly Objectives, Second Quarter, FY 1988

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–25751 Filed 11–3–87; 3:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., November 17, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–25752 Filed 11–3–87; 3:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., November 24, 1987.

PLACE: 2033 K Street, NW, Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Briefing by the National Futures Association
Application of the Chicago Board of Trade for designation as a contract market in Long-Term U.K. Gilt Futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR DOC. 87–25753 Filed 11–3–87; 3:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., November 24, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR DOC. 87–25754 Filed 11–3–87; 3:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., November 24, 1987.

PLACE: 2033 K STREET, NW, WASHINGTON, DC, 8TH FLOOR CONFERENCE ROOM.

STATUS: Closed.

MATTERS TO BE CONSIDERED: ENFORCEMENT MATTERS.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–25755 Filed 11–3–87; 3:09 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 10, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

THE CLOSED MEETING of Tuesday, November 17, 1987, has been cancelled.

THE OPEN MEETING of Thursday, November 19, 1987, has been cancelled.

DATE AND TIME: Thursday, November 12, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987–28—Harold D. Hammett on behalf of Texas Democratic Party—Federal.
Draft Advisory Opinion 1987–29—Jan W. Baran on behalf of Life Underwriters PAC and the National Association of Life Underwriters.
Routing Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87–25740 Filed 11–3–87; 2:39 pm]

BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 9, 1987:

An open meeting will be held on Tuesday, November 10, 1987, at 10:00 a.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, November 10, 1987, at 10:00 a.m., will be:

Consideration of an application filed by David Lerner Associates, Inc., Spirit of America Management Corp, and David Lerner for an order of the Commission under section 9(c) of the Investment Company Act of 1940 permanently exempting them from the provisions of section 9(a) of the Act to allow them to serve or act in certain capacities for Spirit of America Government Fund, Inc., and open-end, diversified, management investment company. For further information, please contact Victor R. Siclari, at (202) 272–2190.

The subject matter of the closed meeting scheduled for Tuesday, November 10, 1987, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Opinions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Adkins at (202) 272–2014.

Jonathan G. Katz,

Secretary.

November 2, 1987.

[FR Doc. 87–25727 Filed 11–3–87; 1:21 pm]

BILLING CODE 8010-01-M

federal register

Thursday
November 5, 1987

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Fire Protection Requirements for Cargo or Baggage Compartments; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25430, Notice No. 87-11]

Fire Protection Requirements for Cargo or Baggage Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to upgrade the fire safety standards for cargo or baggage compartments in certain transport category airplanes used in air carrier, air taxi, or commercial service. Ceiling and sidewall liner panels that are not constructed of aluminum or rigid fiberglass and are used in Class C or D compartments greater than 200 cubic feet would have to be replaced with improved panels prior to a specified date. This notice is the result of research and fire testing and is intended to increase airplane fire safety.

DATE: Comments must be received on or before May 3, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25430, 800 Independence Avenue SW., Washington, DC 20591, or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC. Comments delivered must be marked Docket No. 25430. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel, weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25430." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

During the early post-World War II period, it was recognized that timely detection of a fire by a crewmember while at his station and prompt control of the fire when detected were necessary for protection of the airplane from a fire originating in a cargo or baggage compartment. Because the requirements for detection and extinguishment varied depending on the type and location of the compartment, a classification system was established. Three classes were initially established and defined as follows:

Class A—A compartment in which the presence of a fire would be easily discovered by a crewmember while at his station, and of which all parts are easily accessible in flight. This is typically a small compartment used for crew luggage and located in the cockpit where a fire would be readily detected and extinguished by a crewmember. Due to the small size and location of the compartment, and the relatively brief time required to extinguish a fire, a liner is not needed to protect adjacent structure.

Class B—A compartment with sufficient access in flight to enable a crewmember to effectively reach any part of the compartment with the contents of a hand fire extinguisher and that incorporates a separate, approved smoke or fire detection system to give warning at the pilot or flight engineer station. A Class B compartment is typically much larger than a Class A compartment and can be located in an area remote from the cockpit. Because of the larger size of the compartment and the greater time interval likely to occur before a fire would be controlled, a liner meeting the flame penetration standards of § 25.855 and Part I of Appendix F of Part 25 must be provided to protect adjacent structure. A Class B compartment is typically the large cargo portion of the cabin of a combination passenger and cargo carrying airplane (frequently referred to as a "combi" airplane) or the relatively small baggage compartment located within the pressurized portion of an airplane designed for executive transportation.

Class C—As defined at the time of initial classification, any compartment that did not fall into either Class A or B was a Class C compartment. Class C compartments differ from Class B compartments primarily in that built-in extinguishment systems are required for control of fires in lieu of crewmember accessibility. The volumes of Class C compartments in currently used domestic jet transport airplanes range from 700 to 3,045 cubic feet.

Later, two additional classes were established and defined as follows:

Class D—A compartment in which a fire would be completely contained without endangering the safety of the airplane or the occupants. A Class D compartment is similar to a Class C compartment in that both are located in areas that are not readily accessible to a crewmember. In lieu of providing fire detection and extinguishment, Class D compartments are designed to control a fire by severely restricting the supply of

available oxygen. Because an oxygen-deprived fire might continue to smolder for the duration of the flight, the capability of the liner to resist flame penetration is especially important. The volumes of Class D compartments in transport category airplanes currently used in domestic air carrier service range from approximately 225 to 1,632 cubic feet. Some airplanes designed for executive transportation and used in air taxi service also have relatively small (15–25 cubic feet) Class D baggage compartments located outside the pressurized portion of the cabin.

Class E—A cargo compartment of an airplane used only for the carriage of cargo. In lieu of providing extinguishment, means must be provided to shut off the ventilating airflow to or within a Class E compartment. In addition, procedures, such as depressurizing the airplane, are stipulated to minimize the amount of oxygen available in the event a fire occurs in a Class E compartment.

The FAA recently conducted a series of tests at its Technical Center to investigate the capability of three liner materials to resist flame penetration under conditions representative of actual cargo or baggage compartment fires. The tests were conducted using simulated Classes C and D compartments. Although cargo or baggage is sometimes placed in compartments in preloaded containers, the tests were conducted with bulk-loaded baggage because cargo or baggage is frequently bulk-loaded directly into the compartments in actual service. In conjunction with these tests, the FAA developed a method of testing liner materials utilizing a 2 gallons-per-hour kerosene burner. The materials tested—fiberglass, Kevlar and Nomex—comprise the primary liner materials currently used in domestic jet transport airplanes. Copies of Report No. DOT/FAA/CT-83/44, A Laboratory Test for Evaluating the Fire Containment Characteristics of Aircraft Class D Cargo Compartment Lining Material, dated October 1983, and Report No. DOT/FAA/CT-84/21, Suppression and Control of Class C Cargo Compartment Fires, dated February 1985, have been placed in the Rules Docket. Copies of these reports, which describe the FAA testing, are available for public inspection and are also available for purchase from the National Technical Information Service in Springfield, Virginia 22161.

From these tests, it was found that a fire could rapidly burn through Nomex or Kevlar under representative conditions. In addition to the fire hazards associated with the initial flame penetration, the ability of the compartment to restrict the supply of oxygen in the compartment would be hindered. This, in turn, could result in a fire of increased intensity. As a result of these tests, new type certification standards were adopted for Class C or D cargo or baggage compartments in transport category airplanes (Amendment 25–60; 51 FR 18236; May 16, 1986). The newly adopted standards, which are applicable to airplanes for which application for type certificate is made after June 16, 1986, include new test methods for the ceiling and sidewall liner panels. In addition, the maximum volume of a Class D compartment is limited to 1,000 cubic feet.

Discussion

As discussed above, the test conducted under representative conditions by the FAA Technical Center showed that a fire could rapidly burn through liners constructed of Kevlar or Nomex. Liners constructed of rigid fiberglass (glass fiber reinforced resin), on the other hand, exhibited satisfactory burn-through characteristics. Subsequent tests showed that liners constructed of aluminum were also better in this regard than those of Kevlar or Nomex, although not generally as good as those constructed of rigid fiberglass. Subsequent tests, on the other hand, showed that nonrigid fiberglass construction, such as blankets or battings, was unsatisfactory because the supporting material would burn away rapidly. In the absence of the supporting material, the fiberglass would fall out of place.

Although Amendment 25–60 provides new standards for future transport category airplanes, it does not affect airplanes currently in service nor the airplanes that will be produced under type certificates for which application was made prior to June 16, 1986. Although the majority of the transport category airplanes currently used in U.S. air carrier, air taxi, and commercial service utilize liners constructed of rigid fiberglass for the ceiling and sidewalls of cargo or baggage compartments, certain models use liners constructed of Kevlar or Nomex. In order to preclude the continued use of such materials, this notice proposes to add a new § 121.314 and to amend § 135.169 to require improved standards for the cargo or baggage compartment liners in transport category airplanes used in such service.

Due to the additional burden of retrofitting existing airplanes, the standards proposed in this notice differ somewhat from those provided by Amendment 25–60 for future type designs. As proposed herein, existing installations with liners constructed of rigid fiberglass would be acceptable without further tests. Previously approved installations utilizing aluminum ceiling or sidewall liner panels could also be retained; however, aluminum could not be used to replace other materials. Ceiling and sidewall liner panels constructed of other materials would have to be replaced with panels constructed of fiberglass or with materials tested using the apparatus and procedures recently adopted for Part 25. The acceptance criteria for such materials would be the same as for materials tested for compliance with Part 25.

The term "liner," as used in this context also includes any design features that would affect the capability of the liner to safely contain a fire. The materials of such features would have the fire integrity of the basic material, in the case of rigid fiberglass or aluminum liner panels; or the design features would have to be tested along with the basic panel material unless they have been previously found satisfactory. For example, joints that are constructed with fireproof fasteners and are not subject to gaps caused by distortion need not be tested. On the other hand, the test specimens would include joints constructed with nonfireproof fasteners or joints subject to distortion. Similarly, test specimens would include lamp lenses, if failure of the lenses would allow flames to pass; however, lamps need not be included in the test specimen if the lamp incorporates a fireproof body that would prevent passage of flames.

The proposed standards would not be applicable to compartments with volumes less than 200 cubic feet. The fire hazards associated with relatively small compartments are not as great due to the limited volume of oxygen and amount of combustible materials that would be contained in them. The present liners used in these compartments are, therefore, considered to provide an acceptable level of safety.

Part 135 of this Chapter, which pertains to air taxi operators and commercial operators, incorporates certain provisions of Part 121 by reference insofar as operations with large airplanes are concerned. Section 135.169 would be amended to include new § 121.314 among those sections of Part 121 that are incorporated by reference. The proposed standards would, therefore, also be applicable to those operators when airplanes with compartments larger than 200 cubic feet are used.

The new standards of Part 25 for future type designs include a maximum volume of 1,000 cubic feet for a Class D compartment. A similar requirement is not proposed in this notice because the redesign and retrofit of airplanes with Class D compartments larger than 1,000 cubic feet would be extremely burdensome.

Compliance with the proposed standards would not be required for transport category airplanes type certificated on or before January 1, 1958, because their advanced age and limited numbers in Part 121 or 135 operation would make compliance impractical from an economic standpoint. That date was selected because the rule would include the Boeing 707 and Douglas DC-8 vintage and later airplanes and exclude older airplanes, such as the Douglas DC-6 or DC-7. It should also be noted that the proposed standards would not apply to airplanes that are not operated under the provisions of Part 121 or 135, such as airplanes used for executive travel under the provisions of Part 125 of this Chapter.

All other transport category airplanes that are operated under the provisions of Part 121 or 135 would have to meet the new standards within two years after the effective date of the amendment. The two year compliance period is intended to allow operators and manufacturers time to select and qualify prospective liner materials and incorporate them with a minimum of disruption to fleet schedules or the assembly lines.

Regulatory Evaluation

The period of this analysis is ten years, beginning in the latter half of 1987, when the proposed rulemaking is expected to become final. The two-year compliance period is expected to expire in 1989. All values are expressed in 1986 dollars. Costs and benefits have been discounted to their present values at the beginning of the analysis period using the 10 percent discount rate prescribed by the Office of Management and Budget (OMB).

The major cost of the proposed rule change would result from the need to retrofit the cargo compartment liners of certain airplane models that do not meet the proposed standards. Another minor cost would result from the additional fuel that would be consumed by these airplanes because of the slight increase in airplane weight necessary to comply with the new standards.

Most transport category airplanes operated under Part 121 or 135 are equipped with cargo or baggage compartment liners that already meet the proposed new standards. These airplanes would not be affected by the proposed rulemaking. The Boeing 757 and 767, Lockheed L-1011, and Saab SF-340 airplanes, on the other hand, have cargo or baggage compartment liners that are made of either Kevlar or Nomex, materials that do not meet the proposed new standards. All liner panels in airplanes of these models would have to be replaced with liner panels that meet the proposed new standards. Certain Boeing 727 and 737 airplanes have cargo or baggage compartment doors with nonrigid fiberglass blanket construction which does not meet the proposed new standards. Similarly, certain portions of the liners in Boeing 747 airplanes are of nonrigid fiberglass construction. Although the rest of the liner material used in 727, 737, and 747 airplanes would be satisfactory, the portions that are of nonrigid fiberglass construction would have to be replaced.

Production of Boeing 727 and Lockheed L-1011 airplanes has been completed; therefore, the only airplanes of these models that would be affected by the proposed rulemaking are those forecast to be in U.S. air carrier service in 1989 when the two-year compliance period is expected to end. The Boeing 747, 757, and 767 airplanes are still in production; however, Boeing has voluntarily begun to install liners that meet the similar, recently adopted Part 25 standards on airplanes of those models. The only airplanes of those models that would be affected by the proposed rulemaking are those delivered before the voluntary installations began (approximately the end of 1986). The Boeing 737 and Saab SF-340 airplanes are still in production also, and it is expected that airplanes of those models produced soon after the anticipated 1987 adoption of the final rule would be equipped with compliant materials. An adjustment to the number of Boeing 737 and Saab SF-340 airplanes that are expected to be operating in 1989 has been made to account for those airplanes produced during the latter part of the two-year compliance period.

Unit costs for retrofitting most airplane models that would be affected by the rule are based upon estimates of complete kits provided by airframe manufacturers to operators of their airplanes. Engineering and certification costs incurred by the airframe manufacturers are, therefore reflected in the cost of these kits. Labor cost estimates are based upon installation of a prefabricated kit. In lieu of purchasing prefabricated kits, operators may elect to fabricate their own replacement panels from sheets of compliant liner materials. In such cases, they would incur lower material costs and higher labor costs, but the total retrofit cost would be equal to or less than the cost of using a kit. (Because only two cargo doors are affected on Boeing 727 and 737 airplanes, it has been assumed that operators of those airplanes would use the latter approach.) A $40 per hour wage rate has been used to estimate installation costs. It is anticipated that the retrofit work would be distributed evenly over the two-year compliance period.

The Boeing 727 and 737 airplanes would not incur any weight penalties because the new cargo door panels would weigh approximately the same as the fiberglass blankets they would replace. The other models affected by the proposed rulemaking would, however, be expected to incur slight weight penalties in complying with the new standard. Although rigid fiberglass would not weigh more than fiberglass blankets, it is expected that operators of Boeing 747 airplanes would retain the fiberglass blankets that are currently used as the compartment liners in some areas and simply install rigid fiberglass directly over the blankets. Rigid fiberglass would weigh slightly more than the Kevlar or Nomex that it would replace in Boeing 757 and 767, Lockheed L-1011 and Saab SF-340 airplanes. Data compiled by the National Aeronautics and Space Administration indicate that each additional pound of weight added to a turbofan-powered transport category airplane results in an average additional fuel consumption of about 15 gallons per year per airplane. At the current jet fuel price of about 60 cents per gallon, each additional pound of weight would cost $9 annually. (Data provided by Saab indicate that the SF-340 would only consume an additional 5 gallons of fuel annually for each additional pound of weight, resulting in an annual weight penalty cost of $3 per pound.) This fuel penalty has been applied only to those airplanes in which compliant liner materials would be installed as a result of this rulemaking action. Airplanes that would be equipped voluntarily have not been included.

The FAA expects that with careful planning most retrofit work could be completed during regularly scheduled maintenance intervals over the two-year period allowed to bring affected airplanes into compliance; however, in some instances it might be necessary to remove an airplane from service for no more than a day. In such cases, there might be some transfer of traffic and revenue among air carriers; however, no appreciable social costs resulting from

disrupted travel are expected to be incurred by the public because adequate alternative transportation is available for such a short period.

The FAA has estimated that the total cost of compliance with this proposed regulation would be approximately $14.9 million. These costs have been summarized in Table 1.

TABLE 1.—COMPLIANCE COSTS FOR AIRPLANES SUBJECT TO THE PART 121 CARGO COMPARTMENT LINER RULE [1]

Airplane model	No. of airplanes needing retrofit	Material cost per airplane	Labor cost per airplane	Total model retrofit cost (present value) (million)	Weight penalty per airplane (lbs.)	Total model fuel cost (present value) (million)	Total model compliance cost (present value) (million)
Boeing 757	70	$25,000	$6,400	$2.0	150	$0.6	$2.6
Boeing 767	70	25,000	6,400	2.0	150	.6	2.6
Lockheed L-1011	116	30,000	8,000	4.0	250	1.6	5.6
Saab SF-340	44	([2])	([2])	.4	25	.03	.4
Boeing 747	132	12,000	4,800	2.0	150	1.1	3.1
Boeing 727	900	180	320	.4	0	0	.4
Boeing 737	640	180	320	.3	0	0	.3
Total all affected models				11.1		3.8	14.9

[1] Numbers may not add precisely because of rounding.
[2] Combined material at labor cost for each SF-340 airplane would be $10,000.

The potential benefits of the proposed rule change are the avoided losses of life and property that would have resulted from those airplane fires that may be prevented by the new cargo compartment liner standards. Quantifying these benefits is difficult because most transport airplanes currently in service have liners constructed of fiberglass materials that meet the new standards. Further, of the transport category airplane models currently in service with liner materials that do not meet the proposed flame penetration standards, only one, the Lockheed L-1011, has experienced a catastrophic fire that was possibly related to a cargo or baggage compartment (the specific origin or cause of this fire is the subject of considerable dispute). Although the historic accident record indicates that the probability of a cargo or baggage compartment fire is extremely low, tests conducted by the FAA Technical Center indicated that when such a situation does occur, liners made of certain materials that are currently in use would be ineffective in preventing flames from penetrating the compartment wall and spreading to other portions of the airplane. It is, therefore, necessary that these liner materials be replaced. The potential benefits of preventing one catastrophic fire involving those airplane models subject to the rule change include the prevention of property losses ranging from about $2.6 to $23 million (discounted present value of used airplanes with the loss distributed evenly over the ten-year period), and the avoidance of from 20 to 300 fatalities (based on aircraft capacities and average load factors).

A comparison of the costs and benefits of this proposal indicates that it would be very cost beneficial if only one accident were prevented. Comparing the costs and benefits for each airplane model individually, the compliance costs would be greatly exceeded by the benefit of the avoided airplane property loss alone. No cost would need to be attributed to preventing loss of life. Comparing overall costs and benefits of the proposal, should the only accident prevented involve the smallest airplane subject to the rule change, the Saab SF-340, the cost per fatality avoided would only be approximately $.62 million. (The cost per fatality avoided can be determined by deducting the $2.6 million prevented hull loss benefit value from the overall $14.9 million compliance cost of the proposal, and dividing this difference which gives that portion of the costs attributable the prevention of fatalities, by the average of 20 persons carried aboard the airplane.) If the actual overall compliance costs are as much as 50 percent higher than estimated, the cost per fatality avoided would increase to $.99 million, which is still very acceptable under Department of Transportation guidelines for regulatory actions. Thus, it is expected that very favorable cost/benefit relationships would result from this proposal.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of shall entities."

The Part 121 rule change proposed in this notice is not expected to adversely impact small entities. FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance* (dated September 16, 1986) classifies an operator of aircraft for hire as a small entity if it owns no more than nine aircraft, and further defines a "substantial number of small entities" as more than one-third of the small entities subject to the proposed rule, but not less than 11. Threshold annualized cost levels for determining significant economic impact have been specified in the order for operators of aircraft for hire. The threshold values (in 1986 dollars) are $92,700 for scheduled operators whose entire fleet has a seating capacity over 60, $51,800 for other scheduled operators, and $3,600 for unscheduled operators.

The FAA has identified a total of 13 small entity air carriers that operate airplane models affected by the proposed rule. All but two of these carriers operate Boeing 727 and 737 airplanes, the least expensive models to bring into compliance with the proposed rule. Should these air carriers operate as many as nine of these airplanes, the largest number allowed to be considered a small entity, then the total retrofit cost would be $4,500, based upon the estimated cost of $500 per airplane for these models. Applying a capital recovery factor to the $4,500 retrofit cost

yields an annualized cost of approximately $700 for each operator. This is far less than the threshold value of $3,600 prescribed for determining significant economic impact on unscheduled operators. Further, many of these small entity air carriers engage in scheduled operations, which would make them subject to the higher $92,700 threshold value. For these reasons, the rule change proposed in this notice is not expected to result in a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The proposed rule change will have little or no impact on trade for either U.S. firms doing business in foreign countries or foreign firms doing business in the United States. The rule change will affect only U.S. air carriers because foreign air carriers are not subject to Part 121. Foreign air carriers would not gain any competitive advantage over the domestic operations of U.S. carriers because they are prohibited from transporting passengers between points within the United States, unless those passengers have originated in or are destined for a foreign country. In international operations, foreign air carriers operating the same airplane models as those U.S. operators affected by the retrofit requirements of the proposal might realize a slight cost advantage; however, the costs of this proposal would be extremely small in comparison to the overall costs of engaging in international air transportation.

Further, it is expected that newly produced units of most, and possibly all, of the affected airplane models would be delivered to both foreign and domestic customers with liner materials that comply with the proposed rule. For these reasons, no appreciable trade impact is expected to result from the proposal.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it has been certified under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Cargo, Flammable materials, Hazardous materials, Transportation, Common carriers.

14 CFR Part 135

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Cargo, Hazardous baggage, Materials, Transportation mail.

The Proposed Amendment

Accordingly, the FAA proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (FAR), 14 CFR Parts 121 and 135, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983), 49 CFR 1.47(a).

2. By adding new § 121.314 to read as follows:

§ 121.314 Cargo and baggage compartments.

(a) After (a date two years after the effective date of this amendment), each Class C or D compartment as defined in § 25.857 of Part 25 of this Chapter, greater than 200 cubic feet in volume in a transport category airplane type certificated after January 1, 1958, must have ceiling and sidewall liner panels that are constructed of:

(1) Glass fiber reinforced resin (rigid fiberglass);

(2) Materials that meet the test requirements of Part 25, Appendix F, Part III of this Chapter; or

(3) In the case of liner installations approved prior to (the effective date of this amendment), aluminum.

(b) For compliance with this section, the term "liner" includes any design feature, such as a joint or fastener, that would affect the capability of the liner to safely contain a fire.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502, 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983), 49 CFR 1.47(a).

4. By amending § 135.169 by revising paragraph (a) to read as follows:

§ 135.169 Additional airworthiness requirements.

(a) Except for commuter category airplanes, no person may operate a large airplane unless it meets the additional airworthiness requirements of § 121.213 through § 121.283, § 121.307, § 121.312, and § 121.314 of this chapter.

* * * * *

Issued in Seattle, Washington, on October 28, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–25581 Filed 11–4–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Thursday
November 5, 1987

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 5

Federal Acquisition Regulation (FAR); Sources Sought Synopsis for Research and Development; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

Federal Acquisition Regulation (FAR); Sources Sought Synopsis for Research and Development

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing a revision to FAR 5.205 to make optional the synopsizing of advance notices of interest in Research and Development fields, and to clarify the purpose of such notices.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 4, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87-42 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule does not change the current FAR requirements regarding synopsizing solicitations for R&D requirements. It merely clarifies and makes optional the synopsizing of advance notices of interest in R&D fields. Accordingly, the proposed rule is not a "significant revision" within the meaning of FAR 1.501-1, in that it will not have a significant cost or administrative impact on contractors or offerors. It does, however, represent a change to the FAR for which public comments are welcomed, and, therefore, a proposed rule is being issued.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: October 30, 1987.

Roger M. Schwartz,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 5 be amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for Part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 5.205 is amended by revising paragraph (a) to read as follows:

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may publish in the CBD advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices shall be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices shall be titled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers shall synopsize all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

* * * * *

[FR Doc. 87-25602 Filed 11-4-87; 8:45 am]

BILLING CODE 6820-61-M

Federal Register

Thursday
November 5, 1987

Part IV

Environmental Protection Agency

40 CFR Parts 414 and 416

Organic Chemicals and Plastics and Synthetic Fibers Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 414 and 416

[FRL 3230-5]

Organic Chemicals and Plastics and Synthetic Fibers Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes effluent limitations guidelines and standards that limit the discharge of pollutants into navigable waters and publicly owned treatment works (POTWs) by existing and new sources in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) industrial category. The Clean Water Act and a consent decree require EPA to issue this regulation.

The regulation establishes effluent limitations guidelines attainable by the application of the "best practicable control technology currently available" (BPT) and the "best available technology economically achievable" (BAT), pretreatment standards applicable to existing and new dischargers to POTWs (PSES and PSNS, respectively), and new source performance standards (NSPS) attainable by the application of the "best available demonstrated technology."

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time November 19, 1987. These regulations shall become effective December 21, 1987.

The compliance date for PSES is November 5, 1990. The compliance date for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with BPT and BAT are established in permits.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be had only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The basis for this regulation is detailed in four major documents. See Section XV—Availability of Technical Information for information on those documents. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (Phone: (703) 487-4600). For additional technical information, contact Mr. Elwood H. Forsht, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Phone: (202) 382-7190). For additional economic information, contact Ms. Kathleen Ehrensberger, Analysis and Evaluation Division (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Phone: (202) 382-5397).

On January 11, 1988, the complete public record for this rulemaking, including the Agency's responses to comments received during rulemaking, will be available for review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Forsht at (202) 382-7190.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the legal authority, background, the technical and economic bases, and other aspects of the final regulation. The abbreviations, acronyms, and other terms used in the Supplementary Information sections are defined in Appendix A to this notice.

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I. Legal Authority

This regulation is promulgated under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S.C. 1251 *et seq.*)), also referred to as "the Act." It is also promulgated in response to the decree in *Natural Resources Defense Council, Inc* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), *modified* by Orders dated October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984, January 7, 1985, April 24, 1986, and January 8, 1987.

II. Scope of This Rulemaking

This final regulation establishes effluent limitations guidelines and standards for existing and new organic chemicals, plastics, and synthetic fibers

(OCPSF) manufacturing facilities. It applies to process wastewater discharges from these facilities.

For the purposes of this regulation, OCPSF process wastewater discharges are defined as discharges from all establishments or portions of establishments that manufacture products or product groups listed in the applicability sections of this regulation, and are included within the following U.S. Department of Commerce Bureau of the Census Standard Industrial Classification (SIC) major groups:

(1) SIC 2865—Cyclic Crudes and Intermediates, Dyes, and Organic Pigments,

(2) SIC 2869—Industrial Organic Chemicals, not Elsewhere Classified,

(3) SIC 2821—Plastic Materials, Synthetic Resins, and Nonvulcanizable Elastomers,

(4) SIC 2823—Cellulosic Man-Made Fibers, and

(5) SIC 2824—Synthetic Organic Fibers, Except Cellulosic.

The OCPSF regulation does not apply to process wastewater discharges from the manufacture of organic chemical compounds solely by extraction from plant and animal raw materials or by fermentation processes.

The OCPSF regulation covers all OCPSF products or processes whether or not they are located at facilities where the OCPSF covered operations are a minor portion of and ancillary to the primary production activities or a major portion of the activities.

The OCPSF regulation does not apply to discharges from OCPSF product/process operations which are covered by the provisions of other categorical industry effluent limitations guidelines and standards if the wastewater is treated in combination with the non-OCPSF industrial category regulated wastewater. (Some products or product groups are manufactured by different processes and some processes with slight operating condition variations give different products. EPA uses the term "product/process" to mean different variations of the same basic process to manufacture different products as well as to manufacture the same product using different processes.) However, the OCPSF regulation does apply to the product/processes covered by this regulation if the facility reports OCPSF products under SIC codes 2865, 2869, or 2821, and its OCPSF wastewaters are treated in a separate treatment system at the facility or discharged separately to a municipal treatment system.

For example, some vertically integrated petroleum refineries and pharmaceutical manufacturers discharge wastewaters from the production of synthetic organic chemical products that are specifically regulated under the Petrochemical and Integrated Subcategories of the Petroleum Refining Point Source Category (40 CFR Part 419, Subparts C and E) or the Chemical Synthesis Products Subcategory of the Pharmaceuticals Manufacturing Point Source Category (40 CFR Part 439, Subpart C). The principles discussed in the preceding paragraph apply as follows: The process wastewater discharges by petroleum refineries and pharmaceutical manufacturers from production of organic chemical products specifically covered by 40 CFR Part 419 Subparts C and E and Part 439 Subpart C, respectively, that are treated in combination with other petroleum refinery or pharmaceutical manufacturing wastewater, respectively, are not subject to the OCPSF regulation no matter what SIC code they use to report their products. However, if the wastewaters from their OCPSF production are separately discharged to a POTW or treated in a separate treatment system, and they report their products (from these processes) under SIC codes 2865, 2869, or 2821, then discharges from these manufacturing operations are subject to regulation under the OCPSF regulation, regardless of whether the OCPSF products are covered by 40 CFR Part 419, Subparts C and E and Part 439, Subpart C.

Today's OCPSF category regulation applies to plastics molding and forming processes when plastic resin manufacturers mold or form (e.g., extrude and pelletize) crude intermediate plastic material for shipment off-site. This regulation also applies to the extrusion of fibers. Plastics molding and forming processes other than those described above are regulated by the Plastics Molding and Forming effluent guidelines and standards (40 CFR Part 463).

Public comments requested guidance relating to the coverage of OCPSF research and development facilities. Stand-alone OCPSF research and development, pilot plant, technical service, and laboratory bench scale operations are not covered by the OCPSF regulation. However, wastewater from such operations conducted in conjunction with and related to existing OCPSF manufacturing operations at OCPSF facilities is covered by the OCPSF regulation because these operations would most likely generate wastewater with characteristics similar to the commercial manufacturing facility. Research and development, pilot plant, technical service, and laboratory operations which are unrelated to existing OCPSF plant operations, even though conducted on-site, are not covered by the OCPSF regulation because they may generate wastewater with characteristics dissimilar to that from the commercial OCPSF manufacturing facility.

Finally, as described in the following paragraphs, this regulation does not cover certain production that has historically been reported to the Bureau of Census under a non-OCPSF SIC subgroup heading, even if such production could be reported under one of the five SIC code groups covered by today's regulation.

The Settlement Agreement (see Section III.A) requires the Agency to establish regulations for the Organic Chemicals Manufacturing SIC codes 2865 and 2869 and for the Plastics and Synthetic Materials manufacturing SIC code 282. SIC 282 includes the three codes covered by this regulation, 2821, 2823, and 2824, as well as SIC 2822, Synthetic Rubber (Vulcanizable Elastomers), which is covered specifically in the Settlement Agreement by another industrial category, Rubber Manufacturing (40 CFR Part 428). The Agency therefore directed its data collection efforts to those facilities that report manufacturing activities under SIC codes 2821, 2823, 2824, 2865 and 2869. Based on an assessment of this information and the integrated nature of the synthetic organic chemicals, plastics and synthetic fibers industry, the Agency also defined the applicability of the OCPSF regulation by listing the specific products and product groups that provide the technical basis for the regulation.

Since many of these products may be reported under more than one SIC code even though they are often manufactured with the same reaction chemistry or unit operations, the Agency considered extending the applicability of the OCPSF regulation (50 FR 29068; July 17, 1985, or 51 FR 44082; December 8, 1986) to include OCPSF production reported under the following SIC subgroups:

1. SIC 2911058—aromatic hydrocarbons manufactured *from* purchased refinery products,

2. SIC 2911632—aliphatic hydrocarbons manufactured *from* purchased refinery products,

3. SIC 28914—synthetic resin and rubber adhesives (including only those synthetic resins listed under both SIC 28914 and SIC 2821 that are polymerized for use or sale by adhesive manufacturers),

4. Chemicals and Chemical Preparations, not Elsewhere Classified:

a. SIC 2899568—sizes, all types

b. SIC 2899597—other industrial chemical specialties, including fluxes, plastic wood preparations, and embalming fluids,

5. SIC 2843085—bulk surface active agents, and

6. SIC 3079—miscellaneous plastics products (including only cellophane manufacture from the viscose process).

However, for the reasons discussed below, the Agency has decided not to extend the applicability of the OCPSF regulation to discharges from establishments that manufacture OCPSF products and have, in the past, reported such production under these non-OCPSF SIC subgroups.

The SIC codes are classifications of commercial and industrial establishments by type of activity in which they are engaged. The predominant purpose of the SIC code is to classify the manufacturing industries for the collection of economic data. The product descriptions in SIC codes are often technically ambiguous and also list products that are no longer produced in commercial quantities. For this reason, the Agency proposed to define the applicability of the OCPSF regulation in terms of both SIC codes and specific products and product groups (50 FR 29073, July 17, 1985). Many chemical products may appear under more than one SIC code depending on the manufacturing raw material sources, use in the next stage of the manufacturing process, or type of sale or end use. For example, phenolic, urea, and acrylic resin manufacture may be reported under SIC 28914, Synthetic Resin Adhesives, as well as under SIC 2821, Plastics Materials and Resins. Benzene, toluene, and xylene manufacture may be reported under SIC 2911, Petroleum Refining, or under SIC 2911058, Aromatics, Made from Purchased Refinery Products, as well as SIC 2865, Cyclic Crudes and Intermediates. Likewise, alkylbenzene sulfonic acids and salts manufacture may be reported under SIC 2843085, Bulk Surface Active Agents, which include all amphoteric, anionic, cationic and nonionic bulk surface active agents excluding surface active agents produced or purchased and sold as active ingredients in formulated products, as well as SIC 286, Industrial Organic Chemicals.

Many commenters stated that the Agency's OCPSF technical and economic studies do not contain sufficient information to extend coverage to all facilities reporting OCPSF manufacturing under all of the above SIC subgroups. The Agency agrees in part with these commenters. The OCPSF technical, cost, and economic impact data gathering efforts focused only on those primary and secondary manufacturers that report OCPSF manufacturing activities under the above SIC codes 2821, 2823, 2824, 2865 and 2869. Specific efforts were not directed toward gathering technical and financial data from facilities that report OCPSF manufacturing under SIC subgroups 2911058, 2911632, 28914, 2843085, 2899568, 2899597 and 3079. As a result, EPA lacks cost and economic information from a significant number of plants that report OCPSF manufacturing activities to the Bureau of Census under these latter SIC subgroups. Consequently, the applicability section of the final regulation (§ 414.11) clarifies that the OCPSF regulation does not apply to a plant's OCPSF production that has been reported by the plant in the past under SIC groups 2911058, 2911632, 28914, 2843085, 2899568, 2899597, and 3079.

Approximately 140 of the 940 OCPSF plants that provide the basis for today's regulation reported parts of their OCPSF production under SIC codes 2911058, 2911632, 28914, 2843085, 2899568, and 2899597 as well as SIC codes 2821, 2823, 2824, 2865, and 2869. As a result of the definition of applicability, a smaller portion of plant production than was reported as OCPSF production for these plants will be covered by today's regulation.

The Agency does note, however, that the OCPSF manufacturing processes are essentially identical regardless of how manufacturing facilities may report OCPSF production to the Bureau of Census. Therefore, the OCPSF data base and effluent limitations and standards provide permit issuing authorities with guidance for establishing "Best Professional Judgement" (BPJ) permits for OCPSF production activities to which this regulation does not apply.

Some of the non-OCPSF SIC subgroups were the subject of prior EPA decisions not to establish national regulations for priority pollutants under the terms of Paragraph 8 of the Settlement Agreement. Such action was taken for adhesive and sealant manufacturing (SIC 2891), as well as plastics molding and forming (SIC 3079), paint and ink formulation and printing (which industries were within SIC 2851, 2893, 2711, 2721, 2731 and ten other SIC 27 groups) and soap and detergent manufacturing (SIC 2841). However, it should be noted that in specific instances where a plant in these categories has OCPSF production activities, toxic pollutants may be present in the discharge in amounts that warrant best professional judgement (BPJ) regulatory control. The adhesives and sealants, plastics molding and forming, and paint and ink formulation and printing Paragraph 8 exclusions do not include process wastewater from the secondary manufacture of synthetic resins. Similarly, the soaps and detergents Paragraph 8 exclusion does not include process wastewater from the manufacture of surface active agents (SIC 2843). In these cases, and even in cases where priority pollutants from OCPSF production covered by other categorical standards (e.g., petroleum refining and pharmaceuticals) have been excluded from those regulations under the terms of Paragraph 8 of the Settlement Agreement, BPJ priority pollutant regulation for individual plants having OCPSF production may be appropriate.

III. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (Section 101(a)) To implement the Act, EPA was required to issue effluent limitations guidelines, pretreatment standards, and new source performance standards for industrial dischargers.

In addition to these regulations for industrial categories, EPA was required to promulgate effluent limitations guidelines and standards applicable to discharges of toxic pollutants. The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" that was approved by the Court. This agreement required EPA to develop a program and adhere to a schedule for controlling 65 "priority" toxic pollutants and classes of pollutants. In carrying out this program, EPA was required to promulgate BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for a variety of major industries, including the OCPSF industry. See *Natural Resources Defense Council, Inc* v. *Train, supra.*

Many of the basic elements of the Settlement Agreement were incorporated into the Clean Water Act of 1977. Like the Agreement, the Act stressed control of toxic pollutants,

including the 65 "priority" toxic pollutants and classes of pollutants.

Under the Act, the EPA is required to establish several different kinds of effluent limitations guidelines and standards. They are summarized briefly below:

1. Best Practicable Control Technology Currently Available (BPT)

BPT effluent limitations guidelines are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory for control of familiar (i.e., conventional) pollutants.

In establishing BPT effluent limitations guidelines, EPA considers the total cost in relation to the effluent reduction benefits, the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, and non-water quality environmental impacts (including energy requirements). The Agency considers the category-wide or subcategory-wide cost of applying the technology in relation to the effluent reduction benefits.

2. Best Available Technology Economically Achievable (BAT)

BAT effluent limitations guidelines, in general, represent the best existing performance in the category or subcategory. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

In establishing BAT, the Agency considers the age of equipment and facilities involved, the processes employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and non-water quality environmental impacts.

3. Best Conventional Pollutant Control Technology (BCT)

The 1977 Amendments to the Clean Water Act added section 301(b)(2)(E), establishing "best conventional pollutant control technology" (BCT) for the discharge of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: BOD, TSS, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease a conventional pollutant on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. BAT remains in effect for the toxic and nonconventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that the BCT effluent limitations guidelines be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its discharge of conventional pollutants with the cost to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA has promulgated a methodology for establishing BCT effluent limitations guidelines (51 FR 24974, July 8, 1986).

4. New Source Performance Standards (NSPS)

NSPS are based on the performance of the best available demonstrated technology. New plants 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 numerical values attainable through the application of best available demonstrated control technology for all pollutants (toxic, conventional and nonconventional).

5. Pretreatment Standards for Existing Sources (PSES)

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The Clean Water Act requires pretreatment standards for pollutants that pass through POTWs or interfere with POTWs' treatment processes or sludge disposal methods. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based and analogous to the BAT effluent limitations guidelines for removal of toxic pollutants. For the purpose of determining whether to promulgate national category-wide pretreatment standards, EPA generally determines that there is pass through of a pollutant and thus a need for categorical standards if the nation-wide average percentage of a pollutant removed by well-operated POTWs achieving secondary treatment is less than the percent removed by the BAT model treatment system. The General Pretreatment Regulations, which set forth the framework for categorical pretreatment standards, are found at 40 CFR Part 403. (Those regulations contain a definition of pass through that addresses localized rather than national instances of pass through and does not use the percent removal comparison test described above. See 52 FR 1586, January 14, 1987.)

6. Pretreatment Standards for New Sources (PSNS)

Like PSES, PSNS are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of a POTW. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate in their plant the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Overview of the Industry

The OCPSF industry is large and diverse, and many plants in the industry are highly complex. This industry manufactures over 25,000 different organic chemicals, plastics, and synthetic fibers. However, less than half of these products are produced in excess of 1,000 pounds per year. The industry includes approximately 750 facilities whose principal or primary production activities are covered under the OCPSF SIC groups. There are approximately 200 other plants which are secondary producers of OCPSF products, i.e., OCPSF production is ancillary to their primary production activities. (As discussed above in this preamble, this regulation covers OCPSF discharges from secondary producers, with certain exceptions.) Thus the total number of plants to be regulated totally or in part by the OCPSF industry regulation is approximately 1,000. Secondary OCPSF plants may be part of other chemical producing industries such as the petroleum refining, inorganic chemicals, pharmaceuticals, and pesticides industries as well as chemical formulation industries such as the adhesives and sealants, the paint and ink, and the plastics molding and forming industries.

Some plants produce chemicals in large volumes while others produce only small volumes of "specialty" chemicals. Large volume production tends to use continuous processes. Continuous processes are generally more efficient than batch processes in minimizing

water use and optimizing the consumption of raw materials.

Different products are made by varying the raw materials, the chemical reaction conditions, and the chemical engineering unit processes. The products being manufactured at a single large chemical plant can vary on a weekly or even daily basis. Thus, a single plant may produce simultaneously many different products using a variety of continuous and batch operations and the product mix may change on a weekly or daily basis.

A total of 940 facilities (based on 1982 production) are included in the technical and economic studies used as a basis for this regulation. Approximately 76 percent of these facilities are primary OCPSF manufacturers (over 50 percent of their total plant production involves OCPSF products) and approximately 24 percent of the facilities are secondary OCPSF manufacturers that produce mainly other types of products. An estimated 32 percent of the plants are direct dischargers, about 42 percent discharge indirectly (i.e., to publicly owned treatment works), and the remaining facilities (26 percent) either do not discharge to surface waters or have unknown discharge status. The estimated average daily process wastewater discharge per plant is 1.31 MGD (millions of gallons per day) for direct dischargers and 0.25 MGD for indirect dischargers. The non-discharging plants use dry processes, reuse their wastewater, or dispose of their wastewater by deep well injection, incineration, contract hauling, or by means of evaporation and percolation ponds.

As a result of the wide variety and complexity of raw materials and processes used and of products manufactured in the OCPSF industry, an exceptionally wide variety of pollutants are found in the wastewaters of this industry. They include conventional pollutants (pH, BOD, TSS and oil and grease); an unusually wide variety of toxic priority pollutants (both metals and organic compounds); and a large number of nonconventional pollutants. Many of the toxic and nonconventional pollutants are organic compounds produced by the industry for sale. Others are created by the industry as byproducts of their production operations. EPA focused its attention in today's rulemaking on the conventional pollutants and on the 126 toxic priority pollutants.

Economic data provided in response to "308 survey" questionnaires completed pursuant to Section 308 of the CWA indicate that OCPSF production in 1982 totaled 185 billion pounds and that the quantity shipped was 151 billion pounds. The corresponding value of shipments equaled $59 billion, and employment in the industry totaled 183,000 in 1982. In that same year a total of 455 firms operated the 940 facilities referred to above.

Plant and firm sizes and types vary considerably. Single plant firms are much smaller in terms of total (OCPSF and non-OCPSF) sales, an average of $33 million annually. By contrast, multi-plant firms are much larger with average annual sales totaling $1.39 billion. This relationship holds whether a plant is a primary producer or a secondary producer of OCPSF products.

Certain sectors of the OCPSF industry tend to be more concentrated than others. Cellulosic fiber manufacturers exhibit the most concentration, with all domestic production coming from only six plants. Synthetic fibers manufacturers are the next most concentrated with 40 plants. The organic chemicals and plastics sectors are the least concentrated and the most competitive; both sectors have large numbers of plants and firms with both primary and secondary producers. In addition, most sectors of the OCPSF industry face extensive foreign competition.

International OCPSF trade is an important factor for this industry and the U.S. economy. In 1984, exports of OCPSF products were five percent of all U.S. exports, while OCPSF imports accounted for one percent of all U.S. imports. Both imports and exports of OCPSF products have increased over the last 15 years, particularly for plastic resins and organic chemicals.

While U.S. exports were three times greater than imports in 1984, the trend over the most recent years has been for exports to remain constant or decline; while imports have steadily increased. As expansion in foreign petrochemical production continues, the worldwide market for OCPSF products will continue to become increasingly competitive in all product sectors. Domestic producers of basic commodity chemicals face the greatest problems in terms of foreign competition.

IV. Development of the Final OCPSF Regulation

A. Efforts Leading to the Proposed Rulemaking

1. Earlier Regulatory Efforts

EPA originally promulgated effluent limitations guidelines and standards for the Organic Chemicals Manufacturing Industry in two phases. Phase I, covering 40 product/processes, was promulgated on April 25, 1974 (39 FR 14676). Phase II, covering 27 additional product/processes, was promulgated on January 5, 1976 (41 FR 902). The Agency also promulgated effluent limitations guidelines and standards for the Plastics and Synthetic Fibers Industry in two phases. Phase I, covering 31 product/processes, was promulgated on April 5, 1974 (39 FR 12502). Phase II, covering eight additional product/processes, was promulgated on January 23, 1975 (40 FR 3716).

These regulations were challenged. On February 10, 1976, the Court in *Union Carbide* v. *Train*, 541 F.2d 1171 (4th Cir. 1976), remanded the Phase I Organic Chemicals regulation. EPA withdrew the Phase II Organic Chemicals regulation on April 1, 1976 (41 FR 13936). However, pursuant to an agreement with the industry petitioners, the regulations for butadiene manufacture were left in place. The Court also remanded the Phase I Plastics and Synthetic Fibers regulations in *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976), and in response EPA withdrew both the Phase I and II Plastics and Synthetic Fibers regulations on August 4, 1976 (41 FR 32587) except for the pH limitations, which had not been addressed in the lawsuit. Consequently, only the regulations covering butadiene manufacture for the Organic Chemicals industry and the pH regulations for the Plastics and Synthetic Fibers industry have been in effect to date. These regulations are superseded by the regulations promulgated today.

In the absence of promulgated, effective effluent limitations guidelines and standards, OCPSF direct dischargers have been issued NPDES permits on a case-by-case basis using best professional judgment (BPJ), as provided in section 402(a)(1) of the CWA.

2. Initiation of Current Rulemaking Efforts

Subsequent to the remand and withdrawal of the above regulations, studies and data gathering were initiated in order to provide a basis for issuing effluent limitations guidelines and standards for this industry. These efforts provided a basis for a March 1983 proposal and July 1985, October 1985, and December 1986 (post-proposal) notices of availability of information. These efforts are described below.

On March 21, 1983, the Agency proposed regulations for the OCPSF categories at 48 FR 11828. The proposed regulations included effluent limitations guidelines based on the application of BPT, BCT, and BAT, along with NSPS and PSES and PSNS. EPA proposed BPT

regulations for four subcategories to control the discharge of conventional pollutants, 5-day biochemical oxygen demand (designated as BOD throughout this notice), total suspended solids (TSS), and pH. EPA also proposed BAT regulations for two subcategories (based on general types of products made), controlling 36 toxic organic and eight toxic metal pollutants in the Not Plastics-Only Subcategory and five toxic organic and five toxic metal pollutants in the Plastics Only Subcategory. The Agency also proposed BCT limitations setting all BCT limitations equal to BPT regulations based on the application of a proposed BCT cost test methodology (see 47 FR 49176). With regard to PSES and PSNS, EPA proposed standards controlling 15 toxic organic pollutants in the Not Plastics-Only Subcategory and two toxic metal pollutants in the Plastics Only Subcategory. For NSPS, EPA proposed to establish limitations based on the proposed BPT limitations for conventional pollutants and on the proposed BAT limitations for toxic pollutants. PSNS was proposed to be equal to PSES.

As part of the proposal, the Agency solicited additional comments and information on 30 specific issues related to the proposed rulemaking (refer to section XIX of the proposal at 48 FR 11850 of March 21, 1983). These issues related to several topics including: (1) The industry generic process basis for the subcategorization scheme, (2) the potential use of post-biological polishing ponds and filters as the technology basis for the BPT total suspended solids limitations, (3) the potential difficulty of meeting BPT limitations due to high or low ambient temperatures, (4) the methodology devised to determine which priority pollutants are likely to be discharged from particular product/processes, (5) the technical and economic achievability of the proposed BAT limitations at individual plants, (6) a workable scheme for not regulating all priority pollutants at all plants, (7) the methodology for excluding certain priority pollutants from PSES, (8) the unit costs and costing models used for developing BPT and BAT costs, (9) the analytical methods utilized to develop the priority pollutant data base, and (10) the economic impact analysis methodology. The Agency also acknowledged the need for more data. In addition to soliciting information, EPA stated its intent to collect additional data.

B. Post Proposal Notices

On July 17, 1985 (50 FR 29068), the Agency published a notice of availability in which numerous changes to the March 1983 proposal were discussed. Most of the changes noticed were a direct result of the comments received on the proposed regulation or due to the new information and data collected after the proposal was published. The changes discussed in this notice included a new approach to BPT subcategorization, changes to the technology bases for BAT, PSES, NSPS and PSNS, with a description of what the revisions in the proposed limitations and standards would be, based on the changes in technology and the new data. EPA presented new estimates of pollutant loadings and discussed revisions to the engineering costing methodology. Options were presented for toxic pollutant monitoring requirements, and a revised methodology for determining economic impacts was discussed.

On October 11, 1985 (50 FR 41528), the Agency extended the comment period for the July 17, 1985 notice (50 FR 29068). The notice also provided corrected estimates of the wastewater pollutant loadings set forth in the July notice and announced the addition of both data analyses and regulatory options to the record. In this notice, the Agency discussed possible controls of air emissions of volatile pollutants, the possibility of editing the BPT data base for TSS performance, and the possibility of accommodating for adverse economic impacts at small facilities. The notice also discussed establishing alternative zinc BAT limits for manufacturers of rayon fibers that use the viscose process and manufacturers of acrylic fibers that use the zinc chloride/solvent process.

On December 8, 1986 (51 FR 44082), the Agency published another notice of availability in which several additional issues for the OCPSF regulation were discussed, including options for alternative BAT limits and PSES for small plants, and a revised BPT subcategorization approach. In conjunction with this new approach to subcategorization, the Agency presented a mathematical equation to model long-term average effluent concentrations of BOD and TSS as a function of the proportion of activity in each subcategory at an individual facility. The coefficients used in this equation were estimated from reported plant data using standard statistical regression methods. The Notice also discussed the possible use in the POTW pass-through analysis of qualitative information which would expand the data base for evaluating the effectiveness of POTW removal. The Notice discussed the possibility of transferring metals treatment effectiveness data based on hydroxide precipitation and sulfide precipitation from metals industries. The Notice also discussed treatment of cyanide in OCPSF wastewater by alkaline chlorination, and the application of package biological or in-plant biological treatment in setting limits for some pollutants. Finally, EPA announced the availability of additional data to characterize the effectiveness of steam stripping technology.

C. Summary of the Data Base Used in the Final Regulations

The data used for the proposal were collected through industry surveys via 1976 and 1977 questionnaires, telephone calls, and sampling visits and are described in the following paragraphs. The data used for the engineering analysis were extracted from the industry responses to the 1976 BPT questionnaire and a subsequent 1977 BAT questionnaire. The data from these questionnaires were computerized and sent to the plants for their review and comments during December 1979 and January 1980. Also, (long-term daily) pollutant raw waste and final effluent data were collected by EPA through on-site sampling visits.

The above questionnaires requested information related to products manufactured, processes used, production rates, age and size of facilities, water consumption, wastewater generation, treatment technologies employed, and influent wastewater and effluent characteristics.

Additionally, some qualitative information was gathered through telephone calls on the generation of wastewater and mode of discharge at 301 plastics manufacturing facilities.

From all these sources of data, the Agency identified 428 plants which make up the 1983 Proposal Summary Data Base. The Proposal Summary Data Base is a corrected and updated version of the original data found in the 1976 and 1977 generated 308 Data Base.

Data on product/processes, plant location and age, production, percent operating capacity, mode of discharge, treatment unit operations, influent and effluent wastewater flow and concentrations, and period of data collection were obtained from the original 1976 and 1977 questionnaires data printouts for each of the plants in the data base. The information on each plant was examined, and the data were modified to reflect any corrections to the original data and to incorporate the plant's responses to the 1979–1980 mailing.

As part of the data collection efforts, the Agency conducted four major

sampling studies in order to characterize the raw wastewaters and treated wastewaters in the OCPSF industry. These studies are the Screening Study (performed in two phases), Verification Study, Five-Plant Study and Twelve-Plant Study, and are discussed in the following paragraphs.

In 1977 and 1978, EPA performed sampling at 131 plants to determine the presence of priority pollutants (Phase I of the Screening Study). These plants were chosen because they operated product/processes that produce the highest volume organic chemicals, plastics and synthetic fibers. Twenty-four hour composite samples were taken of the raw plant water, effluent from certain product/processes, and wastewater influents and effluents at the plant wastewater treatment facilities. These samples were analyzed for toxic pollutants and conventional pollutants.

In December 1979, samples were collected from an additional 40 plants (Phase II of the Screening Study). These plants manufactured products such as dyes, flame retardants, coal tar distillates, photographic chemicals, flavors, surface active agents, aerosols, petroleum additives, and other low volume specialty chemicals.

Subsequent to this screening effort, EPA conducted more intense sampling at 37 plants with samples collected from the effluents of 147 product/processes manufacturing organic chemicals and 29 product/processes manufacturing plastics or synthetic fibers, as well as from treatment system influents and effluents at selected facilities (Verification Study). This sampling was conducted over a period of three days at each plant (with the exception of one plant which had six days of data), and was performed in order to verify the presence and estimate the concentrations of priority pollutants in discharges from the predominant product/processes in the industry.

The raw wastewater sampling data for the priority pollutants gathered from the 176 product/process wastewater streams in the Verification Study were computerized to become the Master Process File (MPF). These data were used in estimating the pollutants and loadings for the product/processes in the industry for the proposal.

From June 1980 to May 1981, EPA, with cooperation from the Chemical Manufacturers Association (CMA) and five participating chemical plants, performed the EPA/CMA Five-Plant Study to gather longer-term data on biological treatment of certain specific toxic pollutants at organic chemical plants. In addition to effluent data, biological wastewater treatment system influent samples were taken subsequent to in-plant treatment and prior to biological treatment and to any preliminary neutralization and settling, although in some instances following equalization, of each plant's combined waste stream. The five plants were selected because of the specific toxic organic pollutants expected to be generated by plant processes and because they were characterized as having well-designed and well-operated activated sludge treatment systems. Seven to thirty sets of influent and effluent samples (generally 24-hour composites) were collected at each plant over a four- to six-week sampling period. Thus, the toxic pollutant data base which formed the basis of the March 21, 1983 proposal was generated from the OCPSF industry over a period of time from 1977 through part of 1981.

The Agency received numerous comments on the proposed regulation from individuals representing industry, environmental groups, and state and local governments. These comments criticized the data and analyses that were fundamental to the proposed regulation and urged the Agency to reassess its data base and reconsider many aspects of the proposal. Significant comments on the proposal concerned, among other issues: (1) The adequacy of the Agency's data base to cover a diverse industry such as this, (2) the BPT subcategorization scheme (3) the treatment effectiveness data base and editing rules, (4) the compliance cost estimates, and (5) the economic impact methodology. Following a review and analysis of these and other comments, the Agency began a new data gathering effort in order to assure that the OCPSF regulation is based upon information that represents the entire industry and to assess wastewater treatment installed since 1977. The Agency conducted an extensive data gathering program to improve the coverage of all types of OCPSF manufacturers.

This effort involved mailing new "Section 308" survey questionnaires (i.e., under the authority of Section 308 of the Act) to all manufacturers of OCPSF products. In addition to this survey, which covered all known OCPSF manufacturers, EPA also sent a supplemental questionnaire to 84 OCPSF facilities known to have installed selected wastewater treatment unit operations for which EPA sought additional information.

Also included in the 1983 308 survey questionnaire were questions designed to obtain additional cost, economic and financial data. (EPA also obtained economic and financial data from a number of public and private sources.)

The technical data collected through the new 308 survey included data on processes, production levels, raw wastewater characteristics and treatment performance from calendar year 1980, which was selected to reflect normal plant operations at near capacity levels. Economic and financial data were collected for calendar year 1982 to reflect then-current market conditions.

In addition to this new survey, EPA also conducted toxic pollutant sampling at 12 additional OCPSF facilities between March of 1983 and May of 1984. Eight plants were sampled between 14 and 20 days each; three plants between 10 and 12 days; and one plant for one day. The analytical protocol used to measure the volatile organic priority pollutants was Method 1624 (purge and trap followed by isotope dilution GC–MS) while Method 1625 (isotope dilution GC–MS) was used to measure semi-volatile organic priority pollutants. (See 40 CFR Part 136 for a description of these methods.) This new sampling program improved the data base for pollutants already covered by the proposal, expanded the coverage of priority pollutants, and provided an additional basis for estimating wastewater treatment system variability. During the program, EPA sampled influents to and effluents from in-plant controls including steam strippers, chemical precipitation units, and an in-plant activated carbon adsorption unit. The end-of-pipe systems influents and effluents sampled included extended aeration and pure oxygen activated sludge systems, a powdered activated carbon (PAC) biological system, polishing ponds, filtration units, and an activated carbon adsorption unit.

D. Engineering Costing Methodology

The development of effluent limitations guidelines includes identifying technologies available for reducing pollutant loadings, quantifying the reduction of pollutants by a technology or group of technologies, and identifying the costs and economic impacts associated with the application of the technologies or groups of technologies. The results of these analyses form the basis for regulatory options.

To derive costs since proposal, EPA has changed its engineering costing methodology in response to comments and as a result of further analyses and evaluations performed by the Agency.

The costs of the proposed regulation were based on estimates of compliance

costs for model plants, referred to as generalized plant configurations ("GPC's"). The GPC's represent typical combinations of product/processes as reported by plants in the OCPSF industry data base. The product/processes used in GPCs were the 147 organic chemicals product/processes and 29 plastic/synthetic fibers product/processes for which the Master Process File contains data.

The Agency received a number of comments as a result of the proposal pointing out inadequate coverage of the industry using the Agency's methodology, and claiming that EPA had underestimated the cost of compliance because of it. In order to respond to these comments, data on industry's experience in the acquisition and operation of certain technologies were required to revise and/or calibrate predictive cost models. This additional information was obtained from the OCPSF industry using the 1983 308 survey data collection effort, discussed earlier. This specific data collection effort was part of the Supplemental Questionnaire which was sent to 84 selected OCPSF manufacturers, and requested detailed cost information regarding capital and operating costs for specific treatment technologies. A total of 67 questionnaires were completed and returned with useful data and information. The remaining 17 plants did not respond or did not provide useful data and information.

The cost data collected was adjusted to 1982 dollars (if reported as other year dollars) using the Engineering News Record (ENR) index. The reported plant cost data were used, where possible, to derive curves for estimating the cost of acquiring and operating the technologies. Where the data were not sufficient to derive the cost curves, the data were used to check the accuracy of cost curves derived from other sources of information such as equipment vendors.

For the final regulation, the Agency has estimated the total costs of the regulation on a plant-by-plant basis using all available data, i.e., by adding together the estimated individual costs for all the plants. Plants which provided partial responses to questionnaires (primarily secondary producers) were costed on a plant-by-plant basis as well as those which provided full responses. However, the Agency estimated loadings for the partial response plants using data submitted by full response plants and data included in the Master Process File in order to generate plant-by-plant estimates of raw waste characteristics for the partial response plants. A summary of the major aspects of the costing methodology follows. A more detailed description of this methodology is contained in Section VIII of the Development Document.

The final engineering costing methodology was used to develop costs on a plant-specific basis for selected BPT options for BOD and TSS, and for in-plant wastewater stream control of priority toxic pollutants for selected BAT and PSES options.

BPT Costing

Plant-specific BPT costs were developed based on a comparison of the individual plant's current (i.e., 1980) BOD and TSS effluent concentrations (as reported by the plants) and the calculated effluent long-term average concentration targets upon which the BOD and TSS limits in the BPT regulation are based. The treatment system technologies that were costed for each plant depended on that comparison (after adjustment for dilution by non-process wastewater flows). If the current discharge concentrations exceeded the calculated target levels, the Agency determined the additional treatment units or operational upgrades that would be needed to achieve the long-term average target concentration levels and calculated the cost of the treatment. For example, some plants were costed for the addition of clarifiers for improved control of solids in existing systems. Where the required upgrades were substantial, EPA costed full scale activated sludge treatment and/or second stage activated sludge.

BAT Costing

BAT technology in the regulation promulgated today is based upon BPT technology plus appropriate in-plant or end-of-pipe physical/chemical treatment for the removal of individual toxic pollutants. The costing approach thus incorporates in-plant treatment costs.

First, EPA estimated each plant's current level of discharge for each toxic pollutant. These estimates were obtained by using data in the Master Process File and 1983 308 Survey (see Section IV–C above) for the product/processes used by the plant.

Based on the toxic pollutants estimated to be present, the appropriate in-plant treatment technology was selected. For plants using end-of-pipe biological treatment, each pollutant discharged to the end-of-pipe biological system had to be above a certain concentration value before in-plant treatment would be costed. Steam stripping was costed for the removal of volatile organic pollutants; activated carbon was costed for other specific organic pollutants; and multi-stage or package biological treatment was costed for the remaining regulated organic pollutants. Chemical precipitation was costed for metals removal, and cyanide destruction via alkaline chlorination was costed to control total cyanide.

For plants with product/process flows less than 500 gallons per day, only contract hauling was costed. Current zero discharge wastestreams such as wastestreams which were reported to be discharged or disposed of currently via contract hauling, deep well disposal, incineration, or land disposal including surface impoundment use were not included in the BAT cost analysis. Costs associated with RCRA requirements for surface impoundments were included in the baseline costs for certain facilities and are discussed below.

NSPS Costing

EPA used its BPT costing methods to cost entirely new treatment systems for new sources based on model flow sizes for each subcategory. BAT technology costs were used to estimate costs for new sources to control priority pollutant discharges.

PSES Costing

PSES toxic pollutant removal cost estimates were obtained using the same procedures as used in the BAT costing.

RCRA Baseline Costs for Relining of Surface Impoundments

The Hazardous and Solid Waste Amendments enacted in November 1984 (Pub. L. 98–616, November 8, 1984) require that each existing surface impoundment be retrofitted by November 8, 1988 so as to be in compliance with the minimum technology requirements established by the Amendments for land-based treatment, storage and disposal of hazardous wastes. Facilities in the OCPSF Industry were reviewed to determine what costs would be incurred as a result of the 1984 amendments.

Utilizing the RCRA *1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities* ("Screening Survey Data Base"), a total of 48 OCPSF facilities were identified as likely to incur costs as a result of the amendments, and were therefore included in the RCRA costing analysis. After evaluation, these costs were included for 41 of these plants in the baseline economic analysis. The plants selected included plants with surface impoundments that are used for treatment or storage. Costs were estimated to retrofit these

impoundments with double liners and to install groundwater monitoring wells. This is discussed in more detail in Section VIII of the document entitled "Development Document for Effluent Guidelines, New Source Performance Standards and Pretreatment Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category."

E. Pollutant Loading Estimate Methodology

This section describes the methodology used to calculate pollutant loading estimates and presents a summary of the results of these calculations for the OCPSF regulated process waste streams. A more detailed description of these efforts is contained in Section VIII of the Development Document.

1. Conventional Pollutant Loadings

BOD and TSS loadings (i.e., pounds of pollutants discharged by direct dischargers) were calculated from the data base on a plant-by-plant basis.

Current (1980) BOD and TSS loadings were calculated by multiplying current BOD and TSS concentration values, as reported by the plants, times the plant's process wastewater flow. For plants for which EPA lacked either BOD or TSS current effluent data, effluent concentrations were estimated using the available reported plant effluent data as a basis.

BPT loadings (i.e., the pounds that would be discharged after compliance with BPT) were calculated by multiplying the BOD and TSS long-term average effluent concentration targets times the plant's process wastewater flow. (The methodology for determining long-term average effluent target values is described in Section VI of this notice.) For plants already achieving the long-term average effluent target for BPT, its current concentration values are used to calculate BPT loadings.

The current (1980) in-place treatment BOD and TSS estimated annual discharge loadings are 61.49 and 99.59 million pounds per year, respectively. The BOD and TSS BPT estimated discharge loadings, based on compliance with today's regulation, are 19.76 and 33.32 million pounds per year, respectively.

2. Toxic Pollutant Loadings

The methodology used to estimate OCPSF industry toxic pollutant loadings uses the data from the Master Process File and the 1983 survey data which incorporates NPDES permit application form data where appropriate and other available toxic pollutant analytical data. The methodology has been used to estimate raw (untreated) and current (1980) toxic pollutant loadings, as well as projected BPT and BAT loadings for direct dischargers and PSES loadings for indirect dischargers, on a plant-by-plant basis.

The current (1980) in-place treatment toxic pollutant annual loadings are estimated to be 1.6 million and 22.6 million pounds for direct and indirect dischargers respectively. The toxic pollutant estimated loadings for direct dischargers after compliance with BAT are 0.49 million pounds, and for indirect dischargers after compliance with PSES are 0.08 million pounds.

At the time of proposal, the Agency overestimated the annual discharges of toxic pollutants. Industry comments objected to these overestimates, argued that toxic pollutant discharges by the OCPSF industry are low, and questioned the need to establish BAT limitations on a wide range of toxic pollutants. These commenters suggested that the Agency rely on the NPDES permit application Form 2C toxic pollutant data for determining toxic pollutant loadings. They maintained that available NPDES permit application Form 2C data constitute the most appropriate and extensive data base for predicting the extent (frequency) of occurrence of priority pollutants in the OCPSF industry. They argued that the Form 2C data submitted by trade association member companies indicate that only a few priority pollutants are detected in treated discharges and concluded that existing treatment systems, installed principally for the control of conventional pollutants, do an excellent job of controlling priority pollutant discharges.

The Agency disagrees with these comments and, for the reasons discussed below, has concluded that although the industry's loadings are lower than estimated at proposal, many OCPSF plants currently discharge significant amounts of toxic pollutants. Thus regulation beyond BPT is warranted.

Since the OCPSF regulations apply to process wastewater only (nonprocess wastewater is regulated by permit writers on a case-by-case basis), the Agency determined the relative contributions of process and nonprocess wastewater at the effluent sample sites using data from the 1983 308 Survey. These data were used to calculate plant-by-plant "dilution factors" for use in adjusting or assessing analytical data at effluent sampling locations. This information was used to determine if reported Section 308 and Form 2C final effluent concentration data could be used to adequately characterize actual process wastewater pollutant concentrations. For example, if a pollutant was reported as 30 ppb at the final effluent sampling location with 1 MGD of process wastewater flow and 9 MGD of noncontaminated nonprocess cooling water flow, then the concentration of the pollutant in the process wastewater was actually 300 ppb. Similarly, if the same plant reported that another pollutant was not detected at the same sampling location and the analytical method threshold level or minimum "detection" level was 10 ppb, then the other pollutant concentration in the process wastewater could be as high as 90 ppb without being detected in the diluted final effluent.

One hundred six plants reported Form 2C toxic pollutant data in the 1983 Section 308 Questionnaire. Of these, 70 plants diluted the process wastewater before the Form 2C effluent sampling point. The following table relates the number of plants with Form 2C data to the range of dilution at the effluent sampling point.

TABLE 1—RANGE OF DILUTION FOR PLANTS WITH FORM 2C DATA

Range of dilution in percent	Number of plants with Form 2C data (percent)
0	36(34)
>0 to 25	20(19)
>25 to 100	20(19)
>100 to 500	17(16)
>500 to 6054	13(12)
Total	106(100)

The Agency was able to identify 13 facilities that reported measured toxic pollutant concentrations of treated process wastewater both before and after dilution with nonprocess wastewater. In general, analyzing the diluted effluents yields underestimated or undetected values for organic toxic pollutants that were measured in the undiluted process wastewater. However, this was not generally the case for cyanide and toxic pollutant metals such as cadmium, chromium, and lead. These compounds are commonly found in cooling water additives that may be utilized to inhibit biological growth or the formation of rust and scale in cooling equipment. The presence of a portion of these metals and cyanide in the diluted effluent seems in many cases to be caused by their presence in nonprocess cooling water. Therefore, the assumption that the nonprocess dilution wastewater is relatively free of toxic pollutants appears true for the organic toxic pollutants but is not necessarily true for

cyanide and the toxic metal parameters. Thus, the use of unqualified Form 2C data does not provide an adequate assessment of process wastewater toxic pollutant constituents and concentrations. Using Form 2C data tends to underestimate organic toxic pollutant loadings in process wastewater and may actually overestimate metal toxic pollutant loadings in process wastewater.

V. Summary of the Most Significant Changes From Proposal and Notices

This section describes several of the most significant changes from proposal and subsequent notices to the final rule. Other areas of change and issues are discussed in Sections VI, VIII and X of this preamble, the Development Document, the Economic Impact Analysis, and the record for this rule.

A. BPT

On March 21, 1983, EPA proposed BPT limitations for BOD, TSS and pH for four subcategories of the OCPSF industry (48 FR 11828). These were subcategory 1—Plastics only, subcategory 2—oxidation, subcategory 3—type 1 (which included specified processes other than oxidation), and subcategory 4—other discharges. These subcategories were developed following an analysis of manufacturing processes in use by the OCPSF industry and the BOD loadings associated with them.

Subcategory 1 included discharges resulting from the manufacture of plastics and synthetic fibers only. Subcategory 2 included discharges from the manufacture of organic chemicals only or both organic chemicals and plastics and synthetic fibers that included wastewater from the oxidation process only. This subcategory was further divided into two groups based on flow: A high-water usage group (greater than or equal to 0.2 gallon per pound of total daily production) and a low-water usage group (less than 0.2 gallon per pound of total daily production). Subcategory 3 included discharges resulting from the manufacture of either organic chemicals only or both organic chemicals and plastics and synthetic fibers that included wastewater from Type I chemical processes but not from the oxidation process. Type I processes were listed as peroxidation, acid cleavage, condensation, isomerization, esterification, hydro-acetylation, hydration, alkoxylation, hydrolysis, carbonylation, hydrogenation, and neutralization. Subcategory 4 included all OCPSF discharges not included in subcategories 1–3. Different BOD and TSS daily maximum and maximum monthly average BPT limitations were proposed for each of the subcategories.

Commenters claimed that the proposed subcategorization scheme was unworkable and that it arbitrarily grouped chemical processes into non-homogeneous groups with respect to effluent treatability. They also complained that, under the proposed scheme, minor changes in production or product mix could cause the applicable discharge subcategory to change. Numerous specific comments questioned whether specific product/processes were properly placed within the subcategorization scheme.

Following a review of the comments and analysis of additional BOD and TSS loading and production data, the Agency developed and solicited comment on a new BPT subcategorization scheme consisting of eight product-based subcategories (50 FR 29068; July 17, 1985). In this scheme, plants were classified according to the proportion of their total production volume associated with particular classes of OCPSF products. The eight production-class subcategories and the plant production characteristics associated with them are as follows: (1) Rayon fibers—plants in which rayon fibers production by the viscose-rayon process constitute at least 95 percent of total OCPSF production. (2) Other man-made fibers—plants in which other man-made fiber and organic chemical production constitute at least 95 percent of total OCPSF production. (3) Thermosets—plants in which thermosetting resins constitute at least 95 percent of total OCPSF production and plants in which thermosetting resins plus organic chemicals constitute at least 95 percent of total OCPSF production. (4) Thermoplastics—plants in which thermoplastic materials constitute at least 95 percent of total OCPSF production. (5) Thermoplastics and Organics—plants in which thermoplastic materials and organic chemicals constitute at least 95 percent of total OCPSF production. (6) Commodity Organics—plants in which organic commodity chemicals (those produced nationally at a level exceeding one billion pounds per year) constitute at least 75 percent of organic chemical production and in which plastics production is less than 5 percent of total OCPSF production. (7) Bulk Organics—plants whose production was not classified as either commodity or specialty organics (those produced at a level below 40 million pounds per year) but is at least 95 percent organics, and (8) Specialty Organics—plants in which specialty organic chemical products constitute at least 75 percent of total organic chemical production and in which plastics production is less than 5 percent of total OCPSF production.

This scheme was intended to address the issues raised by commenters on the first proposed subcategorization scheme, and was also based primarily on production characteristics.

Industry commenters argued, however, that even given the revisions in the July 17, 1985 subcategorization scheme, a one or two percent difference in relative production could still place similar plants in different subcategories with significantly different limitations. In addition, it was asserted that some plants could not be placed in any of the subcategories and that there was no mechanism presented to develop limitations for these plants. Industry commenters also commented that the analysis of BOD concentration values ignored the effects of different water use practices and various water conservation efforts by OCPSF plants.

In order to respond to the issues raised concerning the BPT subcategorization, the Agency has modified its July 17, 1985 scheme as follows: The fundamental product-based subcategory classification framework is generally retained with the exception that one subcategory, thermoplastics and organics, is dropped as it is simply a combination of two distinct subcategories under the new scheme. This approach was noticed in the December 8, 1986 notice of availability (51 FR 44082) and is discussed in more detail in section VI of this notice. In the final regulation, BPT limitations for facilities are not based on their assignment to a single subcategory defined in terms of the predominant production at the facility. Instead, limitations for a particular facility are determined explicitly by the proportion of subcategory production at the plant.

This approach parallels the way EPA generally implements its effluent limitations and standards in the sense that it uses proportions of types of activities (categories, subcategories, or process operations) generating wastewaters in what is essentially a building block approach to establish limits for plants with multiple activities, or in this case subcategory processes. The seven product-based subcategories provided for in today's regulation generally cover the following types of products and SIC codes:

(1) Rayon Fiber (Viscose process only).

(2) Other Fibers (SIC 2823, except rayon, and 2824).

(3) Thermoplastics (SIC 28213).

(4) Thermosets (SIC 28214).

(5) Commodity Organics—organic chemical products produced nationally in amounts greater than or equal to one billion pounds per year (generally SIC 2865 and 2869).

(6) Bulk Organics—organic chemical products produced nationally in amounts less than 1 billion but more than 40 million pounds per year (generally SIC 2865 and 2869).

(7) Specialty Organics—organic chemical products produced nationally in amounts less than or equal to 40 million pounds per year (generally SIC 2865 and 2869).

B. BAT

The Agency proposed in 1983 to establish BAT limits for two subcategories. The "Plastics Only" subcategory consisted of plants that manufacture plastics and synthetic fibers only. Plants in this subcategory tend to discharge significant levels of fewer priority pollutants than plants included in the "Not Plastics-Only" subcategory, all of which result from the manufacture of at least some organic chemicals. The proposed limits thus controlled relatively few priority pollutants in the "Plastics Only" subcategory, and many were proposed to be controlled in the "Not Plastics-Only" subcategory.

The Agency modified its proposed approach in its July 17, 1985 notice of availability (50 FR 29068). The revised approach was to not subcategorize the OCPSF category by product mix for BAT. Since OCPSF plants can economically achieve compliance with the BAT limitations for toxic priority pollutants through some combination of in-plant or end-of-pipe demonstrated technology irrespective of products produced, the BPT product mix subcategorization is not a necessary basis for establishing BAT limitations. In addition, EPA analyzed the costs for compliance and their associated impacts and believes that product mix subcategories do not appear to be necessary for an effective, equitable BAT regulation. EPA recognizes that this requires all direct discharger NPDES permits to limit and to monitor all regulated pollutants, which, if done on a routine and frequent basis, could require large expenditures. Therefore, the Agency intends to provide guidance to permit writers which will instruct them on how to determine which pollutants may only need to be monitored for on a minimum basis, which must be no less frequently than once per year. (Monitoring is discussed further in response to Comment Number 4 in Section X of this preamble.)

The proposed basis in 1983 for BAT limits was in-plant physical/chemical technology and biological treatment for plants that have or need biological treatment and in-plant physical/chemical technology for non-biological treatment plants. After the publication of the proposed regulation on March 21, 1983 (48 FR 11828) the Agency conducted sampling at 12 additional OCPSF plants in order to collect additional data that would characterize the effectiveness of in-plant treatment technologies. This led to the proposal of revised technology bases for BAT published in the notice of availability of July 17, 1985 (50 FR 29068).

At that time, EPA discussed three technology options being considered for controlling toxic priority pollutants at BAT. Option I consisted of biological treatment only. Option II added in-plant control technologies to Option I treatment. These in-plant technologies included steam stripping to remove volatile and semi-volatile (based on analytical methods GC/MS fractions) priority pollutants, activated carbon for various base/neutral priority pollutants, chemical precipitation for metals and alkaline chlorination for cyanide, and possibly in-plant biological treatment for removal of polynuclear aromatic (PNA) priority pollutants. Option III added activated carbon to Option II technology as a final polish to the end-of-pipe biological treatment system.

The technology option selected as a basis for this rule (and discussed in Section VI of this preamble) is in-plant physical/chemical and biological treatment with BPT end-of-pipe treatment. For plants without end-of-pipe biological treatment, a separate set of limitations are provided. In addition, separate zinc limitations are provided for rayon fiber production by the viscose process and acrylic fiber production by the zinc chloride solvent process.

C. PSES

The determination of pollutants for regulation at PSES relies on an analysis of whether pollutants pass through, interfere with, or are otherwise incompatible with POTWs. The Agency has traditionally determined passthrough by comparing the percentage of a pollutant removed by the selected BAT treatment system to the percentage removed by POTW's with good secondary treatment. However, the Agency proposed in 1983 to modify this approach slightly and determine pass through only if the BAT percent removal exceeded the POTW percent removal by at least five percent. The rationale given at the time was that a difference of less than five percent may not reflect real differences in treatment efficiency. Rather, EPA said, they may reflect analytical variability at the concentrations typically found in end-of-pipe biological systems at POTWs and OCPSF plants. In its notice of availabilty published on July 17, 1985 (50 FR 29068), the Agency announced that it would consider using a percent differential as great as ten percent.

At the same time EPA announced that it was considering regulating some volatile and semivolatile organic toxic pollutants on two additional bases. One was interference based upon potential safety hazards to workers due to volatilization of pollutants in POTWs' headworks. The other was pass through based on the belief that pollutants pass through POTWs by volatilizing in substantial part to the atmosphere from the primary and secondary stages of the biological treatment systems employed by POTWs.

After considering comments and evaluating the different approaches, the Agency announced that it no longer intended to use percent removal differentials but instead intended to compare actual POTW percent removals to actual BAT treatment system percent removal to determine pass-through (December 8, 1986, 51 FR 44082). However, the Agency stated that it would consider conducting the comparison by comparing only POTW and BAT removal efficiencies for comparable influent concentration ranges.

The approach used in selecting pollutants for regulation in the PSES issued today determines pass through by comparing BAT and POTW removals directly (i.e., no percent removal differential is used). However, as will be discussed in greater detail in Section VI, the final data base used to develop these respective removals was modified to assure consistency with the industrial data base used to establish limitations. This was done by using average plant influent and effluent values and, to the extent possible, by using plant removal data only where influent concentrations were equal to or greater than ten times the analytical threshold level (generally ten times 10 ppb, or 100 ppb). In addition, EPA is establishing PSES for three pollutants whose removal by POTWs is accomplished in part by volatilization.

VI. Basis for the Final Regulation

A. BPT

1. BPT Subcategorization and Method for Deriving Limitations

The Agency is designating seven subcategory classifications for the OCPSF category to be used for the purpose of establishing BPT limitations.

In this final subcategorization scheme, facilities are not assigned to a single subcategory based on the predominant production at the facility. While some plants may have production which falls entirely within one of the seven subcategory classifications, most plants have production which is divided among two or more subcategories. To analyze treatment effectiveness for each of the individual subcategories, EPA needed to develop a method for assessing and using the treatability data from the many OCPSF plants whose influents and effluents are comprised of wastewater from two or more subcategory operations. The method EPA used is based on a regression equation that accounts for the pollutant discharges from such multiple subcategory plants in an explicit and straight-forward manner. For setting the limits in the final regulation, the regression equation is used to model long-term average effluent BOD as a function of the proportion of the production of each subcategory at each facility. The coefficients of this equation are estimated from actual plant data using standard statistical regression methods. The equation has a coefficient that corresponds to each of the subcategory classifications listed above. The BPT subcategory long-term average effluent values are determined for each subcategory using the appropriate coefficient.

BPT limitations for each subcategory are based on a combination of long-term average effluent values and variability factors that account for variation in treatment performance about the long term averages. The long term averages are values that a plant should target the design of its treatment system to achieve on an average basis. The variability factors are values that represent the ratio of a large value that would be expected to occur only rarely (on a daily or monthly basis) to the long term average. The purpose of the variability factor is to allow for variation in effluent concentrations about the long-term average. A facility that designs and operates its treatment facility to achieve the long-term average on a consistent basis should be able to comply with the daily and monthly limitations in the course of normal operations.

The BPT long-term average effluent values were developed from a data base comprised of selected plant average values reported to the Agency in the 1983 survey discussed previously. (The basis for selection is presented in A.2, below.) In this survey, plants were to report average annual influent and effluent BOD and TSS along with technical information concerning treatment operation, process flows and subcategory production classifications.

The variability factors were developed from a data base comprised of individual daily measurements on treated effluent BOD and TSS from 21 and 20 of these OCPSF plants, respectively. Daily measurement data are required to determine variability factors and were obtained from plants as part of the 1983 survey supplemental questionnaire and from prior data submittals. In the history of the development of effluent guidelines regulations, it has usually been the case that variability factors are determined from data bases comprised of different sets of plants and, usually, smaller numbers of plants, in comparison to data sets consisting of plant annual averages. This is due to the fact that many plants do not monitor frequently enough for use of their data in analyzing day to day variability or do not have monitoring records for the period being studied (1980, in the case of the OCPSF BPT study), since some plants do not maintain the records of daily values used to report monthly averages for greater than three years. Individual daily pollutant measurements are therefore more difficult to obtain. However, plants in the OCPSF annual average and daily data bases cover the full range of subcategory classifications covered by this regulation.

For the July 17, 1985 Notice, the 1983 survey annual average data were used to determine the effluent BOD and TSS long-term averages for the subcategories presented. Limitations were determined by multiplying the long-term averages for each subcategory by the variability factors determined from the daily measurement data base. In response to comments on the 1985 notice, the Agency proposed a revised approach based on a regression analysis of the 1983 survey annual average data. The basis of the revised approach, presented in the December 8, 1986 Notice, was a mathematical equation that models long-term average effluent BOD as a function of the subcategory characteristics and includes a term that attempted to account for plant OCPSF process wastewater flow. For purposes of the 1986 notice, variability factors were based on a daily measurement data base consisting of data from 23 plants which were unchanged from the 1985 notice. The Agency has retained the regression equation framework to calculate the long-term average subcategory bases for BPT limitations in the final regulation. Comments on the 1986 notice, however, prompted the Agency to reconsider the flow adjustment term. On reanalysis, EPA concluded that inclusion of the flow term was not appropriate and that there was no technical basis in the record to conclude that achievable long-term mean effluent concentrations were significantly affected by water use practices in the industry.

The final variability factors used in conjunction with the long-term means to calculate the limitations are based on the same daily measurement data base as in the previous notices, with the exception that two plants' data previously included have been excluded because measured performance included effects of polishing ponds at these plants and one plant was excluded because it had an average effluent TSS greater than 100 mg/1. Thus, the final variability factors are derived from data obtained from 21 plants for BOD and 20 plants for TSS.

In applying the limitations set forth in the regulation, the permit writer will use what is essentially a building-block approach that takes into consideration applicable subcategory characteristics and the proportion of production quantities within each subcategory at the plant. Production characteristics are reflected explicitly in the plant's limitations through the use of this approach.

2. Data Selection Criteria

The Agency has received two diametrically opposed sets of comments on the proposed data editing criteria used to develop BPT limitations. EPA proposed to select plants for analysis in developing limitations only if the plants achieve at least a 95 percent removal efficiency for BOD or a long term average effluent BOD concentration below 50 mg/1. On one hand, many industry commenters argued that these criteria were too stringent; were based upon data collected after 1977 from plants that had already achieved compliance with BPT permits and thus raised the standard of performance above what it would have been had the regulation been promulgated in a timely manner; and had the effect of excluding from the BPT data base some well-

designed, well-operated plants. An environmental interest group argued, in contrast, that the criteria were not stringent enough, in that they resulted in the inclusion of the majority of plants in the data base used to develop effluent limitations.

The data collected by EPA for the BPT regulation are indeed, as industry commenters have noted, based largely on post-1977 data. EPA had originally collected data in the early and mid-1970's which reflected OCPSF pollutant control practices at that time. As a result of industry challenges to EPA's ensuing promulgation of BPT (and other) limitations for the OCPSF industry, EPA began a new regulatory development program, which included a new series of data gathering efforts (see Section IV of this preamble). Industry commenters are correct in noting that the data are thus taken to a large extent from OCPSF plants that had already been issued BPT permits that required compliance by July 1977 with BPT limitations established by the permit writers on a case-by-case basis. It is thus fair to conclude that the performance of at least some of these plants was better when EPA collected the data for the new rulemaking effort than it had been in the mid-1970s when the original BPT regulations were promulgated.

EPA does not believe that the use of post-1977 data is improper. First, the Clean Water Act provides for the periodic revision of BPT regulations when appropriate. Thus it is within EPA's authority to write BPT regulations after 1977 and to base them on the best information available at the time. Moreover, it is not unfair to the industry. The final BPT regulations are based on the same technology that was used to effectively control BOD and TSS in the 1970s—biological treatment preceded by appropriate process controls and in-plant treatment to assure effective, consistent control in the biological system, and followed by secondary clarification as necessary to assure adequate control of solids. The resulting effluent limitations are not necessarily more (or less) stringent than they would have been if based on pre-1977 data. Many of the plants that satisfy the final data editing criteria discussed below, and thus are included in the BPT data base, would not have satisfied those criteria in the mid-1970s. The improved performance wrought by the issuance of and compliance with BPT permits in the 1970's has resulted in EPA's ability in 1987 to use data from a large number of plants to develop the BPT limitations. Approximately 72 percent of the plants for which data were obtained pass the final BOD editing criteria (95 percent/40 mg/l for biological only treatment); the editing criteria have excluded other plants that, despite having BPT-type technology in-place, were determined not to meet the performance criteria used to establish the data base for support of BPT limitations. EPA concludes that the use of post-1977 data has resulted in a good quality but not unrealistic BPT data base.

EPA has modified the BOD editing criteria to make them slightly more stringent. However, it must be noted that EPA does not consider the selection of editing criteria to be a strict numerical exercise based upon exclusion of data greater than a median or any other such measure. EPA specifically disagrees with the comment that data reflecting BPT performance must necessarily comprise performance levels better than a median. The criteria represent in numerical terms what is essentially an exercise of the Agency's judgment, informed in part by industry data, as to the general range of performance that should be attained by the range of diverse OCPSF plants operating well-designed biological systems properly. The numerical analyses discussed below should thus be regarded as an analytical tool that assisted EPA in exercising its judgment.

The data to which the criteria have been applied reflect the performance of plants that have been issued BPT permits requiring compliance with BPT permit limits. It is not unreasonable to expect, therefore, that the class of facilities identified as the "best" performers in the industry is considerably larger than it would have been had the data been collected in the mid-1970's. This result is consistent with the purpose and intent of the NPDES program: To require those plants performing below the level of the best performers to improve their performance to the point of being on a par with the best performers. Moreover, it should be noted that while the majority of OCPSF plants pass the initial screening criteria, a majority of OCPSF plants (approximately 70 percent) will nonetheless need to upgrade their treatment systems' performance to comply with the BPT effluent limitations guidelines, based upon the reported effluent data (for 1980), and the long-term average targets for BOD and TSS. The fact that a majority of plants will need to upgrade years after they received their initial BPT permits indicates that the result of the adoption of the data base used to develop the limitations is appropriately judged the best practicable treatment.

The editing criteria were applied to the 1983 "308 survey" data, comprised of annual average BOD and TSS data from plants in the OCPSF industry. The purpose of the editing criteria was to establish a minimum level of treatment performance acceptable for admission of a plant's data into the data base that would be used to determine BPT limitations. First, only data from plants with suitable treatment (i.e., biological treatment) were considered for inclusion in the data base. For these plants, the use of both a percent removal criterion and an average effluent concentration criterion for BOD is appropriate since well operated treatment can achieve either substantial removals or low effluent levels or both. In addition, use of only a percent removal criterion would exclude data from plants that submitted useable data but did not report influent data. The use of an effluent level criterion allowed the use of data from such plants in developing limitations.

Following review of the data base, EPA continues to believe that 95 percent BOD removal is an appropriate editing criterion. Well over half the plants in the 308 survey that reported both influent and effluent BOD achieve better than 95 percent removal. The median removal for these plants is 95.8 percent, which reflects good removal from an engineering point of view.

The Agency also continues to believe that achievement of a specified long-term average effluent BOD concentration is also an acceptable standard of performance to qualify a plant's data for inclusion in the data base for BPT limits. In order to establish a concentration value, i.e., a data selection criterion for the final regulation and respond to various comments, the Agency re-examined the 1983 308 survey data. There are data from a total of 99 direct discharging plants with end-of-pipe biological treatment only (the selected BPT technology, as discussed below) that reported average effluent BOD and a full range of information regarding production at the plant. All of these data were used in the evaluation of the BOD data selection criterion, even in cases of plants that did not report influent values and for which removal efficiencies could therefore not be estimated. The median BOD average effluent for these 99 plants is 29 mg/l. There is no engineering or statistical theory that would support the use of the median effluent concentration as a data selection criterion for developing a regulatory data base. In fact, there are many plants that, in the Agency's best judgment, achieve

excellent treatment and have average effluent values greater than the overall median of 29 mg/l. There are many reasonable explanations for differences in average effluent levels at well operated plants. Differences in plants' BPT permit limitations, coupled with individual plant waste management practices and wastewater treatment system design and operation practices, and the types of products and processes at each plant, contribute to differences in average effluent levels achieved.

To obtain insight into differences in BOD values among different subcategories, the data were divided into subsets two different ways based on subcategory production at each plant. The results of this analysis are summarized in Tables 2A and 2B. The data were assigned by plant in one case into three groupings and in the other into five groupings, and in each case the medians of the average BOD effluent values in each grouping were determined. In the first case plants were assigned as plastics, organics, or mixed and in the second, as fibers/rayon, thermoplastics, thermosets, organics or mixed. All plants considered in the analysis had biological treatment only in place. The assignment of a plant to a group was determined by the predominant production at the plant, that is, whether a plant had 95 percent or more of its production in the group. For instance, if a plant has 95 percent or more plastics production, it was placed in the plastics group. Those plants not containing 95 percent or more of a group production were classified as mixed.

TABLE 2A—MEDIANS FOR THREE GROUPINGS

Groupings	Number of plant averages	Median of plant average effluent BOD (mg/l)
Plastics	30	20.5
Organics	42	42.5
Mixed (all remaining plants)	27	35
All plants	99	29

TABLE 2B—MEDIANS FOR FIVE GROUPINGS

Groupings	Number of plant averages	Median of plant average effluent BOD (mg/l)
Rayon/Fibers	7	14
Thermoplastics	17	18
Thermosets	3	32
Organics	42	42.5
Mixed (all remaining plants)	30	35.5
All plants	99	29

The largest median average effluent BOD for a grouping in both cases is 42.5 mg/l, which suggests that the proposed 50 mg/l data selection criterion is high.

In the absence of a theoretical engineering or statistical solution which would determine what value should be used in a regulatory context, the Agency examined some reasonable alternatives suggested by the results displayed in Tables 2A and 2B. The Agency considered using different editing criteria for different product groups, such as those listed in Table 2B, but decided to use a single criterion to define the final data base.

An important reason for using a single editing criterion for all subcategories is that this facilitates setting an editing criterion for the group of plants that do not fall primarily into a single subcategory. These mixed plants comprise a significant segment of the industry, and it is important that the data base for the regulations include data from this segment. Editing criteria that are subcategory specific cannot be applied to mixed plants. We did, however, examine BOD levels by the groupings used in Tables 2A and 2B to gain insight into what uniform editing criterion would be appropriate.

For the groupings exhibiting relatively high BOD levels, organics and mixed plants, EPA determined that a 40 mg/l BOD edit would be appropriate. This value is between the median for these two groupings. Given the fact that plants with substantial organics production tend to have fairly high influent BOD levels or complex, relatively difficult-to-biodegrade wastewaters, EPA believes that a more stringent edit would not be appropriate for these two groupings. However, EPA believes that a less stringent edit would be inappropriate, since many plants in these groupings meet the 40 mg/l criterion.

The other groupings have median values below 40 mg/l, and EPA examined them closely to determine whether they should be subject to more stringent editing criteria than the organics and mixed groupings. EPA concluded that they should not for the reasons discussed below.

The thermosets groupings contains three plants, whose average effluent BOD levels are approximately 15, 32, and 34 mg/l, respectively. EPA believes all three should be retained in the data base. This is particularly important because a major source of wastewater at the plant with the lowest value is melamine resin production; several other types of resins fall under the thermoset classification. Thus, including all three plants' data provides improved coverage of thermoset operations in the data base. An editing criterion of 30 mg/l arbitrarily excludes data from the two plants whose performance slightly exceeds 30 mg/l and would result in melamine resin production being the predominant thermoset production represented in the data base.

The average BOD effluent values for rayon/fibers and thermoplastics are lower than the average values for thermosets, organics and mixes. The Agency evaluated the effects on long-term average effluent values for these groups by uniformly editing the data base at 30, 35, 40 and 50 mg/l, using the BPT regression approach to calculate each of the subcategory long-term average values. The long-term averages for rayon/fibers and thermoplastics are relatively insensitive to the use of the 30, 35, 40 and 50 mg/l edited data bases. That is, the long-term averages are roughly the same regardless of which of these editing criteria is used.

After considering the effect of the various editing criteria on the different groupings discussed above, EPA has concluded that a 40 mg/l editing criterion for BOD is most appropriate. Moreover, in defining BPT level performance, this criterion results in a data base that provides adequate coverage of the industry.

Thus, data from plants with suitable treatment will be included in the data base for BOD if the plant achieves 95 percent BOD removal or a 40 mg/l long-term average. As a result of these criteria, BOD data from 71 plants are retained in the analysis.

As discussed previously, the Agency also saw a need to edit the data base for TSS performance. The Agency is using two editing criteria for selecting TSS data, both of which must be met. The first criterion is that data must be from a plant that meets one of the BOD editing criteria, i.e., achieves either 95 percent removal of BOD or 40 mg/l. The second is that the average effluent TSS must be 100 mg/l or less. As a result of this edit, TSS data from 61 plants are retained for analysis.

In a well-designed, well-operated biological treatment system, achievable effluent TSS concentration levels are related to achievable effluent BOD levels and, in fact, often are approximately proportional to BOD. This is reflected in the OCPSF data base for those plants that meet the BOD performance editing criteria (provided that they also exhibit proper clarifier performance, as discussed below). By using TSS data only from plants that have good BOD treatment, the Agency is thus establishing an effective initial editing for TSS removal by the biological system. However, as BOD is

treated through biological treatment, additional TSS may be generated in the form of biological solids. Thus, some plants may need to add post-biological, secondary clarifiers to assure that such biological solids are appropriately treated.

Thus, while the 95/40 BOD editing insures good BOD treatment and a basic level of TSS removal, plants meeting this BOD editing level will not necessarily meet a TSS level suitable for inclusion in the data base used to set TSS limitations. To insure that the TSS data base for setting limitations reflects proper control, EPA proposed in the December 8, 1986 Notice to include only data reflecting a long-term average TSS concentration of less than or equal to 100 mg/l.

The December 1986 Notice requested comment on the use of the 100 mg/l TSS editing criterion and, as an alternative, use of 55 mg/l as the editing criterion for TSS along with setting the TSS limitations based upon the relationship between BOD and TSS. Some commenters criticized both 100 mg/l and 55 mg/l as overly stringent and asserted that such additional TSS editing was unnecessary since the BOD editing was sufficient to assure that TSS was adequately controlled. These comments, while agreeing that there was a relationship between BOD and TSS, also recommended a slightly different methodological approach for analyzing the BOD/TSS relationship.

The Agency disagrees with the commenters who argued in effect that all TSS data from plants that meet the BOD criteria be included in the data base for setting TSS limitations. The Agency has examined the data and has concluded that an additional TSS edit is required at a level of 100 mg/l. Support for this is evident in the reasonably consistent BOD and TSS relationship for plants in the data set that results from the 95/40 BOD edit that have TSS values of 100 mg/l or less. For plants that have TSS values above 100 mg/l, there is a marked change in the pattern of the BOD/TSS relationship. Below 100 mg/l TSS, the pattern in the BOD/TSS data is characterized by a homoscedastic or reasonably constant dispersion pattern along the range of the data. Above the 100 mg/l TSS value, there is a marked spread in the dispersion pattern of the BOD/TSS data. The Agency believes that this change in dispersion (referred to as heteroscedastic) reflects insufficient control of TSS in some of the treatment systems. The Agency has concluded that the 100 mg/l TSS editing criterion provides a reasonable measure of the additional control on TSS required in good biological treatment systems that have met one of the BOD editing criteria.

The Agency considered the more stringent TSS editing criterion of 60 mg/l, rather than 100 mg/l. The Agency's analysis demonstrated that this is not appropriate. Most fundamentally, this criterion would result in the exclusion of plants that EPA believes are well-designed and well-operated plants. Moreover, the relationship between BOD and TSS is well defined for plants with TSS less than 100 mg/l and BOD meeting the 95/40 criteria.

The Agency gave serious consideration to the statistical method recommended by a commenter for the analysis of the BOD/TSS relationship. The commenter recommended a linear regression relationship between the untransformed (not converted to logarithms) BOD and TSS data. The Agency has retained the use of a linear regression relationship between the natural logarithms of the BOD and TSS data. The logarithmic approach is similar to that recommended by the commenter but resulted in a somewhat better fit to the data.

The Agency also considered in response to comments an editing criterion based on secondary clarifier design criteria, i.e., clarifier overflow rates and solids loadings rates. While the Agency agrees that using these design criteria, if available, may have provided an appropriate editing criterion, very little data were supplied by industry in response to the Agency's request for data regarding these design criteria or are otherwise contained in the record.

3. Technology Selection

The Agency developed three technology options for consideration in developing BPT limitations. Option I consists of biological treatment, which usually involves either activated sludge or aerated lagoons, followed by clarification (and preceded by appropriate process controls and in-plant treatment to assure that the biological system may be operated optimally). Many direct discharge facilities in the OCPSF industry have installed this kind of treatment.

Option II consists of Option I technology with the addition of a polishing pond to follow biological treatment.

Option III includes multimedia filtration as an alternative technology (in lieu of Option II ponds) to achieve TSS control beyond Option I biological treatment.

EPA has selected Option I, biological treatment with clarification, as the technology basis for BPT limitations controlling BOD and TSS for the OCPSF industry. (This option has previously been referred to simply as "biological treatment." However, a properly designed biological treatment system includes "secondary clarification", which usually consists of a clarifier following the biological treatment step. EPA's costing methodology for BPT Option I includes the installation of secondary clarifiers for plants needing significantly improved TSS control.)

There were 70 plants identified in the OCPSF 1983 Section 308 survey that rely exclusively upon end-of-pipe physical/chemical treatment. Forty-one of these plants reported effluent BOD and 45 plants reported effluent TSS values. Some of these plants have such low levels of BOD that they will only have to upgrade their treatment to meet the TSS limits. Some of the other plants which reported BOD values were achieving low concentrations by dilution with nonprocess waters; for these plants the BOD concentrations were adjusted to take into account this dilution. Based upon this evaluation, plants which did not meet the long-term average target for BOD (approximately 71 percent of these plants) were determined (for costing) either to have sufficient BOD in their OCPSF process wastewaters to support biological treatment or to have flows small enough (less than 500 gallons per day) to be contract hauled. In addition, costs were included for these plants to upgrade treatment of TSS where necessary as part of installing biological treatment and clarification, to provide chemically assisted clarification, for algae control at existing ponds, or for contract hauling. The cost of compliance with the TSS limitations for plants without biological treatment are based upon the performance of clarifiers, using the data from biological treatment plants' secondary clarifier performance.

Option I technology is in place at 156 of 304 direct discharging plants in the OCPSF industry data base. Seventy-one of those plants are included in the Option I data base used to develop the BPT limitations for BOD, since their treatment passes the 95/40 BOD editing criteria; and 61 of the 71 plants are included in the data base to develop TSS limitations since their effluent TSS long-term average is less than 100 mg/l. Twenty-three of these facilities have reported actual long-term averages less than or equal to their respective Option I, subcategory-proportioned (based on

1980 production) long-term average concentration levels.

The Agency estimates that BPT Option I would cost the OCPSF direct discharge plants $215.8 million in capital investment and $76.6 million annually and remove 41.7 million lb/yr of BOD and 66.3 million lb/yr of TSS in addition to current removals. EPA has concluded that the costs of compliance with BPT are justified by the pounds of pollutants that will be removed by such compliance.

EPA has rejected Options II and III because they are not clearly demonstrated to enhance the treatment of OCPSF discharges beyond the levels achieved by the Option I requirements and because they do not currently appear to be used by a representative portion of the industry.

Theoretically, a polishing pond should accomplish additional removal of TSS and perhaps some removal of insoluble BOD. However, as discussed below, the data available to the Agency do not clearly demonstrate the effectiveness of polishing ponds following effective biological treatment with clarification. The Agency identified 18 plants that reported using polishing ponds and also met the earlier editing criteria for BOD of 95 percent removal or 50 mg/l or less and TSS of 100 mg/l or less. (All but one of the 18 also meet the final editing criteria of 95 percent removal or 40 mg/l for BOD and meeting BOD criteria plus 100 mg/l for TSS.) For reasons discussed below, EPA does not believe that the data support any firm estimate of incremental pollutant removals and incremental costs for Option II.

EPA notes first that only 17 plants in the industry have polishing ponds and meet the 95/40 BOD editing criteria. Even if ponds were demonstrated to be an effective treatment option for this industry, which they are not, the data base for BPT Option II limitations would necessarily be very small relative to the large number of BPT subcategories, and therefore, would provide far less coverage of subcategories in the industry than the Option I data base.

In examining the data from the 18 plants originally placed in the Option II data base (using the 95/50 criteria), EPA noted that they yielded concentrations that were not much lower than Option I concentrations. Option II plants averaged only 2 mg/l BOD and 8 mg/l TSS lower than Option I plants. Because these increments seemed rather small, EPA performed a statistical analysis to compare the averages for the two data bases. The results of the analysis did not provide evidence of a significant difference between the two data sets. These results led EPA to question the validity of the Option II data as an expression of a true incremental control option and to reexamine the sources of the data.

In the July 17, 1985 notice, EPA discussed its belief that plants using polishing ponds in the OCPSF industry have done so not to add another treatment step after effective Option I-level biological treatment but rather to improve upon substandard biological treatment. As noted above, the Option II data base showed little incremental removal over Option I. Subsequent to the December 8, 1986 Notice, EPA reexamined all available engineering information on plants with polishing ponds, including treatment plant schematics provided by these facilities in response to 308 questionnaires. This examination revealed that seven of the 18 original Option II facilities are using their polishing ponds as secondary clarifiers (i.e., in lieu of effective secondary clarification typically included in an Option I biological system), another six facilities use their ponds to control or equalize unusual releases or combine treated wastewater from their biological systems with other wastewaters at the final pond stage, and one facility uses its pond as a reaeration basin prior to discharge.

This reanalysis confirms the hypothesis that, in most cases, plants that have installed polishing ponds have done so to improve the substandard treatment afforded by their biological systems. In general, if the plant's biological treatment system were well-designed and well-operated, polishing ponds would not have been installed. For example, some plants, where land is readily available, use polishing ponds to achieve some of the BOD removal that would otherwise be achieved by activated sludge treatment because this BOD removal is accomplished more economically at these plants by polishing ponds. In summary, almost no plants have installed ponds to achieve additional removal of BOD and TSS beyond that achieved by well-operated, well-designed biological treatment with clarification.

Further, EPA believes that there would be significant problems connected with the installation and operation of polishing ponds added to biological treatment (Option II) at some OCPSF facilities. Due to the size of polishing ponds (they are often significantly larger than activated sludge systems), land availability is a barrier to installation at a number of plants. In addition, algae growth in warm climates interferes with the operation of the polishing ponds by creating high suspended solids levels. (Algae growth can be controlled by the addition of copper sulfate.) Consequently, the Agency has concluded that Option II (polishing ponds added to good biological treatment) is not sufficiently demonstrated or practicable as a basis for BPT limitations for the OCPSF industry.

EPA has evaluated Option III (good biological treatment plus multimedia filtration) technology to determine if this option can achieve, in a practicable manner, additional conventional pollutant removal beyond that achievable by well-designed, well-operated biological treatment with secondary clarification.

Forty-five plants identified filtration as an in place technology in the 1983 308 survey. Of these, 30 submitted data (BOD or TSS); however, only 28 could be evaluated for both BOD and TSS performance. Eleven plants had biological treatment (usually with secondary clarification) followed by filtration and passed the 95/40 BOD and 100 TSS editing criteria. Because only 11 plants in the OCPSF data base use this Option III technology and comply with the editing criteria, this option would require EPA to regulate all seven subcategories based upon a very small data set.

The median effluent TSS concentration value for these 11 plants is 32 mg/l. If three additional plants were included in this data base because they use Option I treatment plus either ponds or activated carbon followed by filters, the resulting median TSS value would be 34 mg/l. These results, when compared to the performance of clarification only following biological treatment (median value of 30 mg/l) clearly show that the efficiency of filtration following good biological treatment and clarification is not demonstrated for this industry. Moreover, on the average, OCPSF plants with more than Option I treatment in EPA's data base (biological treatment plus filtration) have not demonstrated substantial BOD removal beyond that achievable by Option I treatment alone. The median BOD concentration value for these plants in 19 mg/l compared to a median value of 23 mg/l BOD for those plants with Option I technology in place and meeting the 95/40 BOD editing criteria.

Like Option II, then, the results of this analysis of Option III data do not provide evidence of a significant difference in performance between plants with good biological treatment alone compared to those with biological treatment plus filtration. The data do not support any firm estimate either of

incremental pollutant removal benefits or of incremental costs for Option III technology.

One commenter suggested that, in light of the apparent poor incremental performance of filters in the OCPSF industry, EPA should transfer data from non-OCPSF filtration operations, specifically from domestic sewage treatment. EPA also possesses some filtration data from certain industries other than the OCPSF industry. However, EPA believes that it would be inappropriate to use non-OCPSF wastewater data to set the OCPSF BPT limitations.

The OCPSF industry filtration data do not indicate any substantial TSS or BOD removal beyond that achieved by Option I technology. This fact indicates that differences in the biological solids in the OCPSF industry may be responsible for the lack of filtration effectiveness. For example, if the OCPSF biological floc (solids) were to break into smaller-sized or colloidal particles, they could pass through the filter substantially untreated. While EPA cannot be certain whether this occurs, the data indicate that filters are not as effective in removing OCPSF wastewater solids as they may be for domestic sewage or certain other industry wastewater solids. EPA does not believe that the appropriateness of transferring data from these other wastewaters to the OCPSF industry is demonstrated.

Finally, it should be noted that polishing ponds and filters have rarely been selected by EPA as a BPT technology for any industry. Moreover, filtration has in the vast majority of cases been expressly rejected even at BAT as yielding minimal incremental removals at relatively high cost. Thus to the extent that the commenter wishes EPA to transfer filtration data from other industries, it must be recognized that filtration data has, with very few exceptions (i.e., to remove certain toxic pollutants at BAT), not been considered sufficient to justify the use of filters for BPT and even for BAT. Of course, where solids that contain toxic pollutants may remain after BPT Option I treatment, those pollutants are specifically required to be reduced to the level required by the more stringent BAT regulations promulgated today.

Thus, in summary, EPA has rejected Options II and III because they are not currently demonstrated to be effective technologies for additional control of OCPSF discharges that have already been treated by Option I technology, good biological treatment. Moreover, it should be noted that the Agency generally has refrained from basing BPT limitations on series of end-of-pipe technologies (as distinct from in-plant treatment and preliminary end-of-pipe treatment such as equalization and neutralization necessary for good end-of-pipe treatment). EPA believes that effective biological treatment including clarification, rather than alternatives whose effectiveness and practicability have not been sufficiently documented, is the appropriate basis for BPT limitations in the OCPSF industry.

B. BCT

EPA is not promulgating BCT regulations as part of this regulation.

C. BAT

1. BAT Subcategorization

The Agency is promulgating BAT limitations for two subcategories. These subcategories are largely determined by raw waste characteristics. The end-of-pipe biological treatment subcategory includes plants which have or will install biological treatment to comply with BPT limits. The non-end-of-pipe biological treatment subcategory includes plants which either generate such low levels of BOD that they do not need biological treatment or choose to use physical/chemical treatment alone to comply with the BPT limitations for BOD. The Agency has concluded that, within each subcategory, all plants can treat priority pollutants to the levels established for that subcategory.

Different limits are being established for these two subcategories. Biological treatment is an integral part of the model BAT treatment technology for the end-of-pipe biological treatment subcategory; it achieves incremental removals of some priority pollutants beyond the removals achieved by in-plant treatment without end-of-pipe biological treatment. In addition, the Agency is establishing two different limitations for the pollutant zinc. One is based on data collected from rayon manufacture using the viscose process and acrylic fibers manufacture using the zinc chloride/solvent process. This limitation applies only to those plants that use the viscose process to manufacture rayon and the zinc chloride/solvent process to manufacture acrylic fibers. The other zinc limitation is based on the performance of chemical precipitation technology used in the metal finishing point source category, and applies to all plants other than those described above.

The Agency is issuing BAT limits for 63 priority pollutants for facilities with end-of-pipe biological treatment, including 57 organic priority pollutants, five metal priority pollutants and cyanide. For facilities without end-of-pipe biological treatment, BAT limits are being issued for 59 priority pollutants, including 53 organic priority pollutants, five metal priority pollutants and cyanide. (See Section 5 below for discussion of the pollutant selection).

2. Technology Selection

As noted in Section V, the Agency developed three technology options for end-of-pipe BAT effluent limitations. (The Agency decided not to promulgate any supplemental in-plant BAT limitations to control volatile pollutants for reasons discussed in Section X of this preamble.)

Option I. This option would establish concentration-based BAT effluent limitations for priority pollutants based on using BPT-level biological treatment as described above for dischargers using end-of-pipe biological treatment. For plants not using end-of-pipe biological treatment, the Option I treatment is in-plant controls, consisting of physical/chemical treatment and in-plant biological treatment to achieve the same toxic pollutant limits as are achieved by end-of-pipe biological treatment at BPT.

Option II. This option would establish concentration-based BAT effluent limitations based on the performance of the end-of-pipe treatment component required to meet BPT limitations (biological treatment for the end-of-pipe biological treatment subcategory and physical/chemical treatment for the non-end-of-pipe biological treatment subcategory) plus in-plant control technologies which would remove priority pollutants from waste streams from particular processes prior to discharge to the end-of-pipe treatment system. Two variations of Option II were considered, based upon differing in-plant control technologies used to treat selected priority pollutants including several polynuclear aromatic hydrocarbons, several phthalate esters and phenol. The selected in-plant technologies which form the sole basis of the limitations for the non-end-of-pipe biological treatment plants and a partial basis for plants using end-of-pipe biological treatment, include steam stripping to remove volatile priority pollutants, activated carbon adsorption for various base/neutral priority pollutants, chemical precipitation for metals, alkaline chlorination for cyanide, and in-plant biological treatment (Option IIB) for removal of selected priority pollutants including polynuclear aromatic hydrocarbons, phthalate esters, and phenol. After considering the application of activated carbon adsorption systems (Option IIA)

to remove these latter pollutants, EPA selected in-plant biological treatment (Option IIB) for costing on the basis of available data demonstrating that the effluent levels achieved by dedicated biological systems treating waste streams from segregated processes result in levels equivalent to those achieved by activated carbon adsorption technology and that the in-plant biological treatment is less costly.

The estimated incremental cost of compliance with this option (Option IIB) over BPT is $360.8 in capital investment and $230.4 in annualized costs (1986 dollars). This option is estimated to remove a total of 1.1 million lb/yr of priority pollutants beyond removals by the BPT technology.

Option III. Option III adds activated carbon adsorption to the end-of-pipe treatment to follow biological treatment or physical/chemical treatment in addition to the Option II level of in-plant controls.

Option I technology is capable of treating some toxic priority pollutants to some extent; however, it does not represent the best available technology. In particular, the effectiveness of biological treatment for removing metal pollutants and volatile organic pollutants is limited. Its effectiveness for other pollutants as well is often less than what the Option II technologies can achieve. The Agency has identified many plants that combine various types of in-plant treatment with end-of-pipe biological treatment. Therefore, EPA has decided to reject Option I.

Option III (addition of end-of-pipe carbon adsorption) achieves further reduction in concentrations of some pollutants after Option II, particularly for organic pollutants that are less biodegradable. The capital investment cost associated with activated carbon adsorption systems that are large enough to treat the volume of water discharged from end-of-pipe treatment is very high, $1.2 billion, and the annualized cost is $831.9 million (1986 dollars). These incremental costs would be expected to cause very substantial incremental impacts, including 26 plant closures, and 16 product line closures resulting in a loss of 6475 jobs. In addition, 44 plants would incur other significant impacts. Given the exceptionally high costs and significant economic impacts associated with Option III, EPA has decided not to adopt Option III as the basis for BAT regulation.

The Agency has selected Option II as the basis for BAT limits for both subcategories. EPA has determined that Option II is the best available technology economically achievable for all plants except for a subset of small plants. As discussed immediately below, for plants whose annual OCPSF production is less than or equal to five million pounds, EPA has concluded that Option II is not economically achievable. For these plants, EPA has set BAT equal to BPT.

3. Economic Impacts; Alternative Requirements for Small Plants

EPA has determined that Option II is not economically achievable for a class of small plants, namely those whose annual OCPSF production is less than or equal to five million pounds. Therefore, EPA has set BAT equal to BPT for plants whose annual OCPSF production is less than or equal to five million pounds.

For this group of small producers, the costs of meeting BAT limitations applicable to all other direct dischargers would be an additional $6.2 million annually beyond the cost of complying with BPT. The 19 plants in this group would be heavily and disproportionately impacted by being required to meet the BAT requirements established for all other direct dischargers. One half (9) of these 19 plants are projected to experience a full plant or production line closure, and almost 80 percent (15) of them would incur significant adverse impacts as defined in Section VIII of this preamble. This contrasts with an overall closure rate of seven percent and total significant impact rate of 13 percent for direct dischargers as a whole. The projected closures for the group of small plants are estimated to result in the loss of 162 jobs. The incremental (over BPT) amount of toxic pollutants that would have been removed by these 19 plants is 818 pounds (0.07 percent of the toxic discharges being removed from all directs). EPA has thus determined, based upon the costs and resulting heavy and disproportionate economic impacts incurred by the 19 plants in this sector, and in light of the small increase in their discharges occasioned by this action and the fact that they will be required to meet BPT control levels, to set BAT equal to BPT for this group.

EPA also considered setting BAT equal to BPT for direct dischargers with production levels higher than five million pounds per year. However, EPA determined that the impacts for other production groups, such as plants producing ten million pounds or less and plants producing 15 million pounds or less per year are not nearly so disproportionate as for those in the five-million pound or less group, and that the BAT limitations were not economically unachievable for these groups. To exempt plants in these groups would relieve from full compliance with BAT an increasingly large number of non-impacted plants and would substantially increase the amount of uncontrolled toxic discharges.

EPA also considered restricting relief to small production plants owned by small businesses. EPA rejected this approach because it could not differentiate clearly between the economic impacts that would be experienced by small production plants owned by large businesses and small production plants owned by small businesses. (This issue is discussed in greater detail in Section VIII F of this preamble.)

4. Technology and Data Selection Criteria for Toxic Pollutant Groups

The BAT limits are based on priority pollutant data from both OCPSF and other industrial plants with BAT model treatment technologies in-place. (See Section IV for data gathering efforts in the OCPSF industry.) In selecting plants and product/processes for use in developing the data base for BAT limitations, EPA gave priority to product/processes involving the manufacture of either priority pollutants or high volume chemicals derived from priority pollutants. In each stage of its BAT data base development, the Agency has attempted to obtain data from OCPSF plants representing BAT performance to provide as complete coverage as possible for the priority pollutants discharged by the OCPSF industry. The Agency used information collected in all surveys as a basis for identifying representative plants to be sampled (in the 12 plant study), as is discussed in Section IV of this preamble.

The current BAT data base for organic priority pollutants and the toxic metal zinc (for certain rayon and acrylic fibers producers) contains data which adequately represent the performance of wastewater treatment technology employed by the OCPSF industry. As discussed below, data for toxic metals (including zinc from producers other than those mentioned above) and cyanide have been transferred from another industry data base.

The OCPSF Verification Study emphasized data collection which described raw process wastewater and effluents from the principal treatment configurations (i.e., preliminary in plant treatment and biological treatment for combined plant wastewaters). In cooperation with CMA and participating OCPSF plants, EPA next conducted the EPA/CMA Five-Plant Study to assess the effectiveness of biological treatment in removing certain organic priority pollutants. Finally, the Agency carried

out the Twelve-Plant Study designed to provide additional data on certain nonbiological treatment technologies, such as steam stripping and activated carbon adsorption. Site visits were conducted at these plants prior to sampling to assure that they had well operated biological treatment systems, and to assess what in-plant treatment technologies these plants employed and how they were being operated and maintained. This study was also designed to obtain supplemental long-term performance data for selected biological and physical/chemical treatment technologies.

The following criteria were used to assure that data used for setting limitations were analytically reliable, reflective of good treatment, and adequate to characterize variability:

- The analytical method must be EPA approved;
- There must be data for both the influent and effluent from the treatment system;
- The average influent concentration of a pollutant must be at least ten times the minimum (analytical threshold) level (in most cases 10 ppb); and
- Data for each pollutant must have been obtained from one or more plants with at least three days of both influent and effluent data.

Additional editing was performed to ensure that the quality of treatment represented by the data was BAT-level treatment. Detailed descriptions of how the editing was done are contained in the record for this rule and summarized in Section VII of the Development Document. As detailed previously and discussed further in Section X of this preamble, the data covers a broad spectrum of industry production and thus may be properly applied to all OCPSF plants.

a. *Volatiles Limits.* The Agency is basing its BAT limitations and costs for volatile pollutants on in-plant steam stripping technology alone for plants without end-of-pipe biological treatment. For all volatiles limited in the end-of-pipe biological treatment subcategory except 1,1-Dichloroethane, the combination of steam stripping and end-of-pipe biological treatment are used for limitations (and costing). The data used to derive these limits for the end-of-pipe biological treatment subcategory were taken from plants which exhibited good volatile pollutant reduction across the entire treatment system. For the end-of-pipe biological treatment subcategory the limitations (and costs) are based on the removals achieved by steam stripping alone for one pollutant (1,1-Dichloroethane), since the data for this pollutant demonstrated a treated effluent from the steam stripper at the lowest possible level (a long-term average steam stripping effluent level at the analytical threshold level of 10 ppb) and no data were available from the end-of-pipe biological treatment for this pollutant. To establish limits for the non-end-of-pipe biological treatment subcategory, the Agency used steam stripping data for volatile organic pollutants collected from plants that either did not have end-of-pipe biological treatment or provided data on the separate performance of the in-plant steam stripping treatment technology.

Steam stripping technology employs superheated steam to remove volatile pollutants of varying solubility in wastewater. The technology specifically involves passing superheated steam through a preheated wastewater stream column packed with heat resistant packing materials or metal trays in counter-current fashion. Stripping of the organic volatiles constituents of the wastewater stream occurs because the organic volatiles tend to vaporize into the steam until their concentrations in the vapor and liquid phases (within the stripper) are in equilibrium. The height of the column and the amount of packing material and/or the number of metal trays along with steam pressure in the column generally determine the amounts of volatiles that can be removed and the effluent pollutant levels that can be attained by the stripper. After the volatile pollutants are extracted from the wastewater into the super heated steam, the steam is condensed to form two layers of generally immiscible liquids, the aqueous and volatile layers. The aqueous layer is generally recycled back to the steam stripper influent feed stream because it may still contain low levels of the volatiles. The volatile layer may be recycled to the process from which it came, incinerated on-site, or contract hauled (for incineration, reclaiming, or further treatment off-site) depending on the specific plant's requirements.

Steam stripping is an energy intensive technology in which heat energy is required to both preheat the wastewater and to generate the super heated steam needed to extract the volatiles from wastewater. In addition, some waste streams may require pretreatment such as solids removal, e.g. filtration, prior to stripping because accumulation of solids within the column will prevent efficient contact between the steam and wastewater phases. Periodic cleaning of the column and its packing materials or trays is a necessary part of routine steam stripper maintenance to assure that low effluent levels are consistently achieved.

Steam strippers are designed to remove individual volatile pollutants based on a ratio (Henry's Law Constant) of their aqueous solubility (tendency to stay in solution) to vapor pressure (tendency to volatilize). The column height, amount of packing or number of trays, the operating steam pressure, and temperature of the heated feed (wastewater) are varied according to the strippability (using Henry's Law Constant) of the volatile pollutants to be stripped. Volatiles with lower Henry's Law Constants require greater column height, more trays or packing material, greater steam pressure and temperature, more frequent cleaning and generally more careful operation than do volatiles with higher strippability. Although the degree to which a compound is stripped can depend to some extent upon the wastewater matrix, the basis for the design and operation of steam strippers is such that matrix differences are taken into account for the volatile compounds the Agency has evaluated.

Data on the performance of steam stripper control technology for volatile organic compounds that formed the basis of the July 17, 1985 Notice proposed approach for controlling volatile organic pollutants were obtained for twelve (12) organic volatile priority pollutants from four plants that used steam stripping technology for waste streams from four processes. The July 17, 1985 notice considered regulating the volatile priority pollutants according to steam strippability using Henry's Law Constant. The pollutants were separated into three classes with high, medium and low stripping potential based on their Henry's Law Constants.

Additional steam stripper data were obtained from industry as a part of comments submitted or as a follow up to comments on this proposed approach. The Agency surveyed (by telephone) commenters' plants for any steam stripping data they had to support their comments. The Agency also requested (by telephone) other plants that, based on the type of product/processes employed, might have steam strippers in-place to provide any existing data demonstrating performance of steam stripping. The data were reviewed in detail and edited to assure that only data representing BAT-level design and operation were retained for purposes of developing limitations. The final data base used to develop BAT limitations consisted of performance results from 7 steam strippers at 5 plants for 15 volatile organic pollutants. EPA believes that the data for these plants provide an

adequate basis to set limitations for the industry.

These data were first sorted by process waste stream stripped for each of the compounds in the high and medium strippability groups. (The low strippability pollutants were determined to require types of treatment other than steam stripping, i.e., carbon adsorption or in-plant biological treatment. See Section 4.d. below.)

A further sort of the strippability data was made taking into account the process wastewater matrix. This review confirmed that process wastewater matrices in this industry generally do not preclude compliance with the concentration levels established in today's regulations.

However, EPA has determined that one product/process (production of methyl chloride from methanol by hydrochlorination) does produce an exceptionally corrosive wastewater whose matrix adversely affects the average performance of the packed tower type of steam stripper for which the data was submitted. Therefore, EPA is excluding the submitted steam stripping data from that product/process from the calculation of BAT and PSES limitations for the volatile pollutants.

The final regulations establish limitations for 28 volatile pollutants. For 15 of these pollutants, the limitations are based directly on data representing the actual control of these pollutants by treatment systems operating in the OCPSF industry. EPA calculated a separate limitation for each of these pollutants. For some of these pollutants the available effluent data consisted of measurements so low that very few exceeded the analytical threshold level (10 ppb, the minimum level for most pollutants); see Section X, comment 7. Since variability factors could not be calculated directly for these pollutants, EPA transferred variability factors from related pollutants.

For 13 other volatile pollutants, EPA lacked sufficient data to calculate limitations directly from data relating to these pollutants. Instead, EPA concluded that these pollutants may be treated to levels equivalent, based upon Henry's Law Constants, to those achieved for the 15 pollutants for which there were data. Dividing the 15 pollutants into "high" and "medium" strippability subgroups, EPA developed a long-term average and variability factors for each subgroup and applied these to the 13 pollutants for which data were lacking (six pollutants in the high subgroup and seven in the medium subgroup). The long-term average for each subgroup was determined by the highest of the long-term averages within the comparable "high" or "medium" subgroup of the 15 pollutants for which the Agency had data. This approach tends to be somewhat conservative but in the Agency's judgement not unreasonable in light of the uncertainty that would be associated with achieving a lower long-term average for the pollutants for which data are unavailable. The high strippability long-term average thus derived is 64.5 μg/l, while the medium strippability long-term average is slightly higher 64.7 μg/l.

While it may appear anomalous that the high strippable subgroup yields a just slightly lower long-term average effluent concentration, EPA believes that this is not the case. First, in the context of the maximum levels entering the steam strippers within the two subgroups (12,000 μg/l to over 23 million μg/l), the difference between these two long-term averages is negligible and essentially reflects the same level of long-term control from an engineering viewpoint. Second, the "high" and "medium" strippable compounds behave comparably in steam strippers, in the sense that roughly the same low effluent levels can be achieved with properly designed and operated steam strippers. In other words, it is possible to mitigate small differences in theoretical strippability among compounds in these groups with different design and operating techniques. The small differences in long-term average performance seen in the data reflect, in EPA's judgment, not real differences in strippability among pollutants but rather the difference in steam stripper operations among the plants from which the data was taken. Indeed, one could reasonably collapse the two subgroups into one group and develop a single long-term average for the 13 pollutants for which EPA lacks data. While such an approach might be technically defensible, EPA decided it would be most reasonable to retain the distinction between "high" and "medium" subgroups, which remains a valid and important distinction for the purpose of developing variability factors, as discussed below.

The "high" and "medium" subgroup variability factors were derived by using the average of the variability factors developed for each of the pollutants in the subgroups. The variability factor for the maximum daily limitation for the "high" strippability subgroup was 5.884, and for the "medium" subgroup was 12.266. The variability data in general confirmed the engineering hypothesis that medium strippability pollutants may have higher variabilities due to their greater sensitivity, on a short-term basis, to fluctuations in steam temperature and pressure and other factors.

EPA used an average variability factor for two reasons. First, EPA believes the average variability factor to be reasonable and achievable through vigilant control of those factors that produce variability, particularly in light of the fact that the variability factor values are fairly high. Second, since limitations are derived by multiplying the long-term average times the variability factor, and since the long-term averages were based upon the highest of the long-term averages in each pollutant subgroup, the use of the largest variability factor calculated from the available data would have resulted in limitations that would be too high to effect meaningful treatment. EPA believes that the final limitations set forth in the regulation, based upon conservatively high long-term averages and upon average variability factors yield achievable effluent limitations appropriate to represent best available design and operation of treatment technology for a wide range of product/process wastewater matrices. These average values are used to calculate limitations for the 13 volatile organic pollutants for plants that do not use end-of-pipe biological treatment and for PSES.

b. *Cyanide Limitations.* The final regulation contains concentration-based effluent limitations for total cyanide from process waste streams covered by the regulation. The selected technology basis for controlling the discharge of cyanide is chemical oxidation by the alkaline chlorination method. This technology is demonstrated in the OCPSF industry and is widely used in the metal finishing industry. This method involves the oxidation of free cyanide to carbon dioxide and nitrogen using chlorine gas in an alkaline solution at generally elevated temperatures. Ozone can also be used to oxidize free cyanide. The chemical oxidation equipment often consists of an equalization tank followed by two reaction tanks, although the reaction can be carried out in a single tank. Generally, a several-fold excess of chlorine and caustic plus elevated temperatures are necessary to drive the oxidation reaction to completion, that is, to the production of carbon dioxide and nitrogen.

Eleven direct and indirect discharge plants use cyanide destruction, including some plants that reported the use of alkaline chlorination. However, performance data on cyanide destruction are not available from the OCPSF industry. Nonetheless,

performance data on cyanide destruction by alkaline chlorination in the metal finishing industry are available, and EPA indicated in its December 8, 1986 Notice that it was considering using the performance data for cyanide destruction from the metal finishing industry to develop cyanide limitations and standards. Public comments on this notice suggested that EPA should transfer cyanide destruction performance data from the pharmaceutical manufacturing industry rather than from the metal finishing industry because of the similarity in wastewater characteristics shared by the OCPSF and pharmaceutical industrial categories. EPA has evaluated cyanide destruction in the pharmaceutical industry and has rejected transfer of performance data from that industry for use in the development of OCPSF cyanide limitations because the cyanide destruction performance data from the pharmaceutical industry are from a cyanide hydrolysis system which utilizes high temperatures and pressures to hydrolyze free cyanide, and this particular type of cyanide destruction technology has not yet been demonstrated to be effective on OCPSF cyanide-bearing wastewater. EPA is not aware of any OCPSF plants using hydrolysis treatment for cyanide. In contrast, cyanide destruction, of which alkaline chlorination is a common type, is used by some OCPSF plants. EPA believes that the cyanide destruction by alkaline chlorination data from the metal finishing industry is more appropriate for transfer to the OCPSF industry since this technology is used on cyanide waste streams in the OCPSF industry.

Another significant issue raised concerning the use of alkaline chlorination technology in the OCPSF industry was the contention that while this technology may effectively reduce concentrations of free cyanide in OCPSF wastewaters, it cannot reduce concentrations of metal-complexed cyanides. Commenters have stated that the limitations and standards should be for amenable cyanide only. EPA has evaluated the expected amount of cyanide complexing due to the presence of certain transition metals (nickel, copper, and cobalt) in OCPSF cyanide bearing waste streams, and has concluded that there are no combinations of cobalt and cyanide and only a few (6) product/process waste streams that would contain combinations of either copper and cyanide (four sources) or nickel and cyanide (two sources). For these product/process sources, a potential for cyanide complexing is present. However, no data has been submitted to demonstrate that the actual levels of complexing interfere with the ability of these or other plants to meet the total cyanide limitations. Thus, EPA believes that limitations controlling total cyanide are appropriate for all dischargers subject to this regulation. A detailed writeup identifying the sources of cyanide and the six product/processes with a potential for complex formation with nickel and copper is contained in Section V of the Development Document.

Limitations are based upon the transfer of data on alkaline chlorination (chemical oxidation) technology from the metal finishing industry data base. These limitations apply only to the cyanide-bearing waste streams; thus only cyanide-bearing process wastewater flow should be used by permit writers to convert the concentration-based cyanide limitations into mass-based permit limitations. Cyanide-bearing waste streams are listed in Appendix A to the regulation or may be identified by the permit writer.

c. *Metals Limitations.* The final rule contains concentration-based effluent limitations for chromium, copper, lead, nickel and zinc. The limitations are to be applied only to the flows discharged from metal-bearing process wastewaters (defined in the regulation and discussed below). Separate zinc limitations have been established for rayon manufacturers using the viscose process and acrylic fibers manufacturers using the zinc chloride/solvent process.

The proposed regulations and the July 1985 notice both set forth end-of-pipe concentration limitations for nine metals. The limits were based on end-of-pipe effluent data taken at plants using biological systems preceded in some cases by in-plant treatment for which neither raw waste nor in-plant treatment effluent metals data were available. For plants that do not use biological treatment, EPA solicited comment in the December 1986 notice on establishing limitations based upon the use of hydroxide precipitation data from several metals industries. For OCPSF wastestreams with complexed metals, EPA indicated that it was considering the use of sulfide precipitation to achieve the same limitations.

Industry commenters strongly criticized several aspects of EPA's proposed approach. First, they argued that most priority pollutant metals are not present in significant quantities in OCPSF wastewaters. They criticized the data base upon which EPA had estimated loadings for these pollutants. They argued that to the extent that EPA found metals in OCPSF wastewaters, these pollutants resulted not from OCPSF processes, many of which do not use metals, but rather from non-process wastewaters (e.g., zinc and chromium used as corrosion inhibitors and often contained in cooling water blowdown) or due to their presence in intake waters. The commenters concluded that EPA should regulate only those metals present in OCPSF process wastewaters as a result of the process use of the metals, applying the limits to those wastewaters only.

To address these comments, EPA has conducted a detailed analysis of the process wastewater sources of metals in the OCPSF industry. In response to criticism that EPA has relied too heavily on limited Master Process File metals data, EPA painstakingly reviewed the responses to the latest (1983) Section 308 survey to examine which metals were used as catalysts in particular OCPSF product/processes or were for other reasons likely to be present in the effluent from these processes. When necessary, EPA contacted plant personnel for additional information. The results of EPA's analysis, together with supporting documentation, are set forth in the rulemaking record and summarized in Section V of the Development Document.

Based upon this analysis, EPA has concluded that chromium, copper, lead, nickel and zinc are discharged from OCPSF process wastewaters at frequencies and levels that warrant national control. However, EPA agrees with the commenters that many OCPSF wastewaters do not contain these pollutants or contain them only at insignificant levels. At most plants, process wastewater flows containing these metals constitute only a small percentage of the total plant OCPSF process wastewater flow. As a result, end-of-pipe data obtained by EPA often do not reflect treatment but rather reflect the dilution of metal-bearing process wastewater by nonmetal-bearing wastewater. Thus, these data are not suitable for the purpose of setting effluent limitations reflecting the use of best available technology. Therefore, EPA has concluded, consistent with the industry comments, to focus its regulations on metal-bearing process wastewaters only.

The approach taken in the final regulation is to establish concentration-based limitations that apply only to metal-bearing process wastewaters (similar to the cyanide limitations). The permit writer will establish a mass

limitation by summing the flows of metal-bearing wastewaters and multiplying them by the concentration limitation. Compliance could be monitored in-plant or, after accounting for dilution by nonmetal-bearing process wastewater and nonprocess wastewaters, at the outfall. (Of course, the permit writer may on a case-by-case basis provide additional discharge allowances for metals in non-OCPSF process or other wastewaters where they are present at significant levels. When BAT limits have not been established, these allowances must be based upon the permit writer's best professional judgment of BAT as well). This approach is similar to that taken by EPA in other industry effluent limitations guidelines. (See 40 CFR Parts 433 and 439 for monitoring requirements related to their cyanide limitations).

EPA has listed the product/processes considered to have metal-bearing process wastewater in Appendix A of the regulation. This list is based on EPA's careful review of data in the record. However, EPA recognizes that at some sites process wastewaters not listed in Appendix A may contain significant levels of metals. In such cases, the NPDES program regulations authorize the permit writer to provide an allowance for these additional wastewaters, using the concentration limitations set forth in the regulation.

The concentration limitations are based upon the use of hydroxide precipitation technology, which is the standard metals technology that forms the basis for virtually all of EPA's BAT metals limitations for metal-bearing wastewaters. Because very little OCPSF data on the effectiveness of hydroxide precipitation technology is available, EPA has decided to transfer data for this technology from the Metal Finishing Industry. A comparison of the metals raw waste data from metal finishing plants with the validated product/process OCPSF raw waste data indicates that the concentrations of the metals of concern in the OCPSF industry are within the range of concentrations found at metal finishing plants. Also, the metal finishing wastewater matrices contain organic compounds which are used as cleaning solvents and plating bath additives. Some of these compounds serve as complexing agents and their presence is reflected in the metal finishing industry data base. This data base also contains hydroxide precipitation performance results from plants with waste streams from certain operations (electroless plating, immersion plating, and printed board circuit board manufacturing) containing complexing agents. This is important because the data base reflects both treatment of waste streams containing complexing agents and segregating these waste streams prior to treatment.

The transfer of technology and limitations from the Metal Finishing Industry category is further supported by the principle of precipitation. Given sufficient retention time and the proper pH (which is achieved by the addition of hydroxide, frequently in the form of lime), and barring the binding up of metals in strong organic complexes (see discussion below), a metal exceeding its solubility level in water can be removed to a particular level—that is, the effluent can be treated to a level approaching its solubility level for each constituent metal. This is a physical/chemical phenomenon which is relatively independent of the type of wastewater, barring the presence of strong complexing agents.

Some product/processes do have wastewaters that contain organic compounds which bind up the metals in stable complexes which are not amenable to optimal settling through the use of lime. EPA asked for comment in the December 1986 notice on the use of sulfide precipitation in these situations. Industry commenters argued that the effectiveness of this technology has not been demonstrated for highly stable, metallo-organic chemicals. EPA agrees. Strongly complexed priority pollutant metals are used or created, for instance, in the manufacture of metal complexed dyestuffs (metallized dyes) or metallized organic pigments. The most common priority pollutant metals found in these products are trivalent chromium and copper. The degree of complexing of these metals may vary among different product/processes. Consequently, each plant may need to use a different set of unique technologies to remove these metals. Thus metals limits are not set by this regulation, and must be established by permit writers on a case-by-case basis, for certain product/processes containing complexed metals. These product/processes are listed in Appendix B to the regulation.

The list in Appendix B has been compiled based upon an analysis contained in the rulemaking record. EPA has concluded that all other metal-bearing process wastewaters (whether listed in Appendix A to the regulation or established as metal-bearing by a permit writer) can be treated using hydroxide precipitation to the levels set forth in the regulation.

Finally, EPA has established a separate zinc limitation for rayon manufacturers using the viscose process and acrylic fibers manufacturers using the zinc chloride/solvent process. Process wastewaters from the rayon/viscose and acrylic/zinc chloride/solvent processes contain zinc at levels that are typically a hundred times the levels in other OCPSF wastewaters. EPA has collected data assessing the performance of chemical precipitation with lime and clarification in treating zinc in these discharges. The final limitations are based on these data.

d. *Other Organic Pollutants.* The Agency considered two in-plant technologies for the removal of organic pollutants other than those removed by steam stripping. These are activated carbon adsorption and in-plant biological treatment.

Activated carbon adsorption is a proven technology primarily used for the removal of organic chemical contaminants from individual process waste streams. The carbon has a very large surface area per unit mass and removes pollutants through adsorption and physical separation mechanisms. In addition to removal of most organic chemicals, activated carbon achieves limited removal of other pollutants such as BOD and metals. Carbon used in a fixed column, as opposed to being directly applied in a granular or powdered form to a waste stream, may also act as a filtration unit.

Eighteen OCPSF plants in the data base for this regulation are known to use activated carbon as an in-plant treatment technology. Although performance data for a specific individual in-plant carbon adsorption unit prior to biological treatment were not available, the Agency collected performance data during the 12-plant study from an in-plant (dedicated) carbon adsorption unit following steam stripping at an OCPSF facility for which the carbon adsorption unit treated a process-waste stream prior to discharge. This plant manufactures only inter-related products whose similar wastestreams are combined and sent to a physical/chemical treatment system consisting of steam stripping followed by activated carbon. The toxic pollutants associated with these waste streams are removed by either steam stripping or activated carbon, or a combination of them.

The Agency has decided to use these available performance data from the end-of-pipe carbon adsorption unit as the basis for establishing BAT limits for four pollutants (2-nitrophenol, 4-nitrophenol, 2-4-dinitrophenol and 4,6-dinitro-o-cresol) and for the combination of steam stripping and activated carbon adsorption for nitrobenzene. These data

show very good removals for the carbon adsorption unit of 4,6-dinitro-o-cresol, 2-nitrophenol and 4-nitrophenol. However, the data indicate that for 2,4-dinitrophenol and nitrobenzene, the carbon adsorption unit is experiencing competitive adsorption phenomena. This condition exists when a matrix contains adsorbable compounds in solution which are being selectively adsorbed, and desorbed. The data from the plant sampled by EPA and from another carbon adsorption unit for nitrobenzene at a plant which submitted data yield effluent limitations that are higher when compared to the other organic pollutant effluent limitations in this regulation. EPA believes that these are the limitations, based upon currently available data, that are generally achievable across the industry. Nonetheless, even this level of demonstrated treatment gives significant removals for these compounds. (Current discharge levels of 150,000 pounds annually for these two pollutants would be reduced to less than 10,000 pounds annually after BAT and PSES.) Therefore, limitations for 2,4-dinitrophenol and nitrobenzene are based upon the data available. Further work to identify additional technologies or use of carbon adsorption units in series for removal of these compounds will need to be conducted to determine whether removal of these compounds can be improved.

In-plant biological treatment is an effective and less costly alternative to carbon adsorption for control of certain toxic organic pollutants, especially those which are effectively absorbed into the sludge and are relatively biodegradable. In-plant biological treatment may require a longer detention time and certain species of acclimated biomass to be effective as compared to end-of-pipe biological treatment that is predominantly designed to treat BOD. EPA has determined that in-plant biological treatment with an acclimated biomass is as effective as activated carbon adsorption for removing priority pollutants such as polynuclear aromatics hydrocarbons, phthalate esters, acrylonitrile, phenol, and 2,4-dimethylphenol. EPA has thus selected this treatment for BAT control of these pollutants.

In-plant biological treatment is demonstrated at 33 plants in the OCPSF data base. Three plants' data were available for use in developing BAT limitations for the above pollutants based upon the performance of in-plant biological treatment. The performance data for in-plant biological treatment were taken from plants that treat major sources of polynuclear aromatic hydrocarbons, phthalate esters, acrylonitrile, phenol, and 2-4-dimethylphenol in dedicated biological treatment systems (i.e., with a minimum amount of dilution with other process wastewaters). The Agency has determined that these data are appropriate for use in characterizing the performance of in-plant biological treatment based upon the waste stream characteristics of the influent to the treatment systems. For the pollutants which have limits derived from this in-plant treatment technology data base, the limitations for the non-end-of-pipe biological treatment subcategory are more stringent than for the end-of-pipe biological treatment subcategory. Both biological treatment systems (end-of-pipe and the dedicated systems used for the in-plant biological treatment basis) remove these pollutants from the waste stream in most cases to levels at or below the analytical minimum level. However, available data indicate that the variability of the larger end-of-pipe biological systems in the data base is greater. This may be explained by the fact that the larger end-of-pipe systems receive commingled waste streams with a larger number of organic pollutants, and thus may be more susceptible to daily fluctuations in performance.

The Agency is also relying on the ability of end-of-pipe biological treatment to achieve some additional pollutant removal beyond carbon adsorption and in-plant biological treatment except in the case of 4,6-dinitro-o-cresol. For this pollutant only the in-plant activated carbon technology is used as a basis in both BAT subcategories. Thus, BAT limitations are lower for several pollutants regulated by the end-of-pipe biological treatment subcategory than are the limitations for the same pollutants regulated by the non-end-of-pipe biological treatment subcategory.

5. Pollutant Selection

In developing the OCPSF regulation, priority toxic pollutants of concern were identified through analytical programs to detect and quantify them in the raw wastewaters discharged from the product/process lines which were most important or most common in the industry. The initial work in determining the chemical constituents present in the process wastewaters began in 1977. EPA did not attempt to identify or quantify pollutants other than the priority toxic and conventional pollutants. The initial effort included screening process wastewaters for the presence of compounds on the priority pollutant list of compounds or classes of compounds covered by the NRDC Consent Decree.

Over the next several years data were gathered to further identify and quantify pollutants being discharged from specific processes and in combined discharges from facilities with multiple processes.

The final BAT OCPSF regulation for the end-of-pipe biological treatment subcategory sets limitations for the 63 toxic pollutants set forth in Subpart I of the regulation. Regulating such a large number of toxic pollutants is unprecedented in the effluent guidelines rulemaking program, reflecting the fact that many of the organic toxic pollutants are directly manufactured by OCPSF facilities as well as used as raw materials or generated as byproducts in industry processes. There are one metal priority pollutant (antimony) and three organic priority pollutants (2,4,6-trichlorophenol and 3,3'-dichlorobenzidine and dioxin) for which the Agency does not have sufficient data to regulate or exclude them in the end-of-pipe biological treatment subcategory.

The data base for the non-end-of-pipe biological treatment subcategory limitations (set forth in Subpart J) includes data from biological end-of-pipe subcategory plants if samples of the influent and effluent of the in-plant treatment were collected. Even with these data, there are eight priority pollutants for which the Agency does not have sufficient data to set limitations in the non-end-of-pipe biological treatment subcategory. For these 8 pollutants (2-chlorophenol, 2,4-dichlorophenol, 2,4-dinitrotoluene, and 2,6-dinitrotoluene and the four identified in the preceding paragraph), the Agency is not setting limits. Limitations for these pollutants are being reserved pending availability of additional information concerning their removal by in-plant physical/chemical treatment systems. Thus, the Subpart J limitations cover 59 toxic pollutants.

Readers should note that even though nonconventional pollutants and certain toxic pollutants are not directly limited by this regulation, they will nonetheless be indirectly controlled in many cases by the technologies used to comply with the promulgated limitations if they are present in treatable concentrations. While the degree of such indirect control will vary, in some cases unregulated pollutants will be substantially reduced by the operation of technologies installed to comply with limitations for related regulated pollutants.

In the final rule, EPA has decided that each discharger in a subcategory will be

subject to the effluent limitations for all pollutants regulated for that subcategory. Once a pollutant is regulated in the OCPSF regulation, it must also be limited in the NPDES permit issued to direct dischargers. See Sections 301 and 304 of the Act; see also 40 CFR 122.44(a). EPA recognizes that guidance on appropriate monitoring requirements for OCPSF plants would be useful, particularly to assure that monitoring will not be needlessly required for pollutants that are not likely to be discharged at a plant. EPA intends to publish guidance on OCPSF monitoring in the near future. This guidance will address the issues of compliance monitoring in general, of initially determining which pollutants should be subject only to infrequent monitoring based on a conclusion that they are unlikely to be discharged, and of determining the appropriate flow upon which to base mass permit requirements. This issue is addressed in more detail in Section X of this notice.

D. NSPS

EPA is promulgating new source performance standards that reflect use of the best available demonstrated technology for all new direct discharging sources. NSPS are established for conventional pollutants (BOD, TSS, and pH) on the basis of BPT model treatment technology. Priority pollutant limits are based on BAT model treatment technology. The standards are equivalent to the BPT and BAT limitations.

The Agency considered the same technology options as were discussed previously for BPT and BAT. BPT Options II and III were rejected because they are not adequately demonstrated in the OCPSF category. BAT Option I was rejected as the basis for priority pollutant limits for the same reason it was rejected for BAT, because it is not the best available demonstrated technology. BAT Option III was rejected because of its high cost and the relatively small incremental removal it would achieve, and because it is not well demonstrated as an end-of-pipe technology, either with or without end-of-pipe biological treatment technology.

The Agency is issuing conventional pollutant new source standards for the same seven subcategories for which BPT limits were established. These standards are equivalent to the limits established for BPT.

Priority pollutant new source performance standards are applied to new sources according to the same subcategorization scheme used in setting BAT limitations. The set of standards in the end-of-pipe biological treatment subcategory will apply to new sources that use biological treatment in order to comply with BOD and TSS standards. Standards are established for 63 priority pollutants. The subcategory for sources that do not use end-of-pipe biological treatment apply to new sources that will generate such low levels of BOD that they do not need end-of-pipe biological treatment or choose physical/chemical controls to comply with the BOD standard. These facilities will have priority pollutant standards for 59 priority pollutants which are based on the application of the in-plant control technologies with or without end-of-pipe physical/chemical treatment. In all cases the standards are equivalent to the limits established for BAT. The Agency has determined that NSPS will not cause a barrier to entry for any new source OCPSF plants.

E. PSES

PSES are applicable to indirect dischargers and are generally analogous to BAT limitations applicable to direct dischargers. The Agency is promulgating PSES for 47 priority pollutants which are determined to pass through POTWs. The standards apply to all existing indirect discharging OCPSF plants. EPA determines which pollutants to regulate in PSES on the basis of whether or not they pass through, interfere with, or are otherwise incompatible with the operation of POTWs (including interference with sludge practices).

1. Pass-Through Evaluation; Pollutants Selected for Regulation

The principal means by which the Agency evaluates pollutant pass through, and the general methodology used for this regulation, is to compare the pollutant percentage removed by well-operated POTWs with secondary treatment with the percentage removed by BAT technology.

As discussed previously in Sections IV and V of this notice, EPA proposed to determine that pass through occurs only if BAT technology removes at least five percent more than a well-operated POTW removes. In the July 17, 1985 notice EPA stated that it was considering modification of the pass through comparison to use a ten percent instead of a five percent removal differential. Finally, in the December 8, 1986 notice EPA announced that it would not use either a five or ten percent differential in making its pass through determinations. The Agency also stated that it was considering conducting the comparisons of removal using influent pollutant values from comparable influent concentration ranges for the industrial wastewater treatment system and the POTW.

EPA has decided not to use a five or ten percent removal differential for determining pollutants to regulate in PSES in the final rule. Some commenters have urged that due to analytical variability, data showing BAT performance slightly better than that of POTWs may not reflect a real difference in removal efficiency and may lead to unnecessary imposition of PSES requirements. Another commenter argued to the contrary that analytical variability, if any, can work in the opposite direction, i.e., data showing that POTWs perform as well or better than BAT may also be erroneous and lead to an inappropriate decision not to establish PSES for a pollutant. EPA has concluded that the most reasonable approach is to accept the available data as the best information on the relative percent removals achievable by industrial plants that employ BAT technology and by POTWs, and to perform BAT/POTW comparisons directly on the basis of differences in removal. Such an approach is unbiased in that it does not favor either over-regulation or under-regulation in determining which pollutants are regulated at PSES.

Other commenters urged EPA to use a five or ten percent differential to address the problem of low POTW effluent concentrations which may mask the full extent of POTW treatment. EPA noted in the proposal that in addition to analytical variability, a differential might be used because POTW influent concentrations are typically much lower than industry treatment system influent concentrations and many POTW effluent concentrations are below the analytical threshold level. When below this threshold, the effluent values are reported as being at the analytical threshold or "detection limit" (more precisely, the "minimum level" established in 40 CFR Part 136), which overestimates the effluent concentration and underestimates the percent removed. It is not possible in such situations to determine to what level below the detection limit the POTWs are actually treating the pollutants and thus it is not possible to determine the extent to which POTW removals are underestimated and to determine the effect, if any, on the outcome of a pass-through comparison. Thus, it is uncertain whether a compensating differential would be appropriate. Moreover, a five or ten percent differential could result in a determination of no pass-through where pass-through was occurring. It should be

noted that to allow even a few of the pollutants to go unregulated based upon the five percent differential may be significant in terms of the number of pounds of toxic pollutants discharged to receiving waters. Finally, the problem discussed by the commenters will be greatly mitigated by changes in the data editing criteria.

EPA has modified the criteria under which the data for conducting the pass-through comparison test were selected. In previous analyses, EPA used individual daily pairs and plant average pairs of influent and effluent data when influent concentrations exceeded 20 μg/l. For pollutants with low influent concentrations, i.e., not much higher than 20 μg/l, the effluent concentrations were consistently at or below the method detection limit (or, more precisely, the "minimum level" established in 40 CFR Part 136) and thus could not be quantified by using the applicable method. The conservative approach of adopting the "detection limit" or the analytical threshold as the effluent value for such measurements has the effect of underestimating the POTW's percent removal, perhaps greatly underestimating the removal. In many cases, in fact, both POTW and BAT treatment systems with relatively low influent concentrations yielded effluent measurements below detection, and the resulting percent removals were not true measures of treatment effectiveness, but rather were functions of influent concentrations. The percent removal comparison thus had the effect of determining pass through in some cases solely because the POTW had a lower pollutant influent concentration, rather than basing the determination on demonstrated differences in treatability. The POTW might be achieving as high a percent removal as the BAT level technology, but there was no basis for determining whether this was so or not.

A second concern with the 20 μg/l influent criterion was its inconsistency with the criteria used to select industrial data for assessing treatability and calculating BAT effluent limitations. One of EPA's criteria for selecting data to set BAT effluent limitations for direct dischargers is that the influent data for that plant must exceed ten times the pollutant's analytical threshold. (See Section X comment and response number 7 for a discussion of analytical thresholds.) When an influent concentration is below this level, effluent concentrations below the pollutant's analytical threshold often may be achieved using less than BAT-level treatment. The editing criterion helps to insure that BAT effluent limitations generally reflect the technical capability of BAT level treatment rather than low influent concentrations.

Consistent with the BAT data editing approach and the available POTW pollutant data above 100 ppb or "ten times the detection limit", EPA has also used the "ten times detection limit" criterion for pollutants in BAT-level industrial and POTW influents for purposes of selecting the data used to perform pass through comparisons for the final regulation for all of the pollutants for which such data are available. For most (24) of the pollutants which pass through, EPA has used data from the POTW data base with an influent concentration average greater than ten times the pollutant's detection limit. For 16 pollutants for which adequate POTW data are unavailable using the "ten times" approach, the pass through analysis uses data which remain after applying a 20 ppb editing criterion because no influent data above 100 ppb or "ten times the detection limit" exist for these pollutants.

EPA has also modified its approach to calculating plants' percent removals for purposes of comparing BAT-level industrial plant and POTW removals. EPA's earlier approach was to calculate a facility's percent removals by calculating daily removal estimates based on influent and effluent measurements taken on the same day, and then averaging these removals. We have concluded that this method of using daily removal estimates was inappropriate. First, many OCPSF biological systems have retention times exceeding one day's duration. Thus, comparison of influent and effluent samples taken on the same day is not a good indication of removal. Second, even if the retention time is shorter than a full day, any sampled influent, after mixture and dispersal within the biological system, cannot be traced to a particular sample leaving the system. In fact, in the typical biological treatment system, a portion of the biological solids are recirculated within the system, which further complicates the evaluation of removals based on comparison of daily influent and effluent samples. Third, due to the low concentrations frequently found in both OCPSF and POTW biological systems, small daily changes in pollutant concentrations result in larger changes in removal efficiency estimates; these changes are misleading in that they do not necessarily reflect significant variation in the system's operation. Therefore, EPA has modified its approach to calculate a plant's removal efficiency using the arithmetic averages of all influent samples and effluent samples.

EPA recognizes that it has used daily removal estimates in pass-through analyses for other industries. Since the primary pollutants of concern in these other industries (usually metals) were generally removed much more efficiently by BAT-level technology than by POTWs, the mode of analysis was not crucial to the determination of pass through. For the OCPSF industry, the BAT and POTW removal efficiencies for particular pollutants are frequently rather close to one another, and EPA has considered its approach more carefully. This consideration has led to the change in approach described above for this industry. The approach of using influent and effluent averages in removal estimates rather than averaging daily removal estimates is in fact consistent with EPA's approach for establishing percent removal requirements in certain other CWA regulations. (See 40 CFR Part 439 and 40 CFR 133.102).

Moreover, EPA disagrees with the commenter who argues that *NRDC* vs. *EPA*, 790 F.2d 289 (3rd Cir. 1986), compels the use of daily removal estimates in performing generalized BAT–POTW comparisons for purposes of deciding whether pollutants generally pass through so as to require PSES on a national basis. EPA believes that Congress did not require EPA to use a technically flawed comparison of BAT and POTW performance.

Some commenters argued that EPA should not find pass through and should not promulgate PSES for a pollutant when POTW removals are very high (e.g., 85 percent or higher), or when POTWs are specifically designed to treat industrial wastewaters efficiently. EPA does not accept these arguments. EPA is using the same criterion for pass-through in the OCPSF industry that it has used for many years to set PSES for other industries: whether POTW treatment efficiency is as great as BAT level industrial treatment efficiency. If BAT level treatment in industrial plants generally is more effective than POTW removal, a pollutant will be regulated in PSES. Section 307(b) of the Act provides that a particular POTW's removal of pollutants may be considered and that limitations for particular industrial users of POTWs may be revised if the POTW can demonstrate a consistent removal of pollutants in question and meet other requirements relating to sludge quality. The removal credits may be granted consistent with the removal efficiencies of individual POTWs on a case-by-case

basis. See *Cerro Copper Products Co. and Village of Sauget* v. *Ruckelshaus*, 762 F.2d 1060 (7th Cir. 1985). Moreover, EPA notes that no commenter provided adequate information on any particular POTW's removal of all the toxic pollutants found by EPA to generally pass through to form a basis for separate consideration (e.g., by subcategorization) of any POTW.

Another area in which the final regulation differs from the proposal concerns those pollutants for which EPA lacks sufficient field sampling data to perform the pass-through comparison. Despite the fact that EPA sampled 50 POTWs in addition to conducting the many OCPSF industry sampling efforts discussed in Section IV of this preamble, there are 3 pollutants that are regulated at BAT for which EPA lacks sufficient POTW treatment data to perform a pass-through analysis. These are in addition to the 8 pollutants discussed previously under BAT for which EPA lacks sufficient OCPSF industry treatment data to establish BAT limits. Another 3 pollutants listed in Appendix B, for which there are insufficient POTW treatment data, are excluded from regulation since industrial treatment data indicates that they are sufficiently controlled by existing industrial treatment technologies.

In the 1983 proposal, EPA adopted the approach of assuming pass through in the absence of data to the contrary. Some industrial commenters objected to this approach, arguing that section 307(b) authorizes EPA to promulgate pretreatment standards only for pollutants that pass through or interfere with the POTW, and that EPA is thus required to affirmatively find pass through or interference as a precondition to promulgating pretreatment standards. An environmental group argued to the contrary that EPA has an obligation to require pretreatment if there may be pass through or interference and that in the absence of adequate data, pass through must be assumed.

In subsequent notices, EPA requested comment on an alternative approach of using pilot and bench scale data in the absence of full-scale data to determine POTW removal rates, and to use those data for the comparative analysis. EPA made the alternative pilot and bench-scale data available for comment. After considering public comments on this approach and on the data to be used, EPA has decided in the final rule to use data based upon pilot and bench scale performance when adequate full scale data are lacking. The alternative data were used for 7 pollutants, and 4 of these were found to pass through.

EPA disagrees with the comment that EPA must assume pass through in the absence of full scale data to the contrary. Section 307(b) of the Act requires EPA to promulgate pretreatment standards "for those pollutants which are determined not to be susceptible to treatment by (the POTW) or which would interfere with the operation of such treatment works." Thus at least one reasonable interpretation of the statute is that EPA must make a determination of pass through or interference prior to promulgating pretreatment standards, rather than to assume pass through. In any event, the statute does not prohibit the use of pilot/bench-scale data when they are the best available data. Certainly, EPA has a preference for full-scale data and has expended considerable resources to obtain such data. However, to address remaining field data gaps, EPA believes that it is appropriate to use the best alternative information available.

Some industry commenters objected that the alternative data are of lesser quality than the full-scale data and have a larger range of potential error than the full-scale data. EPA acknowledges that this may be so; that is why EPA has relied upon full-scale data whenever available. However, EPA believes that the pilot/bench-scale data used here are of good technical quality and sufficient for use in the comparative analysis and may thus be used in the absence of adequate full scale data. Further, EPA does not agree that the use of a five or ten percent differential to compare BAT and POTW removal efficiencies is compelled when using pilot/bench-scale data. As discussed previously, any analytical inaccuracy in the data, regardless of the type of data used, can be in either direction.

The final pass through issue concerns three volatile pollutants (hexachlorobenzene, hexachloroethane, and hexachlorobutadiene) which are regulated at BAT based on technology and data transfer from other volatile pollutants that are treated by steam stripping technology. These pollutants are also regarded as passing through the POTW due to a determination of potential volatilization. Their "removal" from POTW wastewater includes some emissions of the pollutants to air rather than removal through treatment. This volatilization occurs in POTW sewer systems, equalization and other tanks, and secondary treatment systems. Therefore, EPA has established PSES for these pollutants.

EPA's decision is supported by the Conference Report which accompanied the Water Quality Act of 1987. The report states, with respect to conducting removal credit determinations:

"The purpose of removal credits under section 307(b)(1) is to allow reduced pretreatment requirements on the basis of treatment consistently achieved by the particular publicly owned treatment works. Dispersion into the air of toxic volatile organic chemicals does not constitute treatment of these pollutants. Consequently, removal credits cannot be issued for such pollutants on the basis of their emission from treatment works."

The basis for removal credits is analogous in some aspects to the basis for the pass through analysis. Essential to both is the calculation of POTW percent removal, the former on a local level and the latter on a national level. It was Congress' clear intent that POTW air emissions not be considered "removal" for purposes of relaxing pretreatment standards through removal credits, which strongly implies that such emissions should not be considered as POTW "removal" in calculating POTW removal efficiencies in conducting pass-through comparisons. (For the reasons discussed in Section X of this preamble, EPA is not establishing in-plant PSES for volatiles; thus, while steam stripping is the technology basis for controlling volatile pollutants, and the costs of steam stripping are taken into account in the regulatory decisions, some air emissions by indirect dischargers may occur before discharge to POTWs. Nevertheless, EPA believes that many plants will use steam stripping technology to comply with PSES for volatile pollutants and that this will result in substantial reductions in volatile emissions from indirect discharging OCPSF plants. PSES is thus an important step to controlling these emissions.)

EPA also considered regulating volatile pollutants on the basis of interference with POTWs in that they have the potential to threaten the health and safety of POTW workers. While there is some information in the record to support this basis, it is limited. Therefore, EPA is not relying on this basis, but notes that the information tends to support the decision made on grounds of pass through.

Similarly, EPA is not relying on interference with POTW sludge use and disposal options as a basis for determining to set pretreatment standards for particular pollutants. First, EPA's current sludge criteria are very limited. Second, POTWs' choices of

disposal options for sludge are site-specific. It was thus not feasible at this time to base nationally applicable selection of pollutants for PSES regulation on current impact of discharges of specific pollutants to POTWs by OCPSF facilities on POTWs' sludge disposal practices.

2. Technology Selection

Indirect dischargers generate wastewaters with the same pollutant characteristics as direct discharging plants; therefore the same technology options as were discussed previously for BAT are appropriate for consideration as the basis for PSES. The Agency is promulgating PSES for all indirect dischargers on the same technology basis as that adopted for the BAT non-end-of-pipe biological treatment subcategory. EPA is not including end-of-pipe biological treatment (i.e., biological treatment after application of in-plant treatment and before discharge to the POTW) in the final PSES model technology based on the following considerations. As a matter of treatment theory, end-of-pipe biological pretreatment may be largely redundant to the biological treatment provided by the POTW. The primary function of biological treatment is to reduce BOD loadings, whether at the OCPSF plant or at the POTW. Of course, an OCPSF system may be more acclimated to the types of wastes discharged by the OCPSF plant than is the POTW. However, this distinction is of limited importance once the OCPSF wastewaters are pretreated by BAT-level in-plant physical/chemical treatment.

The data indicate that biological pretreatment following in-plant treatment comprised in the model technology for the BAT and PSES regulation results in very modest incremental removals of priority toxic pollutants. This can be seen by comparing the BAT limitations for plants with and without end-of-pipe biological treatment. Since both sets of limitations are quite low for virtually all pollutants, the total incremental pounds of toxic pollutants removed by adding end-of-pipe biological treatment to in-plant treatment for all indirect dischargers would be less than 13,000 pounds. (The actual number of pounds removed would be less because, among other things, biological treatment could not be effectively used by a number of indirect dischargers with low BOD. They would thus in any event be subject only to limitations equivalent to BAT limits without end-of-pipe biological treatment.) The cost of achieving these removals would be $20.8 million annually. Moreover, this option would result in the closure of two additional plants, with 371 incremental job losses. Based upon a combination of these factors (relatively small incremental removals, high cost, economic impacts, and redundancy of treatment equipment), EPA is not promulgating PSES based upon end-of-pipe biological treatment.

In addition, while information is limited, EPA believes that at least some indirect dischargers located in urban areas may lack sufficient land to install end-of-pipe treatment. (Indirect dischargers tend to have more limited access to land than direct dischargers, although this is not always the case.)

Although EPA has rejected the option of adding end-of-pipe biological treatment, it should be recognized that EPA is using in-plant biological treatment as part of its model technology for the treatment of certain nonvolatile pollutants in particular waste streams. Specifically, for such pollutants, EPA has in some cases used in-plant biological treatment systems as an alternative to in-plant activated carbon adsorption for some absorbable and biodegradable organic pollutants. Thus EPA has in fact used biological treatment as part of PSES model treatment technology where appropriate.

3. Economic Impact

EPA has determined that the PSES promulgated today are economically achievable for OCPSF indirect dischargers as a whole. Moreover, EPA has decided not to exempt any sector of small plants from PSES. Consequently, all indirect dischargers must comply with PSES. For a detailed description of EPA's economic impact methodology and analysis, and small plant impact analysis, see Section VIII of this preamble.

The projected capital and annualized costs are $291.5 and $204.3 million respectively, with an estimated closure rate for all indirect discharging plants of 14 percent (52 product lines and plants out of the 362 plants for which sufficient information exists for costing). Projected job losses associated with these projected closures total 2,190. An additional 17 percent of the indirect plants will incur significant profitability reduction or cost-to-sales impacts. While these impacts are significant, the Agency does not believe they constitute economic unachievability for the indirect discharging segment of the OCPSF industry. Eighty-six percent of the indirect discharger segment of the industry will not suffer either plant or product line closures, and 69 percent of the indirect discharging plants will not be significantly impacted under any measure. A very large number of pounds of toxic pollutants (22.5 million pounds) will be removed by PSES from discharges to POTWs. EPA has therefore concluded that promulgation of PSES as described above is warranted for OCPSF indirect dischargers.

EPA considered exempting certain small plants from PSES, focusing particularly on the sector of plants producing less than or equal to five million pounds of products annually. These plants are projected to incur a closure rate of 26 percent (27 out of 105 plants) and other significant impacts of about 36 percent. Eight hundred twenty-three jobs in this sector would be lost due to the projected closures.

The closure rate of 26 percent for these small plants is higher than the 14 percent rate projected for indirect dischargers overall; however, this impact is not as severely disproportionate as was the impact exhibited by small direct discharging plants compared to all direct dischargers. Although the significant impacts other than closure show a clearer disproportion for the small indirect dischargers, they too are not so great as to clearly define this class of small plants as different in kind from the rest of the indirect dischargers. Indeed, in particular, plants that produce less than five million pounds annually do not suffer impacts at a significantly higher rate than plants that produce less than 10 or 15 million pounds annually.

Also, plants producing five million pounds or less of OCPSF product currently discharge about 2.54 million pounds of toxic pollutants to POTWs annually. Compliance with PSES by these plants would result in toxic pollutant removals of 2.53 million pounds annually. (For plants that produce less than 10 or 15 million pounds, compliance with PSES would result in pollutant removals of 4.87 million or 5.42 million pounds, respectively.) Although POTWs may remove a substantial portion of the pollutants discharged into receiving waters, the discharges that could be avoided by compliance with PSES would still be significant (about 1.0, 1.4, or 1.6 million pounds for production cutoff levels at 5, 10, or 15 million pounds produced, respectively).

The Agency considered a potential exemption for the smaller class of indirect discharging plants with annual production equal to or less than one million pounds. This group of plants is projected to experience a closure rate of 33 percent (14 plant and product line

closures) and a total significant impact rate of 81 percent. The projected employment loss is 161. Although the total significant impact percentage is very high, the disproportion of closures between this group of small indirect dischargers and all indirect dischargers (33 versus 14 percent) is considerably less than the disproportion in the case of small direct dischargers given less stringent BAT limitations and all direct dischargers (47 versus 7 percent). Moreover, the exemption of these plants would result in the failure to remove a very large amount of toxic pollutants—at least 315 thousand pounds and perhaps as many as 805 thousand pounds—from indirect discharges. Accordingly, EPA has decided not to establish a PSES exemption for this class of plants.

EPA considered a variety of less stringent technology options to determine whether it would be possible to afford substantial relief to some indirect dischargers while at the same time obtaining significant levels of pollutant reductions. For example, EPA considered the options of regulating only metals, or only metals and cyanide, and of reducing monitoring frequency. None of these options reduced projected closures or other impacts substantially. Thus the only real alternative to imposing full PSES requirements is a total exemption.

EPA believes that an exemption for small indirect dischargers is not compelled by the fact that a segment of small direct dischargers have received some regulatory relief in the form of a less stringent level of regulation. Small direct dischargers have since the mid-1970s been regulated by NPDES permits and will continue to be subject to BPT limitations, thereby assuring that most toxic pollutants will be removed from their wastewaters. In contrast, most indirect dischargers have to this day failed to install any pretreatment, thereby resulting in 22.6 million pounds of toxic pollutants being discharged into POTWs by all indirect dischargers annually; approximately 2.5 million pounds (11 percent) are discharged to POTWs by small indirect dischargers producing five million pounds or less of OCPSF products.

EPA has thus determined not to exempt small plants from PSES or to establish less stringent PSES for them. While the impacts on small plants are significant, they are in the Agency's opinion neither so high nor so disproportionate as to justify an exemption, especially in light of the continued discharge of substantial amounts of toxic pollutants that an exemption would permit.

4. PSES Compliance Deadline

EPA has established a three-year deadline for compliance with PSES. Design and construction of systems adequate for compliance with PSES will be a substantial undertaking for many indirect OCPSF dischargers, due to the technical complexity of the tasks of characterizing various plant wastewaters, assessing various treatment combinations, and installing different treatment units for particular product/processes and particular pollutants. Thus, EPA believes that a full three-year compliance period is appropriate.

F. PSNS

Just as PSES and BAT are to be based on comparable treatment, PSNS is generally analogous to NSPS. EPA is not including end-of-pipe biological treatment in its PSNS model treatment technology, for the same reasons discussed above with respect to PSES. The Agency is promulgating PSNS on the same technology basis as PSES and issuing standards for 47 priority pollutants that have been determined to pass through or otherwise interfere with the operation of POTWs. The Agency has determined that PSNS will not cause a barrier to entry for new source OCPSF plants.

VII. Pollutants Not Regulated

Paragraph 8 of the modified Settlement Agreement, approved by the District Court for the District of Columbia on March 9, 1979 (12 ERC 1833) contains provisions authorizing the exclusion from regulation, in certain instances, of priority pollutants and industry subcategories.

Paragraph 8(a)(iii) of the modified Settlement Agreement allows the Administrator to exclude from regulation priority pollutants not detected by Section 304(h) analytical methods or other state-of-the-art methods. The 28 priority pollutants not detected in the OCPSF plant or product/process effluents, and excluded from this regulation for this reason are listed in Appendix C of this notice. One additional priority pollutant (dioxin) was not detected at levels of detection being used at the time of the sampling work. This level of detection was 3×10^{-7} grams/liter which is five orders of magnitude higher than the detection limits of the analytical method presently being used to study dioxin (TCDD) in industrial wastewater discharges. Thus, dioxin is being reserved rather than excluded from regulation.

Paragraph 8(a)(iii) also allows exclusion of pollutants that are: (1) Detected in the effluent from a small number of sources and uniquely related to those sources; (2) present in only trace amounts not causing nor likely to cause toxic effects; (3) sufficiently controlled by existing technologies upon which are based other effluent limitations guidelines and standards; or (4) present in amounts too small to be effectively controlled by technologies known to the Administrator. Ninety-seven different priority pollutants were found in OCPSF plants product/process wastewater discharges during the numerous sampling programs. Twenty of these pollutants were found at treatable levels only in a small number of instances. In those instances, these levels were attributable to manufacturing activities that are uniquely related to the plants sampled. (Another 8 priority pollutants were found only in trace amounts which neither cause nor are likely to cause toxic effects.) Another 3 priority pollutants were found to be sufficiently controlled by existing technologies (in addition to the 3 listed in Appendix B) for PSES and PSNS only. These 31 pollutants are listed in Appendix D to this notice along with the particular reason for excluding them from regulation.

Paragraph 8(b) of the Settlement Agreement authorizes the Administrator to exclude from nationally applicable pretreatment standards a subcategory or category if (i) 95 percent or more of all point sources in the subcategory introduce into POTWs only pollutants that are susceptible to treatment by the POTW and which do not interfere with, do not pass through, or are not otherwise incompatible with such treatment work, or (ii) the toxicity and amount of incompatible pollutants (taken together) introduced by such point sources into POTWs is so insignificant as not to justify developing a national pretreatment regulation. Since indirect dischargers generate wastewaters with the same pollutant characteristics as direct discharge plants, EPA has reviewed available data from direct and indirect dischargers and is excluding the same 59 priority pollutants listed in Appendices C and D from nationally applicable pretreatment standards. Appendix E lists six additional pollutants that are regulated at BAT but not regulated at PSES because they do not pass-through or interfere with POTWs.

As noted in Section VI of this preamble, certain specific OCPSF process wastewaters contain certain

metals in complexed forms that are unique to those sources and for which appropriate treatment must be determined on a plant-specific basis. The metals and waste streams involved are listed in Appendix B to the OCPSF regulations and are excluded from regulation by § 414.11(f), pursuant to paragraph 8(a)(iii) of the Settlement Agreement.

VIII. Economic Considerations

A. Cost and Economic Impact

EPA's economic impact assessment is set forth in the report entitled "Economic Impact Analysis of Effluent Limitations and Standards for the Organic Chemicals, Plastics, and Synthetic Fibers Industry." This report presents the investment and annualized compliance costs for the plants covered by the OCPSF regulation. The report also estimates the probable economic effect of compliance costs in terms of plant and product line closures, employment changes, profitability impacts, and regulatory costs as a percent of sales. Local community impacts and international trade effects are also presented. A separate Regulatory Flexibility Analysis detailing the small business impacts has been conducted and is included in the Economic Impact Analysis for this industry.

EPA has identified 654 facilities that will incur costs as a result of this regulation. The costs of implementing the regulations are estimated on a plant-by-plant basis for all of the facilities that discharge wastewater. Of the facilities, 289 are direct dischargers and 365 are indirect dischargers. Total investment costs for BPT, BAT, and PSES are projected to be $855.4 million with annualized costs of $505.1 million, including depreciation and interest. These costs are in 1986 dollars and are based on the determination that plants will build on existing treatment. These costs reflect setting of BAT equal to BPT for the small production plants.

The number of plants costed is greater than the number of plants in the economic impact analysis because the production and shipment information needed for the analysis was not provided by a few companies despite follow-up requests after the 1983 308 survey questionnaires were submitted. For BPT, 214 plants are costed but the impact analysis includes only 209 of these facilities. For BAT, 289 plants are costed; the impact analysis covers 283. For PSES, 365 plants are costed; the impact analysis covers 362.

The Agency recognizes that its data base, which represents conditions in 1982, may not exactly reflect current conditions in the industry today and that plants may have changed product/process lines, or even gone out of business since the data were collected. Despite the fact that the technical and economic data are several years old and thus inevitably do not precisely match the present status of particular plants, EPA believes that the data provide a sound and reasonable basis for assessing the overall ability of the industry to achieve compliance with the regulations. The purpose of the impact analysis is to characterize the impact of these regulations for the industry as a whole and for major groupings within the industry. EPA does not believe that changes within the industry during the past few years significantly modify the technical, cost or economic conclusions underlying the regulation. However, where appropriate, the cost and impact analyses have considered recent trends affecting the industry.

B. Economic Methodology

The Economic Impact Analysis (EIA) uses three primary impact measures: closure, profitability and cost-to-sales. The values are estimated for almost all OCPSF plants (see above) using a combination of section 308 survey data and secondary sources, such as Dun & Bradstreet financial records, plus plant specific compliance costs developed by the Agency. The closure analysis uses a net present value approach which compares cash flow to salvage value. A closure is projected if the salvage value exceeds the present value of cash flow. Plant closure is projected when a plant's OCPSF employment is greater than 80 percent of total plant employment; product line closure is projected when a plant's OCPSF employment is less than or equal to 80 percent of plant employment.

The profitability impact measure indicates the extent to which OCPSF compliance costs affect plant profitability. A significant impact is counted if the compliance costs reduce the plant profits to the lowest decile value for all plants in a particular three digit SIC code.

The cost-to-sales impact measure compares compliance costs to plant sales, with a significant impact counted if the ratio exceeds five percent.

C. Significant Changes in the Economic Impact Methodology

There have been a number of substantive revisions to the economic analysis methodology and data base as a result of comments received on the December 1986 notice of availability. Key comments and methodological changes are summarized below.

Commenters stated that EPA used an inadequate financial data base for its economic analysis for facilities in the size group exceeding $10 million in sales. Based on the evaluation of this set of comments, the financial data base used to calculate discounted cash flow and liquidation values for OCPSF plants in the impact analysis was changed from FIN/STAT to Dun & Bradstreet. The previously used FIN/STAT data base, which covered the period 1976–1981, itself consisted of Dun & Bradstreet data and was developed by the Small Business Administration. The change to Dun & Bradstreet data both increased the total size of the entire data base used (from 61 plants to 190 plants) and increased the number of plants in the "greater than $10 million sales" category from 4 to 73.

Another set of comments stated that EPA used outdated financial data. By using the Dun & Bradstreet data, EPA has updated its financial information to cover the time period 1981 to 1986. (The FIN/STAT data covered the period 1976–1981).

Another set of comments stated that EPA's use of a single financial ratio for plants within a size grouping does not take into account plant-to-plant variability. EPA adopted an improved method for estimating cash flow and salvage value that takes into account plant-to-plant variability. Instead of using median financial ratios to relate these quantities to sales for arbitrary size groups within the industry, the Agency developed regression equations to relate each quantity to plant specific sales. The regression estimates use the full range of the data (now expanded to better characterize the full range of sales in the industry) and do not result in arbitrary gaps or jumps introduced by the previous method. The overall effect of the change in methodology has been to provide a better description of the consequences of the Agency's regulation.

One commenter stated that EPA's intended use of a profitability measure which identifies a significant impact as occurring if plant profitability falls by 25 percent is inappropriate because it does not consider the precompliance profit context. The definition of what constitutes a significant profit impact was changed from a profit decrease of 25 percent or more to any case where the compliance costs reduce plant profits to the lowest decile (10 percent) in a particular three digit SIC code. Since all plants in EPA's OCPSF economic data base are above the

lowest SIC decile prior to incurring compliance costs, this measure effectively identifies significant reductions in precompliance profitability resulting from the regulation.

Another set of comments stated EPA must revise its analysis to reflect changes in the new tax code enacted in 1986. The tax rates used in the final analysis reflect the new tax code enacted in 1986. The major changes reflect deletion of the investment tax credit and the reduction of the impact of compliance costs as an expense item.

D. Baseline Analysis

The baseline economic analysis evaluates each plant's financial operating condition prior to incurring compliance costs for this regulation. This analysis also takes into account certain estimated costs associated with other significant regulations which are not yet promulgated or provided for in annual operating expenses. Baseline costs include RCRA costs for relining surface impoundments that treat, store, and dispose of hazardous wastes. An estimated 41 plants are projected to incur RCRA costs in the baseline. Capital and annualized RCRA costs for these facilities total $25.2 and $8.8 million, respectively (1986 dollars). Other RCRA costs as well as Superfund requirements are assumed to be incorporated in annual operating costs because the financial data used reflect a time period (from 1981 to 1986) after these requirements became effective.

There are no significant economic impacts projected as a result of the baseline costs; therefore, all plants analyzed in the baseline are included in subsequent analyses. Had closures been projected to occur they would have reduced projected impacts from these regulations. The baseline RCRA costs are carried forward into subsequent analyses and are included in the preregulatory costs of a plant.

E. Economic Results

BPT

The capital and annualized costs of complying with the BPT limitations are $215.8 and $76.6 million, respectively, and affect 214 plants. No plant or product line closures are projected; 8 of the 209 direct discharging plants analyzed experience significant profitability or cost-to-sales impacts. Seventy-eight plants are expected not to incur incremental BPT costs or impacts. No job losses are expected to occur as a result of BPT.

BAT

The incremental capital and annualized costs of complying with BAT limitations are $348.1 and $224.2 million, respectively. Estimated plant and product line closures total 11, representing four percent of the 283 plants analyzed. Significant profitability and cost-to-sales impacts occur at an additional 11 plants resulting in a total of 22 significantly impacted plants or 8 percent of the direct discharging plants. Job losses totalling 1,197 are expected to occur as a result of the plant and product line closures. This employment loss represents 0.7 percent of OCPSF total employment. (These costs and impact results reflect the setting of BAT equal to BPT for plants producing five million pounds or less per year of production.)

PSES

For PSES, the total capital and annualized costs of compliance are $291.5 and $204.3 million, respectively. Estimated plant and product line closures total 52, representing 14.4 percent of the 362 plants analyzed. Significant profitability and cost-to-sales impacts are estimated to occur at an additional 63 plants resulting in a total significantly impacted universe of 115 or 31.8 percent of the indirect discharging plants. Job losses totalling 2,190 are expected to occur as a result of the plant and product line closures. This employment loss represents 1.2 percent of the OCPSF total employment.

PSNS and NSPS

For the control of toxic pollutants, the treatment options selected for direct and indirect discharging new sources are identical to those selected for existing sources except that no exemption will be provided for new direct discharging small plants.

For the control of conventional pollutants in NSPS, EPA has adopted the same technology bases as for BPT.

Planned new OCPSF plant construction in the U.S. over the time period 1986 to 1991 is estimated to be only 4.5 percent of total planned OCPSF construction worldwide. Most of this new construction will be in the form of renovation work or upgrading of existing product lines rather than construction of completely new plants. When new construction does occur, the capital costs of the regulation are estimated to represent between two and four percent of the costs of constructing a new plant. These cost increases are low and are not expected to be a barrier to entry.

F. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* Pub. L. 96–354) requires EPA to assess whether its regulations create a disproportionate effect on small businesses. In assessing the disproportionate effect for purposes of complying with the Regulatory Flexibility Act, EPA had to decide whether its analysis of impacts on small businesses would address all small plants or only those small plants operated by small firms. This issue arose because the OCPSF analysis is a plant specific analysis. In previous economic analyses the impacts were modeled, and the Agency did not have the ability to differentiate its assessment of disproportionate effect by ownership. The Agency had the ability to consider that distinction in developing this guideline. If the Agency did not take ownership into account in its definition of small businesses and treats all small plants as small businesses, the Agency would be consistent with previous approaches. If, however, a distinction is made between small single plant operations and small plants owned by large corporate entities, the Agency would be inconsistent with previous definitions of small businesses—definitions which were developed, necessarily, in the absence of knowledge of ownership.

The Agency presented this issue in the December 1986 **Federal Register** notice and solicited comment on whether small OCPSF plants owned by large companies are effectively run as small businesses—i.e., do companies tend to view individual plants as profit centers and decide on their continued operation based mainly on the plant's financial performance, or are plants more typically operated in the context of a firm's overall plan to satisfy product markets? The implication is that if small plants are run independently as profit centers, they should be included in the small business analysis along with single plant small businesses when the disproportionate effect of the regulation is assessed.

The Agency conducted an extensive analysis to address the issue of whether large companies could be anticipated, for a variety of reasons, to continue to operate a facility projected to be a closure in our Economic Impact Analysis. This could occur because firms which are vertically integrated require the output of all the plants in the corporate organization to fill its product lines. Among other reasons for maintaining unprofitable or marginal plants are the desire to remain in a

given product or geographic market, or the belief that the plant's product(s) will ultimately prove worth retaining.

Industry comments supported the notion that small plants are generally treated as independent financial units and that parent companies will usually not keep small plants open, especially in the long run, if they are unprofitable. Our analysis of the industry shows that small plants tend to experience about the same level of impacts, regardless of ownership, in the long run. This result occurs despite the fact that in our closure analysis the weighted average cost of capital assigned to plants owned by medium and large sized firms was from one to two percentage points lower than the weighted average cost of capital assigned to small single plant firms.

To understand better the incidence of impacts in relation to ownership, impacts on small plants (both direct and indirect discharging plants) were evaluated based both on plant production alone and on plant production in combination with aggregate company sales. The former approach captures impacts at small plants without regard to ownership. The latter approach captures impacts occurring at small plants owned by small firms. We evaluated all plants with production levels of <5 million pounds, <10 million pounds, and <15 million pounds (annual OCPSF production) irrespective of size of the firm owning the plant. We also evaluated production and parent company sales combinations of <5 million pounds and <20 million of sales and <10 million pounds and <$20 million of sales.

1. Results of Small Plant Analysis for Direct Dischargers

Under BAT, the analysis shows that, in the absence of the reduced requirements for plants producing five million pounds per year or less of product, provided for in the final rule, the impact of the regulation would be fairly similar with respect to plants with annual production less than or equal to 5 million pounds and plants with both annual production less than or equal to 5 million pounds and parent company sales less than $20 million annually. At these plants, significant impacts would occur at between 60 and 80 percent of the plants. This level of impact would be much greater than that experienced by direct discharging plants overall. The overall significant impact level for direct dischargers is 13 percent before special provision for plants with annual production less than or equal to five million pounds.

2. Results of Small Plant Analysis for Indirect Dischargers

Under PSES, the impact of the regulation is also very similar for plants with annual production less than or equal to five million pounds and plants with annual production less than or equal to five million pounds and parent company sales less than $20 million annually. Impacts occur at approximately 62 percent of the plants; impacts for all indirect dischargers are approximately 31 percent.

A complete description of the small plant analysis and its results is presented in the Economic Impact Analysis.

G. Cost Effectiveness Analysis

EPA has conducted an analysis of the incremental cost per pound equivalent for removal of the pollutants controlled by the OCPSF regulation. A pound-equivalent is calculated by multiplying the number of pounds of a pollutant by the toxic weighting factor for that pollutant. The weighting factors give relatively more weight to more highly toxic pollutants. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if less toxic pollutants are removed.

The cost effectiveness methodology used in this analysis, unlike that for previous effluent guidelines, takes into account reduction of air emissions of volatile organic chemicals expected to result from use of the model technology (specifically steam stripping) upon which the water discharge limitations and standards are based. Reductions in air emissions of these pollutants is counted in computing the cost-effectiveness of the regulation since the treatment technologies costed for the regulation reduce these emissions. (To the extent that some plants use less expensive treatment than steam stripping that results in greater-than-projected air emissions, the predicted reduction of air emissions is an overestimate. Correspondingly, the predicted costs and economic impacts would be overestimated as well.) The toxic weighting factors used take into account the toxicity and carcinogenicity of these chemicals and their effects on humans through inhalation.

The cost effectiveness values for the selected BAT and PSES options are $5 and $34 per pound-equivalent, respectively.

H. SBA Loans

The Agency continues to encourage small concerns to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) the Pollution Control Finance Guarantee Program, (2) the Section 503 Program and (3) the Regular Business Loan Program (Section 7(a)). Eligibility for SBA programs varies by industry.

For further information and specifics on the Pollution Control Finance Guarantee Program, contact the U.S. Small Business Administration, Office of Pollution Control Financing, 1441 L Street, NW., Washington, DC 20416, (202) 653-2548.

The Section 503 Program, as amended in July 1980, allows long-term loans to small and medium size businesses. These loans are made by SBA-approved local development companies.

Through SBA's Regular Business Loan Program (Section 7(a)), loans made available by commercial banks are guaranteed by SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan (Section 7(a)) and Section 503 Programs, contact the appropriate district or local SBA office. The coordinator at EPA Headquarters is Ms. Karen V. Brown, Small Business Ombudsman (A-149C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; (703) 557-1938.

I. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses (RIAs) of major regulations. Major regulations are those that impose an annual cost to the economy of $100 million or more, or meet other criteria. Implementation of the promulgated regulation for the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Industry has been projected to cost over $100 million annually and thus is considered a major regulation. In compliance with E.O. 12291, EPA has prepared an RIA which consists of a benefit-cost analysis and a water quality analysis. The benefit-cost analysis compares the costs of the regulation with its benefits. The aggregate benefits, both monetizable and non-monetizable, exceed or are at least reasonably commensurate with costs.

Benefits were grouped into three categories: (1) Non-quantified and non-monetized benefits; (2) quantified and non-monetized benefits and (3) quantified and monetized benefits.

The non-quantified and non-monetized benefits that were identified include: (1) Protecting and restoring the integrity of aquatic ecosystems (The EPA comparative risk project ranked

point source discharges as a relatively high risk to aquatic ecosystems); (2) reducing the potential health risks to swimmers from dermal exposure to surface waters containing pollutants from OCPSF discharges; (3) reducing the potential health risks to persons eating more than average amounts of fish contaminated with OCPSF-discharged pollutants; and (4) reducing the potential health risks to persons drinking contaminated drinking water from groundwater sources impacted by surface waters containing OCPSF discharges.

One benefit could be quantified but not monetized. With current treatment at OCPSF facilities forty-seven thousand people are estimated to be exposed through inhalation to volatile organic compound (VOC) priority pollutants above long term intake levels recommended by EPA and may experience health effects other than cancer. The OCPSF regulation would reduce these effects.

The monetized national water quality benefits that result from the implementation of BPT and BAT are estimated to range from $178–$330 million (1982 dollars) annually. These benefits are based on estimates of increased uses or improvements in recreational fishing and boating, commercial fishing, diversionary uses (i.e., irrigation) and intrinsic (non-use benefits). When estimates of health (cancer reduction) and environmental (smog protection) benefits that result from the reduction of air emissions are added, benefits estimated range from roughly $189–$393 million (1982 dollars).

The annualized costs to direct dischargers in the OCPSF industry of moving to BAT are estimated to be $270 million (in 1982 dollars).

There were many limitations in estimating the benefits: (1) The national water quality benefits were based on an assumed linear relationship between total pollutant loadings and benefits attributed to cleanup of surface waters in the U.S. (2) The environmental impacts of toxics on aquatic ecosystems are not well understood and the benefits of reducing toxics are likely to be underestimated in the monetized national water quality benefits. (3) Uncertainty exists regarding the magnitude of the intermedia transfer of both priority pollutant VOCs and nonpriority VOC pollutants from OCPSF direct discharge wastestreams to the air. Priority pollutant emission estimates range from 7,000 MT/yr to 20,600 MT/yr. Nonpriority VOC pollutant emission estimates from direct discharge plants range from 9,100 MT/yr to 36,600 MT/yr. (4) The air emissions and thus exposures to pollutants could be underestimated by not considering volatilization between point of product/process wastestream generation and point of influent into industrial treatment facilities.

In addition to the benefits analysis above, a water quality analysis was performed, which consisted of three studies. The first projected water quality impacts for 170 direct discharging OCPSF facilities discharging into 134 stream segments across the country. EPA's published water quality criteria for priority pollutants are used to assess water quality impacts. The analysis projected that under existing conditions 32 percent of the 134 receiving stream segments exceed water quality criteria. A total of 30 pollutants are projected to exceed instream criteria using a criterion for the carcinogens that is based on a 10^{-6} individual risk. Twenty-nine percent of the receiving stream segments are projected to exceed water quality criteria with the implementation of BAT treatment levels in this regulation. A total of 24 pollutants are projected to exceed instream criteria at BAT.

The second study evaluated the effects of 94 indirect discharging OCPSF facilities which discharge to 57 POTWs. At current loadings, treatment works inhibition and/or sludge contamination are projected to occur at 8 of the 57 POTWs as a result of five of the 22 pollutants which have inhibition/sludge contamination values. The implementation of PSES removes inhibition problems for all but one pollutant at one POTW and sludge contamination problems for all but one pollutant at one POTW. The POTW inhibition and sludge values used in this analysis are in general not regulatory values. They are based upon engineering or health-related guidance or guidelines published by EPA and FDA. Thus EPA is not basing its regulatory approach for PSES upon a finding that some pollutants interfere with POTWs by impairing their treatment effectiveness or causing them to violate applicable sludge limits for their chosen disposal methods. Rather, the PSES are based upon a determination of pass through as explained earlier in the preamble. However, the analysis does help indicate the potential benefits for POTW operation and sludge disposal that may result from compliance with PSES.

Also, the effects of POTW wastewater discharges of 56 priority pollutants on receiving streams were evaluated for 56 indirect discharging OCPSF facilities, which discharge to 42 POTWs on 41 stream segments. For these 41 segments, projected instream concentrations for each pollutant were compared to EPA water quality criteria. Instream concentrations are projected to exceed criteria in five of the stream segments under current conditions. A total of 14 priority pollutants are projected to exceed instream criteria using a criterion for carcinogens based on 10^{-6} individual risk. Priority pollutant instream concentrations after implementation of PSES are projected to exceed criteria in one receiving stream segment for two pollutants.

The third water quality study evaluated three stream segments in detail (Houston Ship Channel, Kanawha River and Lower Delaware River). Monetizable water quality benefits were calculated for these streams and compared to expected BAT costs for OCPSF direct discharging facilities. Comparison of benefits with BAT costs show disparate results across the sites. The Kanawha River results indicate that the estimated annual water quality benefits ($0.1 to $2.7 million) are commensurate with the annualized costs ($1.5 million). The Delaware River results indicate that the estimated annual water quality benefits ($2.1–$9.1 million) are significant but are less than the annualized costs of $18.7 million. The Houston Ship Channel monetized annual water quality benefits (<$1.0 million) are substantially less than annualized costs ($8.8 million), due largely to the commercial shipping usage of the Channel, which precludes many of the benefits evaluated. The monetized water quality benefits were based on estimates of increased use or improvements in recreational fishing and boating, commercial fishing and intrinsic (non-use) benefits. Health risks from the ingestion of contaminated fish tissue were also assessed in the three case studies, and for the Delaware River reductions in drinking water health risks were considered. (The Delaware River case study was the only case study where active drinking water intakes were present in the vicinity of OCPSF dischargers.) Due to the difficulty in extrapolating the results of these case studies to a national scale covering all regulated plants in the OCPSF industry and all impacted receiving waters, the monetized national water quality benefits assessment (described above) was employed.

IX. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider

the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption.

The following are the non-water quality environmental impacts associated with this regulation:

A. *Air Pollution*

The effect of BPT, if viewed alone, would likely be a moderate increase in emissions of volatile organic compounds, and thus in air pollution in the immediate vicinity of some OCPSF industry plants. This would be the result of plants installing or upgrading the performance of aerated lagoons, activated sludge basins and equalization basins and thus more effectively driving off volatile organic compounds. This effect will be more than offset, we believe, by the effect of compliance efforts to meet BAT, because we expect many plants to comply with the BAT limits by installing in-process controls that effectively remove volatile organic compounds before they reach the end-of-pipe controls. These in-process controls would be accompanied by effective air pollution controls. Thus, we expect a net decrease in both air loadings and in concentrations of volatile organic compounds in the treated effluents from and BAT combined, and we expect similar effects as a result of PSES as well. A description of these loadings are contained in previous (Section IV) portions of this preamble. In addition, Section X (commenter issues section) of this preamble contains more discussion on the volatile pollutants.

B. *Solid Waste*

EPA has considered the effect these regulations would have on the production of solid waste, including hazardous waste defined under Section 3001 of the Resource Conservation and Recovery Act (RCRA). EPA estimates that increases in total solid waste, including hazardous waste, resulting from the OCPSF regulation will be insignificant compared to current levels.

C. *Energy Requirements*

EPA estimates that the attainment of BPT, BAT, NSPS, PSES and PSNS will increase energy consumption by a small increment over present industry use.

Further details are set forth in Section VIII of the Development Document.

X. Public Participation and Summary of Responses to Major Comments

Public participation in the development of the OCPSF effluent limitation guidelines and standards has been extensive. Throughout the development of this regulation, EPA has made numerous documents available to the public for comment and has held meetings for the purpose of providing information and receiving information and views from many individuals and organizations.

Prior to publication of the proposed regulation on March 21, 1983, EPA made publicly available a variety of major documents. These included EPA's Guidelines Establishing Test Procedures for the Analysis of Pollutants at 40 CFR Part 136 which detailed analytical methods to be used by EPA to analyze samples of OCPSF industry wastewaters, and a Background Document consisting of three volumes and appendices, providing much of the technical and costing foundation for EPA's subsequent regulatory proposal. EPA also discussed its data and methodology at various meetings and workshops with interested members of the public, enabling them to submit detailed comments on this information prior to the publication of the proposal. Thus in the proposal, EPA was able to take the unusual step of publishing responses to 51 preproposal public comments. See 48 FR 11853–61 (March 21, 1983).

The public comment period for the proposal, set originally for three months, was extended to provide for a total of four and a half months for comment. A total of 756 technical comments, totalling approximately 2000 pages, were submitted by industry, government, environmental and other groups and individuals. Partly in response to these comments and partly to incorporate supplemental data (as urged by many commenters), EPA modified its data base, methodologies and regulatory approaches and discussed these changes in a Notice of Availability and request for comments on July 17, 1985 (50 FR 29068). EPA followed this shortly with an additional Notice of Availability on October 11, 1985 (50 FR 41528) in which EPA made extensive additional documentation available to the public to enable fully informed comment on the modifications. The total comment period for the two notices was five and a half months. In response, EPA received over 1,100 technical comments from 72 members of the public.

Finally, on December 8, 1986 (51 FR 44082), EPA published yet another notice discussing several issues and proposed modifications to the previously discussed approaches. EPA provided a 2-month comment period, and received as a result 163 technical comments from 37 members of the public.

Throughout this rulemaking, EPA has not only welcomed the submission of comments but also solicited data that could be used to supplement, correct, or fill gaps in EPA's data base. Where adequately documented data of sufficient quality were submitted, EPA used the data along with other data it had collected. EPA believes that it has made all reasonable efforts to obtain public input on this rule.

Included in the record for this rule is a large response to comments document. The sheer volume of comments precludes the publication of EPA's responses to all of them in this preamble. EPA has discussed and responded to many comments earlier in this preamble. Set forth below are responses to some additional significant comments. Other comments are responded to in the separate response to comments document mentioned above. Finally, the various data compilations, editing and other information contained in the record for this rule address (and in some instances were obtained or acquired specifically for the purpose of addressing) the public comments.

1. *Percent Removal vs. Concentration-Based BPT Limitations*

Comment: A number of industry commenters have stated that the Agency should base BPT limitations on a combination of percent reduction and maximum concentration limitations to control the discharge of BOD from OCPSF facilities.

(A plant's BPT TSS limitation would be some multiple of its percent reduction derived BOD limit). The commenters favored an average percent reduction limitation of 95 percent for some dischargers coupled with a maximum long-term concentration level of 50 mg/l for others. High raw waste load plants (those having average raw waste concentrations over 1000 mg/l) would have to achieve a 95 percent BOD reduction from raw waste levels while low raw waste load plants (those below 1000 mg/l) would have to meet a 50 mg/l concentration limit. The commenters maintained that the imposition of concentration limitations on all discharges including those with high raw waste loads, inhibits water conservation efforts and unfairly discriminates against plants which engage in water conservation practices. They also maintained that percent reduction limitations would better

reflect the inherent variability of OCPSF process operations than would concentration limitations.

Response: Effluent limitations guidelines can be in the form of percent reduction, concentration, or production based mass limitations. Selection of an appropriate approach is within EPA's discretion and is based upon its judgement as to which is most appropriate for a particular industry and data set. Thus for example, limitations can be based solely on the performance of applicable treatment systems or on treatment system performance and production. When the available production data for a category can be correlated with pollutant discharges, EPA can develop mass limitations based on both treatment system performance and production. This approach, however, is not appropriate for the OCPSF category because of the large number of different products involved, the constantly changing nature of the product mix, and the lack of any established strong correlation between production type and pollutant discharge. Thus for the OCPSF BPT regulation, EPA has promulgated concentration-based limitations rather than mass-based limitations.

EPA also prefers concentration-based limitations over percent-reduction limitations for this industry. EPA believes that percent reduction limitations would allow plants with high raw waste loads to discharge very high concentrations of BOD on a long-term average basis. Yet the data collected by EPA demonstrates that even high raw waste loads can be reduced to low concentrations through the use of BPT technology. Concentration limitations describe the limits of performance of this technology better than percent removal requirements do.

For example, a plant with an average raw waste BOD concentration of 2,000 mg/l would be allowed by a 95 percent reduction requirement to discharge a long-term average concentration of BOD of 100 mg/l (after applying a variability factor, the actual daily limit would be substantially higher). Such concentrations are unacceptably high; this is indicated by the fact that some OCPSF plants with average raw waste BOD concentrations greater than 2,000 mg/l achieve long-term average BOD effluent concentrations of less than 100 mg/l.

Percent-reduction limitations also discourage the efficient operation of biological treatment systems. From an engineering point of view, optimally designed systems are designed to meet target BOD levels, not a specific percent reduction in BOD. That is how systems are generally designed and costed by wastewater engineering firms.

The Agency does not agree with the assertion that concentration limitations discourage water conservation. The Agency notes that commenters did not support this assertion with quantitative or qualitative data demonstrating how and to what extent water conservation is practiced and how such practices would be impacted by concentration limitations. The comment ignores the fact that water conservation is often practiced for a variety of sound reasons of efficiency and economy, and that wastewater treatment costs themselves may be substantially reduced by reducing the flow which must be treated. The resulting cost savings may outweigh any increased cost that arguably results from being required to treat the more concentrated stream to meet an effluent concentration limitation. The record before the Agency does not demonstrate that the concentration limitations will discourage water conservation.

Commenters contend that percent-reduction limitations would accommodate variations in BOD loading caused by process changes better than concentration limits do. The commenters' insistence that percent reduction limitations are more accommodative to process changes ignores the fact that most plants have equalization basins on the front end of treatment systems for the express purpose of dampening surges in raw waste BOD due to process events (spills, etc.) and changes. The effect of these basins is to smooth out BOD loadings. The remaining variability has been accommodated by the variability factor developed by EPA for the BOD concentration limitations. In developing percent reduction limitations, there is a danger that the variability due to process changes may be over-compensated for and that the resulting limitations could be met by poorly operated plants.

Percent reduction limitations might penalize plants which utilize in-plant methods to treat raw waste BOD. The reduction in raw waste BOD achieved in-plant could only be measured if all the individual product/process effluents were analyzed prior to in-plant treatment on a regular basis, a practical impossibility for some plants and an unwarranted burden for many others. As a result, it would be very difficult to credit these plants with in-plant removal.

Finally, the development of percent reduction limitations requires that influent as well as effluent data descriptive of treatment technology performance be available, whereas concentration limitations require only that effluent data be available. In the case of the OCPSF categories, considerably less influent than effluent data are available. The Agency believes that in order to establish percent reduction limitations for a category or subcategory, the influent data should be comparable to the effluent data in quantity and quality and should provide as much coverage of the category as the effluent data. This would be necessary to correctly reflect the variability of production operations and treatment performance within the category. Moreover, if EPA were to develop percent reduction limitations using the available BPT data base, the resulting limitations would be less representative of the OCPSF categories because many plants employing numerous product/processes would be deleted from the limitation development data base due to lack of daily raw waste data. This consideration also argues in favor of issuing the concentration approach, for which more data is available.

2. The Effect of Temperature in Achieving BPT Permit Limits

Comment: EPA has incorrectly evaluated the effect of temperature on biological treatment plants and has concluded that it is not important in the context of effluent limitations guidelines. One element of this incorrect analysis was EPA's deletion of nine plants from the data base simply because they had summer/winter NPDES permits. This step is arbitrary and virtually assures that the effect of temperature will not be considered in the estimation of effluent variability. Also, the commenter argued that a number of plants in the 308 data base showed statistically significant temperature effects.

Response: EPA has studied the effects of temperature variations on biological treatment system performance in the OCPSF industry. In warm climates, the Agency believes that warmer than average temperatures do not have any significant effect on biological treatment efficiency or variability. However, algae blooms can be a wastewater treatment problem in ponds located in warm climates. Nonetheless, polishing ponds are not part of the technology basis for BPT limitations. Also, EPA was not able to associate algae bloom problems with any elements of biological treatment (aerated lagoons, clarification, equalization, basins, etc.). Consequently, EPA believes that algae growth problems in warm climates are not relevant to the final BPT regulations.

In order to evaluate winter performance of biological treatment systems, EPA has analyzed BOD removal efficiency, BOD effluent, and operational changes for 21 plants located in various parts of the country and reporting daily data. These analyses indicate that there is a slight reduction in average BOD removal efficiency and a small increase in average effluent BOD during January and February for some plants. However, many plants were able to maintain a BOD removal efficiency of 95 percent or greater and effluent BOD concentrations characteristic of good operation during the entire year. The analysis also suggests that the plants with lower efficiencies are affected as much by inefficient operating practices as by winter temperature considerations. Indeed, plants in colder climates, with the widest annual temperature fluctuation, generally achieved more consistent year-round performance than plants in middle latitudes. A discussion of inefficient operating practices used by some plants as well as practices employed by plants achieving superior all year performance may be found in Section VII of the Development Document. The adoption of practices used by plants with higher winter efficiencies should result in improved winter efficiency.

EPA has determined that temperature effects can be mitigated by operational and technological changes, so that compliance with BPT limitations using biological treatment is possible for all OCPSF plants with well-designed and well-operated biological systems. Section VII of the final development document contains a thorough discussion of summer/winter effects and how individual OCPSF plants have dealt with this problem. In addition, EPA has developed costs for plants which need to upgrade their winter-time biological treatment operation to comply with final BPT limitations.

Regarding the deletion of nine summer/winter plant's data from the data base, the Agency notes that because these plants were subject to meeting two different sets of permit limits, they had no incentive to attempt to achieve uniform limitations throughout the year. Not surprisingly, then, the daily data from these plants exhibit a two-tier pattern. These data can be characterized by two means, and the variability of these data over a 12 month period is fundamentally different from the data from plants required to meet only one set of permit limits. Consequently, the data generated during these periods is not representative of well-operated biological treatment, which as noted above is capable of uniform treatment throughout the year as demonstrated by a number of plants. Another problem with daily data from these plants is that during certain periods of the spring and fall, these plants may be able to operate their treatment plants at less than full efficiency because they are required to meet the less stringent set of permit limits.

In summary, the Agency believes that it has accounted adequately for the effect of temperature changes on biological treatment performance in its variability analysis by including in the variability data base a number of plants from climates with significant temperature variation. The inclusion of data from plants with summer/winter permits would result in an overestimate of the variability of biological treatment operations in the OCPSF categories.

3. Representativeness of the Data Base Used to Establish BAT Effluent Guidelines

Comment: Industry commenters claimed that the Agency's BAT data base was not adequate to represent wastewater treatability across the wide variety of product/process effluents discharged by the OCPSF industry.

Response: EPA has determined that the data base supporting the OCPSF regulations is representative of OCPSF industry wastewaters, treatment technologies, processes, and products. EPA conducted four major sampling programs during the development of BAT limitations. In total, 186 plants were sampled in the Agency's screening, verification, 5-plant and 12-plant studies. After editing the data base so that only good quality data (i.e., having adequate Quality Assurance/Quality Control) representing BAT treatment were used, the edited BAT data base contains sampling data for 36 OCPSF plants (including industry supplied data) representing 232 product/processes. These 36 plants account for approximately 26 percent of production volume and 24 percent of the process wastewater flow of the entire industry. The types of product/processes utilized by these 36 plants represent approximately 13 percent of the types of OCPSF product/processes in use. Since the products manufactured by these facilities are manufactured at other OCPSF facilities, the data obtained from these plants represent even greater percentages of total industry production and flow. Thus, about 68 percent of OCPSF industry production (in total pounds) is represented and about 57 percent of the OCPSF industry wastewater is accounted for by the products and processes utilized by the 36 plants in the data base. Products that could be manufactured by the 232 product/processes utilized at the 36 plants account for 84 percent of industry production and 76 percent of process wastewater.

It is estimated that the OCPSF industry manufactures more than 20,000 individual products; however, overall production is concentrated in a limited number of high-volume chemicals. Excluding consideration of plastics, resins, and synthetic fibers, EPA has identified 36 organic chemicals that are manufactured in quantities greater than one billion pounds per year. These chemicals are referred to as commodity chemicals. Two hundred eighteen organic chemicals are manufactured in quantities between 40 million and one billion pounds per year. These chemicals are referred to as bulk chemicals. Together, these 254 chemicals account for approximately 91 percent of total annual production volume of organic chemicals as reported in the 308 questionnaire data base for the OCPSF industry. By sampling OCPSF plants which manufacture many of these high-volume chemicals, as well as other types of OCPSF plants, EPA has, in fact, gathered sampling data which is representative of production in the entire industry.

In addition to their general coverage of major industry product/processes and products, the BAT sampling programs have focused on OCPSF plants, product/processes and products known or believed to be associated with priority pollutant discharges. EPA evaluated the 176 product/processes sampled during the screening sampling effort in order to determine predictability of priority pollutant occurrence based on product/process chemistry. The Agency determined that priority pollutants could appear in waste streams of plants utilizing various product/processes if priority pollutants were involved as reactants, products, by-products, catalysts, or reagent contaminants in these product/processes. The information obtained from the review of the screening plant sampling was used by EPA to select plants for its later sampling efforts that would represent as much as possible priority pollutant discharge in the OCPSF industry. In selecting plants and product/processes for sampling during the Verification Study, EPA gave priority to product/processes involving the manufacture of either priority pollutant or high-volume chemicals derived from priority pollutants. Similarly, EPA selected

plants for sampling during the EPA/CMA Five-Plant Study and the subsequent Twelve Plant Study based in part upon the known or suspected presence of certain priority pollutants at significant concentrations in plant wastewaters. As a result, the existing BAT data base adequately represents priority pollutant discharges by the entire OCPSF industry.

The current BAT data base also provides broad coverage of the major wastewater treatment technologies employed by the OCPSF industry. The Verification Study emphasized data collection on raw process wastewaters and the principal treatment configurations (i.e., preliminary treatment and biological treatment) for combined plant wastewaters. The EPA/CMA Five-Plant Study was designed to assess the effectiveness of biological treatment in removing organic priority pollutants. The final phase of the sampling program, the Twelve Plant Study, provided additional data on many nonbiological treatment technologies, including in-plant controls and end-of-pipe treatment technologies, and supplemental long-term performance data for other treatment technologies.

In developing its BAT data base, EPA did not sample wastewaters and treatment systems for all plants in the OCPSF industry. The considerable expense associated with the sampling of toxic pollutants, especially organic pollutants, has imposed practical constraints on the scope of OCPSF sampling programs. Resource concerns also reflect the need for rigorous quality assurance/quality control procedures (e.g., blank samples, duplicate samples, etc.) at each stage of sampling/analysis to ensure the highest possible quality for sampling data. These procedures significantly increase the cost of sampling and analysis. As a result, the OCPSF sampling program has been designed with the intention of collecting the greatest possible quantity of data without sacrificing data quality.

Due to its concern that the earlier versions of the BAT data base may not adequately address the variety of priority pollutant loadings in OCPSF industry wastewaters, EPA has at each stage in the rulemaking solicted additional data on the presence, concentrations, and treatability of priority pollutants in OCPSF plant wastewaters. Valid data (as determined by editing and quality assurance rules) submitted by industry were incorporated in the BAT data base and utilized in the calculation of BAT effluent limitations. During the OCPSF rulemaking efforts, each affected OCPSF plant or industry segment had the opportunity to comment and submit sampling data which it believed should be added to the data base considered by EPA.

Finally, it should be noted that the number of plants from which data are used to develop BAT limitations is necessarily limited by the fact that a large portion of the industry does not currently have well-designed, well-operated BAT treatment in place. Since BAT must be based upon the best available technology in the industry, the data must inevitably be limited to only the best performers in the industry.

4. Establishment of Effluent Limitations and Monitoring Requirements in NPDES Permits for OCPSF Facilities

Comment: Some commenters have argued that a plant should be subject to limitations only for those pollutants that it discharges at significant levels. They argue that the imposition of limits will inevitably result in compliance monitoring for pollutants that are not present in the discharge, and that this imposes unnecessary costs. In the July 17, 1985 Notice, EPA sought to address this concern by proposing a monitoring scheme whereby monitoring for pollutants could be drastically reduced if preliminary monitoring and other information indicated that the pollutants would not be discharged at significant levels.

The July 17, 1985 proposal of a monitoring scheme provoked substantial comments from both sides of the issue. Some argued that the scheme required more initial monitoring than was necessary to determine whether pollutants were likely to be present in the discharge during the permit term. Many of these commenters also argued that EPA's test for determining which pollutants would require more frequent monitoring was too stringent (i.e., too inclusive). In contrast, one commenter argued that the test did not adequately account for discharge variability and thus would result in the incorrect conclusion that certain pollutants were not likely to be discharged (were not "pollutants of concern") when in fact they would be discharged at levels and frequencies that warrant frequent compliance monitoring.

Response: The final OCPSF regulations regulate 63 toxic pollutants at BAT and 47 toxic pollutants for PSES. Regulating such a large number of the toxic priority pollutants is unprecedented in the effluent guidelines rulemaking program, reflecting the fact that many of the organic toxic pollutants are directly manufactured by OCPSF facilities as well as used as raw materials or generated as byproducts in industry processes.

As discussed elsewhere EPA has determined that the OCPSF industry should not be subcategorized based on product mix for the BAT regulation because the pollutants are treatable to comparable levels for a wide variety of plants within the industry. (See Section IV of the Development Document.) However, EPA is promulgating BAT limitations for two subcategories which are largely determined by raw waste characteristics (see Section VI.C.1. of this notice). Nevertheless, most OCPSF plants routinely discharge only a limited subset (e.g., 5–15) of the pollutants regulated at BAT. Thus, in the case of a typical plant in the industry, the regulations impose limitations for many pollutants that are not in fact discharged by the plant.

In the final regulation, EPA has decided that each discharger in a subcategory will be subject to the effluent limitations for all pollutants regulated for that subcategory. First, EPA recognizes the difficulty in guaranteeing that a plant will never during the permit term discharge a pollutant regulated for the applicable subcategory. Many factors do cause changes in the nature of OCPSF plant wastewater discharges, such as process changes, raw material changes, and product line changes, as well as more subtle factors that may result in changes in the wastewater matrix. Inserting a limitation in a plant's permit for a pollutant not generally expected (based on initial information) to be discharged assures that in fact the plant will be vigilant not to introduce the pollutant into its discharge without adequate treatment. Second, the limitations on these pollutants are fair, since in the event that a plant does discharge such a pollutant, EPA has determined that each of the regulated pollutants can be successfully treated by OCPSF dischargers by the use of the best available technology economically achievable.

Once a pollutant is regulated in the OCPSF regulation for dischargers in a particular subcategory, it must also be limited in the NPDES permit issued to any discharger in that subcategory. See Sections 301 and 304 of the Act; see also 40 CFR 122.44(a). The question remains, however, as to how much monitoring will be required for the various pollutants regulated by the permit.

EPA believes that industry's concern that OCPSF dischargers not be required to expend unnecessary resources to monitor for non-existent pollutants is

legitimate. While dischargers will normally monitor frequently for at least some toxic pollutants that are expected to be discharged, their monitoring costs would increase if other toxic pollutants were also to be monitored frequently. Whether the cost increase would be significant would depend on several factors, including whether the plant used GC/CD or GC/MS methods (which in turn depends on the number of organic pollutants discharged by the plant) and whether the additional pollutants were members of the same class of compounds as the pollutants that would be monitored in any event. The incremental cost of monitoring using Methods 1624 and 1625 for organics and atomic adsorption for metals could range from $295 for one organic compound and one metal to $1,350 for a scan of all regulated organic and metal priority pollutants. Thus it certainly is desirable to minimize unnecessary monitoring. However, as discussed above and in the July 17, 1985 notice, there is legitimate concern that pollutants may be discharged even if some initial information (e.g., a permit application) suggests that they are not currently discharged.

After considering the comments submitted on both sides of the issue raised by the July 17, 1985 notice, EPA has decided that the appropriate monitoring scheme for plants in this industry, as in other industries for which EPA has promulgated effluent limitations guidelines and standards in the past, is best determined on a case-by-case basis. EPA has generally refrained from setting inflexible monitoring requirements in effluent guideline regulations for other industries, and the NPDES permit regulations have similarly been written to allow the permit writer to establish in the permit (subject to all the procedural and substantive safeguards afforded by the NPDES permit procedures of 40 CFR Parts 122 and 124 and by the judicial review provision of section 509(b) of the Act) a set of monitoring requirements that are appropriately tailored to the plant. See 40 CFR 122.44(i) and 122.48.

The NPDES regulations set forth monitoring and reporting requirements for NPDES dischargers. Section 122.48 requires that each permit specify requirements regarding monitoring type, intervals and frequency sufficient to yield data which are representative of the monitored activity. Section 122.44(i) adds that the monitoring results must be reported with a frequency depending on the nature and effect of the discharge, but in no case less than once per year. Sections 122.41, 122.44 and 122.48 contain numerous other requirements concerning monitoring and reporting.

However, the NPDES regulations do not establish more specific requirements as to the frequency of monitoring that should be required. The frequency with which compliance monitoring should be performed will normally depend upon a variety of factors. One factor, of course, is the level at which particular pollutants are likely to be discharged in the event that the plant fails to treat its effluent adequately. This level would depend on production-, process- and raw material-related factors, as discussed above and elsewhere in the record for this regulation. Other factors relevant to setting monitoring requirements include the size of the plant, the size of the plant's flow, the nature and sensitivity of standards applicable to the receiving water, and other site-specific factors. Permit writers have throughout the history of the NPDES permit program made judgments as to the appropriate monitoring frequencies for particular plants, based upon these site-specific considerations. EPA believes that this approach remains the most appropriate for the OCPSF industry as it has been for all other industries.

EPA recognizes that specific guidance on appropriate monitoring requirements for OCPSF plants would be useful, particularly to assure that monitoring not be needlessly required for pollutants that are not discharged at a plant. One noteworthy factor is the monitoring scheme assumed by EPA for purposes of estimating the costs of complying with the OCPSF regulation. EPA has assumed that all plants would monitor their toxic pollutants four times per month. In addition, EPA has assumed that three of the four analyses would include only those toxic pollutants expected to be present at levels of regulatory concern. However, the fourth monthly analysis included all regulated toxic pollutants.

In assessing wastewater data as part of the analysis for developing appropriate monitoring frequencies for toxic pollutants, permit writers should take special care to account for the effects of dilution, which may indicate the absence of pollutants which in fact may be discharged. For example, as mentioned earlier in this preamble, an indication on a Form 2C permit application that a pollutant is absent or is present only at very low concentrations may reflect dilution and may fail to reveal that the pollutant is genuinely associated with and discharged from particular plant processes in significant amounts and thus needs to be monitored frequently. Thus, permit writers should obtain in-plant, pre-dilution data when necessary to properly characterize the wastewater for purposes of establishing monitoring requirements.

To address issues of particular concern, EPA intends to publish guidance on OCPSF monitoring in the near future.

This guidance will address both the issues of compliance monitoring generally and of initially determining which pollutants should be subject only to infrequent monitoring based on a conclusion that they are unlikely to be discharged.

5. Air Emissions of Volatile Pollutants

Comment: In the July 17, 1985 **Federal Register** notice (50 FR at 29083), EPA discussed its concerns about the "substantial impacts that may result from volatile air emissions at OCPSF biological treatment plants." EPA stated that available information strongly indicated that biological treatment systems fail to treat substantial portions of volatile and semi-volatile pollutants but rather transfer them to the air. In light of this information, EPA stated that it was seriously considering promulgating, in addition to the end-of-pipe effluent limitations, an additional set of in-plant, pre-biological limitations for a set of 20 volatile and semi-volatile pollutants. EPA stated that if it promulgated in-plant limitations, they would be applied prior to any biological treatment system, and control authorities would require compliance monitoring prior to the biological system. However, EPA acknowledged that even this approach might not result in a significant reduction of air emissions. This might occur, EPA said, if sources choose to use in-plant control techniques other than steam stripping which meet the BAT limitations but do not result in any significant reduction of air emissions. Therefore, EPA noted that if warranted, EPA may use Clean Air Act ("CAA") authority to address volatile air emissions.

In the subsequent October 11, 1985 **Federal Register** notice (50 FR at 41529), EPA extended its discussion of the OCPSF volatile air emissions issue. EPA re-emphasized that setting pre-biological limitations, while serving to discourage the substitution of air stripping for treatment, would not absolutely preclude air stripping. For example, some facilities use air strippers, or achieve some degree of air stripping in equalization basins and other devices, prior to biological treatment. EPA reiterated that it was therefore considering addressing this problem

through the Clean Air Act. However, EPA also stated that it would consider three additional options for addressing the problem under the Clean Water Act.

The first option was to require that the in-plant limitations apply at a point prior to any unit or process that is capable of transferring significant quantities of pollutants to the air. Alternatively, a certain level of emissions (e.g., the air stripping of 20 percent or more of the pollutants in question) might be designated as significant, resulting in applying the limits prior to the point where such emissions occur.

The second option was to specify in the regulation that technologies that involve significant levels of air stripping are not BAT because they result in significant adverse non-water quality (air) impacts. This would have been accomplished by listing particular technologies or specifying numerical criteria for determining significant levels of air emissions.

The third option was to specify technologies, such as steam stripping with recovery, that must be employed to remove volatile organic pollutants. EPA acknowledged that the Agency has historically disfavored specifying technologies and has relied exclusively upon effluent limitations and standards reflecting the selected model technologies to achieve particular control levels. Indeed, EPA noted that Congress intended that numerical criteria be the method generally used to set standards. However, since the CWA does not explicitly forbid the specification of technology, and given the extraordinary situation where numerical limitations alone may be incapable of assuring the use of the best available technology from an overall environmental perspective, EPA believed that this option may be legally acceptable.

EPA stated that it would continue to explore both the legal issues and the practical difficulties presented by the above options and invited comment on them. EPA received many comments in response, which are summarized below.

Commenters disagreed widely as to EPA's legal authority to promulgate in-plant limits to control emissions of volatile air pollutants as part of this regulation under the CWA. One commenter argued that EPA is legally required to establish in-plant limitations for OCPSF plants. The commenter did not cite any statutory authority that directly authorizes controls on air emissions under the CWA. However, the commenter argued that control measures and practices are not the "best", as required by the statute, if they allow substantial air emissions while alternative technologies are available which do not result in such emissions. The commenter pointed out that section 304(b) of the Clean Water Act includes "non-water quality environmental impact" as one of the factors to be taken into account in promulgating effluent limitations. In this regard, the commenter cited legislative history accompanying this provision to the effect that water pollution controls should not result in overall environmental degradation.

In contrast, numerous other commenters argued that EPA lacks authority to set limitations under the CWA that are designed to control air emissions. Moreover, these commenters argued, the CAA is the statutory vehicle chosen by Congress for regulating air emissions, and EPA should confine itself to acting under the CAA, if any action is warranted. (Several commenters noted that the Resource Conservation and Recovery Act (RCRA) is an appropriate regulatory vehicle for addressing at least some air emissions related to some OCPSF dischargers managing hazardous wastes.) These commenters noted that the CWA does not contain any provisions explicitly authorizing the specification of technology, the direct limitation of air emissions, or the establishment of in-plant limitations for the purpose of controlling air emissions. Some commenters argued further that in-plant limitations were beyond EPA's statutory authority, which, they asserted, authorizes only the limitation of discharges, i.e., the addition of pollutants to waters of the United States. Some of these commenters argued further that the statutory requirement that nonwater quality environmental factors be considered is: (1) Intended to preclude effluent limitations that result in net adverse environmental impacts but not to authorize specific limitations for the purpose of controlling air emissions, and (2) intended to address primarily adverse energy impacts.

Many industry commenters disagreed with the Agency's preliminary assessment that the air emissions from OCPSF plants constituted a significant environmental problem. They argued that while the Agency's preliminary assessment was that eight million pounds of pollutants are emitted annually from OCPSF biological treatment systems, this figure is minute as compared with total VOC (volatile organic compounds) emissions nationwide. Moreover, they argued that most OCPSF plant emissions are very small and in any event are insignificant in that they do not result in significant increases in ozone levels in the ambient air. These commenters also argued that EPA overestimated the total volatile pollutants emitted to the air noting that EPA's estimates were based upon estimated relative rates of biodegradation and volatilization.

Industry commenters also argued that EPA had incorrectly calculated the costs incurred to meet the in-plant limits. In particular, they asserted that significant energy costs would be incurred to generate the required steam and that steam generation would itself result in air emissions from boilers, with associated control costs.

Finally, industry commenters argued that the in-plant limitations would have the effect of denying plants the opportunity to use biological treatment to treat their organic pollutants, since they would require that dischargers meet limits prior to the point where the wastewaters entered the biological treatment plant.

Response: To address this multimedia issue, EPA held many meetings among the various EPA offices that implement statutory programs that may have some relevance to the issue of air emissions from OCPSF wastewater treatment facilities. After considering the broad variety of technical, policy, and legal issues involved, EPA has decided that the issue of volatile air emissions from OCPSF facilities is best addressed under laws that specifically direct EPA to control air emissions. The primary statutes providing such directions are the CAA and, in the case of facilities managing hazardous waste, RCRA. (The Toxic Substances Control Act may also be used to control air emissions where EPA determines that it would be in the public interest to use this authority.)

As a preliminary matter, the nature of the volatile emissions from OCPSF wastewater treatment systems must be understood. In the absence of any wastewater treatment, OCPSF facilities would discharge wastewaters containing volatile and semi-volatile organic pollutants into the receiving waters or into POTWs, without removal of these pollutants. These pollutants would be contained initially in the receiving waters or the POTWs, but a significant percentage of them would ultimately volatilize from the receiving waters or POTWs into the atmosphere. Because most direct discharging OCPSF plants in fact already have wastewater treatment facilities, most of these volatile pollutants are not discharged and volatilized downstream, but rather are taken out of the wastewater prior to discharge through biodegradation, recovery, accumulation in sludge, or

volatilization. While the volatilization from existing wastewater treatment systems may tend to concentrate residual volatile pollutants near the plant, it would be offset by the BPT and BAT regulations' combined effect. Efforts to comply with BPT and BAT regulations are expected to enhance the performance of the existing wastewater treatment facilities. It appears likely that they will generally cause a net decrease in air emissions. In many cases they will result in the increased use of technologies such as steam stripping that will lessen air emissions. At worst, they will fail to address an existing air pollution problem.

The issue before the Agency, then, is not so much whether the Agency should address an air pollution problem that is created through the promulgation of OCPSF wastewater treatment requirements. Rather, the principal issue is whether, in setting CWA requirements to limit the discharge of volatile organic pollutants in wastewaters, EPA should simultaneously use CWA authority to restrict the air emissions of these pollutants as well. As discussed below, EPA has decided that it would be most appropriate to address the air emissions issue directly by using the statutory authorities designed explicitly for this purpose, rather than to attempt indirect regulation through the Clean Water Act.

The legal and practical difficulties associated with attempting to regulate air emissions under the Clean Water Act are considerable. First, the statute provides no explicit authority for specifying technology, such as steam stripping, to control wastewater discharges. Rather, the statute calls for regulation that establishes effluent limitations and standards (with certain exceptions, such as best management practice (BMP) requirements under section 304(e) of the CWA), rather than specific management requirements. Indeed, the legislative history of the Act indicates that Congress did not want EPA to specify technology but rather wanted EPA to allow dischargers to select the means by which they would comply with effluent limitations. See, e.g., 1972 Legislative History at 311, 794–95 and at 1477.

Setting in-plant limitations to address air emissions has its own set of problems under the CWA. Neither the statute nor its legislative history provides explicit authority or a sense of Congress that EPA should directly control air emissions through effluent limitations promulgated under the CWA. The CWA clearly gives EPA authority to consider potential adverse nonwater quality environmental impacts before promulgating effluent limitations. However, the legislative history and case law examining this section 304(b) factor focus on the need to avoid the creation of significant adverse nonwater quality effects, or to consider the costs of mitigating such effects, rather than making it clear that the CWA could be used as statutory authority for controlling these nonwater quality effects. See, e.g., 1972 Legis. Hist. at 232 and 268–69, and 1977 Legis. Hist. at 412. See also, *Weyerhaeuser Co.* v. *Costle*, 690 F.2d 1011, 1044–53 (D.C. Cir. 1978); *American Paper Institute* v. *Train*, 543 F.2d 328, 339–40 (3rd Cir. 1976); *C&H Sugar Co.* v. *EPA*, 553 F.2d 280, 289–90 (2d Cir. 1977); *FMC Corp.* v. *Train* 539 F.2d 973, 979 (4th Cir. 1976); *Kennecott Copper* v. *EPA*, 612 F.2d 1232, 1246 (10th Cir. 1979) (cases upholding regulations in which EPA considered nonwater quality impacts and in some cases suggested means of mitigating those impacts); *AISI* v. *EPA*, 968 F.2d 284, 308 (3rd Cir. 1977); *Hooker Chemicals and Plastics Corp.* v. *Train*, 537 F.2d 620, 638 (2nd Cir. 1976) (cases remanding regulation where EPA gave no consideration at all to nonwater quality impacts). Indeed, the legislative history indicates that the section 304(b) requirement to consider non-water quality effects was designed to assure that EPA's internal structure and personnel attitudes were sensitized to the existence of such effects to assure that the net results of all of EPA's programs enhanced the environment and to temper effluent limitations, if necessary to prevent such effects. See *Weyerhaeuser, supra*, 690 F.2d at 1044–53. In the present case, this requirement has in fact had the effect of focusing the Agency as a whole on the issue of OCPSF air emissions. As discussed below, EPA is currently collecting data and considering regulations under a variety of legal authorities to address OCPSF air emissions.

Thus, while it is not clear that EPA is precluded from promulgating in-plant limits to control air emissions under the CWA, such action is not required and indeed is not explicitly authorized by the CWA. This points toward our conclusion that it is most appropriate to use the legal authorities that are more directly applicable and more clearly suited to the problem at hand, such as the Clean Air Act.

Another potential problem in using in-plant limits under the CWA is that it is inconsistent with the general approach taken by EPA under the CWA of determining compliance with effluent limitations at the end of pipe or, at least, at the point at which no more process wastewater treatment occurs. This approach is, as industry commenters have noted, consistent with the general statutory scheme of controlling discharges from point sources. EPA certainly is empowered to monitor internal waste streams. See, e.g., *Mobil Oil Corp.* v. *EPA*, 716 F.2d 1187 (7th Cir. 1983) (EPA may monitor internal waste streams to gain information as to which pollutants are being discharged and to better assess a plant's treatment efficiency). Moreover, EPA may establish limits on internal waste streams when end-of-pipe limits are impractical or infeasible, such as where the final discharge point is inaccessible (e.g., under 10 meters of water), so diluted as to make monitoring inpracticable, or subject to interferences that render detection and quantification inpracticable. See 40 CFR 122.45(h). However, EPA has never to date established in-plant limits for the purpose of addressing air emissions. The legal issues raised by such a regulatory approach are difficult and need not be reached given the fact that Congress has provided EPA with broad authority to regulate air emissions directly under other statutes.

The CAA and RCRA provide a broad array of regulatory tools to address the wide variety of air emissions. Clean Air Act regulatory programs include State Implementation Plans (SIPs) to implement National Ambient Air Quality Standards (NAAQS), National Emission Standards for Hazardous Air Pollutants (NESHAPS), and New Source Performance Standards (NSPS). In addition, two major different permit programs have been established to deal with new sources, one in areas that have obtained compliance with NAAQS (Prevention of Significant Deterioration-PSD) and the other in non-attainment areas. The CAA contains a variety of other authorities not discussed here.

RCRA also provides explicit, direct authority to regulate air emissions from hazardous waste treatment, storage and disposal (TSD) facilities. For example, section 3004(n) requires EPA to promulgate regulations for the monitoring and control of air emissions at TSD facilities as may be necessary to protect human health and the environment.

EPA believes that the use of authorities other than the CWA to address air emissions from OCPSF wastewater is preferable for several reasons. First and foremost, as noted above, statutes such as the CAA and RCRA specifically authorize and require EPA to regulate air emissions; the CWA does not. Second, these other authorities

provide for a more direct and effective means of controlling air emissions than does the CWA. Even under a broad reading of the CWA, EPA would be limited to indirectly controlling the air emissions through in-plant wastewater discharge limits, giving rise to some of the practical implementation problems discussed in the July and October 1985 notice. The CAA and RCRA, in contrast, clearly authorize the direct control of the emission itself. Third, because the CAA and to some extent the RCRA authorities provide broad authorization to regulate a wide variety of emission sources, they provide a better context for regulatory activity than does the CWA.

While multimedia issues are clearly raised in this rulemaking, they are similarly inherent in many other Agency regulations, including previously promulgated effluent guidelines. The decision not to use CWA authority to control air emissions here is consistent with longstanding Agency practice to regulate adverse effects in media other than the one being directly addressed through applying statutory authorities expressly established to address those other media. For example, EPA has consistently recognized that wastewater treatment often produces residues that may present environmental problems in other media unless properly controlled (e.g., hazardous sludges). EPA has not regulated disposal in these other media under the CWA but rather has regulated disposal under other directly applicable statutory authorities (e.g., RCRA). In promulgating this and other effluent guidelines, EPA has considered the associated costs of disposing of wastewater treatment residues in compliance with applicable requirements.

It is important to reemphasize that EPA has based the effluent limitations for volatile pollutants on the use of steam stripping with product recovery or destruction rather than on techniques that would allow air emissions, and has developed the compliance costs for this regulation based on the use of this more expensive treatment technology. This is based on the Agency's conclusion, taking into account the air emission aspects of wastewater treatment, that steam stripping with product recovery or destruction better represents the use of "best available technology." To the extent that some OCPSF plants choose to comply with the effluent limitations by using techniques that result in some air emissions (whether through volatilization from biological treatment or through prior air stripping), EPA's estimated costs and economic impacts will be overstated. However, EPA highly recommends that plants incorporate steam stripping with product recovery or destruction into their wastewater treatment systems at this time, to limit air emissions presently and in order to avoid costly retrofit requirements that may be subsequently imposed under the CAA, RCRA or other appropriate statute. EPA's current activities assessing this issue in detail, which will form the basis for subsequent regulatory activity, are summarized below.

Extensive efforts are underway to evaluate and regulate volatile organic pollutant emissions from wastewater in the organic chemicals, plastics, and synthetic fibers industry. Volatile organic compounds (VOCs) emitted from wastewater at OCPSF plants can pose air pollution problems by directly causing human health effects and/or by contributing to the formation of ozone, which then adversely affects human health and the environment. Pollutants emitted from OCPSF wastewater which directly cause human health effects include two organic compounds which are listed as hazardous air pollutants under section 112 of the Clean Air Act (vinyl chloride and benzene) and eight organics for which EPA has published a notice stating an intent to list them as hazardous air pollutants (methylene chloride, ethylene dichloride, ethylene oxide, butadiene, carbon tetrachloride, trichloroethylene, chloroform, and perchloroethylene). Organic compounds which contribute to ozone formation are referred to as volatile organic compounds, and include most organic compounds except for those specifically exempted through a series of notices which have appeared in the **Federal Register**. Also, the EPA currently is examining certain chemicals that may be contained in volatile organic compound emissions and their role as potential depleters of stratospheric ozone. Stratospheric ozone depletion may result in increased cases of skin cancer in humans and significant environmental effects as well. The Agency is continuing to study stratospheric ozone depletion and its environmental and health risk impacts. The reduction in VOC emissions from OCPSF wastewaters may also reduce emissions of potential ozone depleters, thus assisting in the protection of stratospheric ozone.

Volatile organic compounds are emitted from wastewater beginning at the point where the wastewater first contacts air. Thus, air pollutants from wastewater may be of concern immediately as the wastewater is discharged from the process unit. Emissions occur from sewers, junction boxes, screens, settling basins, equalization basins, biological treatment systems, air or steam strippers lacking product recovery and any other units where the wastewater is in contact with the air. In addition, those pollutants not emitted near the point of discharge may volatilize subsequently from the receiving waters.

In an effort being led by EPA's Office of Air and Radiation, EPA is evaluating the magnitude of the VOC emissions from OCPSF plants primarily by reviewing data already collected under the Clean Water and Clean Air Acts, but is also collecting additional data specifically for this purpose. Data on the organic content of wastewater can be used to estimate emissions. Data collected under the authority of section 308 of the Clean Water Act on the priority pollutant concentrations in wastewater are being reviewed along with sampling data obtained by EPA to support the OCPSF effluent guidelines. Analysis of these data indicates that for purposes of developing air emission controls that information on the volatile organic content of individual wastewater streams at the point of discharge from the process units is limited. It is important to realize that these data were designed to measure wastewater treatment effectiveness and thus focus mostly on the concentrations of priority pollutants in the wastewater in the influent and effluent of wastewater treatment systems. Further, due to the potential for emissions between the point of discharge from a process and the influent to end-of-pipe treatment systems, as well as the likelihood of organic emissions other than priority pollutants, the data underestimate air emissions.

In an attempt to improve the basis for estimating emissions, EPA sent questionnaires to nine OCPSF companies in July 1986 requesting that they submit existing data or provide estimates of the organic content in the wastewater at the process unit discharge. Data were requested for both volatile organics and for the specific organic pollutants referred to earlier which have been listed or are being considered for listing under section 112 of the Clean Air Act. (These are referred to as hazardous air pollutants and potentially hazardous air pollutants, respectively. Other pollutants may also become listed or considered for listing as hazardous air pollutants as better health effects data become available in the future.) Responses to this request contained data for the hazardous or potentially hazardous air pollutants, but

for the most part the quantities of VOCs and priority pollutants in the discharges were estimated or not provided.

The responses indicated that the VOC content would probably be at least ten times greater than that of the CWA priority pollutants. If this is the case, the VOC emissions based on a ten-fold increase in the air loadings derived from the section 308 data would amount to 70,000 metric tons/year. The EPA considers emissions of 70,000 tons/year of VOC from an emission source category to be significant, especially since approximately 50 percent of the OCPSF wastewater VOC emissions occur in areas where the National Ambient Air Quality Standard for ozone is not being attained (non-attainment areas). In addition, preliminary estimates indicate that risk and incidence of adverse effects resulting from potentially hazardous air pollutants emitted at OCPSF wastewater treatment facilities are significant.

The responses to the July 1986 data request also indicate that the majority of the emissions are due to a small percentage of the wastewater streams. This suggests that sizable emission reductions can be obtained through treatment of a relatively small percentage of OCPSF plant wastewaters. As a result, the EPA has initiated a program to identify wastewater streams that contain relatively high concentrations of VOCs and to determine the cost of removing the VOCs. The EPA believes that emission controls will be most effective from both an environmental and cost standpoint if applied at the point of maximum VOC concentration. This will generally be at the process unit discharge. Air pollution controls can be used at this point to reduce emissions from wastewater line junctions, open troughs, and other possible emission points in the collection system and from all downstream treatment and processing points. Since treatment costs are directly related to the amount of wastewater, VOC removal is most cost effective if performed prior to being mixed with other wastewaters that contain little or no VOCs. This information will be incorporated into a technical document which can then be used for standards development.

The EPA is presently evaluating whether the Clean Air Act, Resource Conservation and Recovery Act or a combination of these and perhaps other statutes should be used as a basis for regulating emissions from wastewater. RCRA requires the regulation of air emissions at treatment, storage, and disposal facilities, but has several statutory and regulatory exemptions which affect wastewater. As noted above, potential Clean Air Act authorities to employ include section 111 (New Source Performance Standards), Section 112 (National Emission Standards for Hazardous Air Pollutants), and/or State Implementation Plans and State regulations based on control technique guidance issued by EPA. While EPA is evaluating which regulatory authority or authorities to use for control of emissions from wastewater, additional efforts to collect data and develop air sampling procedures (which are the same regardless of regulatory authority) are proceeding.

It should be noted that in the interim, while EPA is proceeding with regulatory development, OCPSF wastewater treatment systems may be subject to new source review under the Clean Air Act. This may be required where new systems are installed to attain the effluent limitations and standards being promulgated in this **Federal Register** notice. These systems may be required to install air pollution control technology to meet best available control technology (BACT) requirements in ozone attainment areas and/or lowest achievable emission reduction (LAER) requirements in ozone nonattainment areas. Information currently being gathered by EPA to support regulatory development could be used by States in making these determinations.

Finally, readers should note that, consistent with the above discussion, EPA has already begun to regulate air emissions of VOC from wastewater systems. On May 4, 1987, EPA published proposed new source performance standards under section 111 of the Clean Air Act to limit emissions of VOC from new, modified, and reconstructed refinery wastewater systems (52 FR 16334). The proposed standards require the refinery wastewater systems to use the "best demonstrated technology", as that term is defined in the Clean Air Act, to reduce volatile organic emissions.

6. Use of Different Analytical Methods

Comment: Some commenters have stated that the various analytical methods used by EPA to generate the data used to dèvelop the limitations are varied and not comparable. For example the methods used include a variety of GC/CD methods and GC/MS procedures.

Response: EPA acknowledges that a variety of methods have been used to develop the limitations. There are several reasons for this. First, different methods are more appropriate or more cost-effective in different wastewater matrices. For example, GC/CD may be cheaper for a wastewater with only a few priority pollutants belonging to the same class of compounds, while GC/MS is cheaper for analyzing for a wide range of compounds. Second, analytical methods for organic compounds have been evolving and improving throughout the period of the OCPSF rulemaking. As available procedures were refined, EPA took advantage of these refinements. Third, EPA was unable to promulgate standard methods for most of these compounds (in a separate rulemaking) in 40 CFR Part 136 until after some of the data used to develop the OCPSF limits were collected.

It is not possible to directly compare and contrast these various methods in the sense of determining a numerical relationship of data generated by one method to that of another. Each method used by EPA to generate the data being used has represented EPA's judgement as to the best method to use at the time for the given purpose of data development in light of the evolving state of the art. Data collected by procedures deemed inadequate were subsequently dropped from the data base. EPA believes that it is most appropriate to treat all the data retained after editing as equally appropriate for use in establishing the limitations. Dischargers by using the technologies upon which the limitations are based, should be able to demonstrate compliance with these limitations using the Part 136 analytical methods.

7. Definition of Analytical Levels of Detection and Their Use in Rulemaking

Comment: A number of commenters were critical of the manner in which EPA dealt with analytical levels of detection and low pollutant concentrations. Many commenters expressed the view that the 1985 proposal established limits below what the commenters term the "limit of quantification" (LOQ). Many commenters also stated that the limits proposed by EPA are at, near, or below the "Method Detection Limit" (MDL), the "limit of detection" (LOD), or the "detection limit." Commenters cited journal articles from "Analytical Chemistry," 52, December 1980, p. 2243; "Analytical Chemistry" 55, December 1983, page 2217 and "Spectrachem" Acta. B, 33B, 1978, page 242.

Response: The Agency's position is that the definitions of MDL, LOD and LOQ cited by commenters contain a number of ambiguities that make their use in rulemaking problematic. The exception is the definition of MDL

provided by EPA (40 CFR Part 136). The other definitions do not provide explicit step by step procedures including computational formulae that are sufficiently specific that a reader can follow and obtain a result. At various points in the other definitions the reader must make assumptions and interpretations that can be translated into operational steps to obtain a result.

In approaching development of analytical methods to be used for regulation of the OCPSF and other industries, EPA sought a means by which low concentrations of organic pollutants in wastewaters could be reliably measured, and sought to avoid the ambiguities associated with the definitions of LOQ, LOD, and detection limit.

For recent measurements of organic pollutants in this industry, EPA used isotope dilution GC/MS Methods 1624 and 1625 (40 CFR Part 136; 49 FR 43234). These methods specify the exact levels at which the instrument must be calibrated (see Section 7 "Calibration" in either method), and specify the "Minimum Level" at which the entire analytical system must give recognizable signals for the pollutant and acceptable calibration points. (See the footnotes to table 2 of Method 1624 and to tables 3 and 4 of Method 1625).) These Minimum Levels are specified in the methods and are not statistically based, nor are they the same as the LOD as one commenter suggests. These minimum levels are based on EPA's experience with pollutant levels that can be measured with near 100 percent certainty in every laboratory EPA employs using these methods.

The minimum levels are pollutant specific and are different for different pollutants. Of the pollutants listed in Methods 1624 and 1625, approximately 22 percent have Minimum Levels of greater than 10 μg/l; the remaining approximately 78 percent have Minimum Levels of 10 μg/l. (Note, however, that the MDL for these pollutants is generally much lower than the Minimum Levels.)

EPA recognizes that it has used in some of its programs an analytical approach related to the LOQ, called PQL ("practical quantification level"), which is generally some multiple of the MDL. This is done, for example in the recently promulgated drinking water standards ("maximum contaminant levels") for volatile organic chemicals (52 FR 25690, July 8, 1987). That regulation established PQLs generally at levels of 5 μg/l, which is in fact lower than the minimum levels established for the corresponding pollutants under the Part 136 regulations. (They are generally to be used for cleaner water matrices than OCPSF wastewaters).) Similarly, EPA has published PQLs as part of its recently revised hazardous waste groundwater monitoring regulations (52 FR 25942; July 9, 1987). However, the PQLs in that regulation have not undergone as extensive a validation procedure as the Part 136 methods, and they are not to be used for any regulatory purpose; they were published primarily to provide guidance to analytical laboratories. (Moreover, these PQLs are based upon analytical procedures that do not reflect the state of the art as fully as the Part 136 methods do.)

In using the minimum level approach for developing the OCPSF effluent guidelines, EPA has used the approach established in the analytical procedures which it has promulgated in Part 136 and which are described above. The promulgated Part 136 methods are required to be used by NPDES permittees; thus it is the use of the Part 136 method's approach to Minimum Levels that is relevant in evaluating whether particular concentrations can be monitored for and thus may appropriately be established as regulatory limits. Moreover, it is notable that, in any event, the limitations and standards established in this rule compare favorably with a variety of analytical detection/quantification definitions. No effluent limitation is less than the minimum level that can be measured reliably with isotope dilution methods; similarly, the limitations are above the MDL for every pollutant in every method and are above the LOQ for at least one method alternate to the isotope dilution methods. Therefore, the Agency concludes that pollutants can be reliably measured at the promulgated levels.

8. Complex Matrices

Comment: Industry commented that the analytical measurement at low levels is highly matrix dependent; i.e., interferences in the sample from other pollutants and other substances can preclude measurement of pollutant levels at the promulgated effluent limits. One commenter submitted data that purport to show that the analytical methods EPA uses will not permit accurate measurement of the effluent limits EPA has set because of the complex matrices. Other commenters state that the proposed effluent limits are too low for measurement in complex wastewaters and that the methods were developed using reagent water and not wastewater matrices.

Finally, one commenter states that EPA has not demonstrated that its methods would prevent nonregulated compounds from coeluting with regulated compounds during the analysis of a complex OCPSF industry wastewater.

Response: EPA agrees that matrix interferences can make measurement difficult for a few of the pollutants at the 10 μg/L level in a few effluents, but not in many. EPA has found that well-designed, well-operated treatment systems that include in-plant treatment (e.g., steam stripping; precipitation) followed by biological treatment reduce the matrix effects so that the sample behaves in the analysis process in nearly the same way as does reagent water, so that matrix interferences do not present a problem. The limitations and standards that EPA is promulgating today are based on well-designed and well-operated treatment system performance.

For dischargers who do not use end-of-pipe biological treatment, matrix interferences are also not likely to be a problem. Effluent limitations below 50 ppb are established primarily for two types of groups, volatile pollutants treated by steam stripping and organic pollutants treated by in-plant biological treatment. In both cases, the limitations are based upon data that demonstrate that the pollutants have been and thus can be measured at the regulatory levels. If situations remain in particular wastewaters where such measurement is difficult, the pollutants can be monitored at the effluent from the in-plant steam stripper or biological treatment unit. In such a case, significant problems from matrix interferences are unlikely.

To establish an effluent limit for daily maximum or monthly average, the data used are in most cases below the effluent limit because the limit allows for the variability of the data about the average of the data (generally referred to as the long-term average). For analytical results reported below the Minimum Level (i.e., the level that EPA can reliably measure consistent with the 40 CFR Part 136 methods), the effluent data was set at the Minimum Level, thus assuring that the effluent limitations would not be based upon values below a level that can be measured reliably. EPA has used its analytical methods to measure pollutant levels, in the presence of a wide variety of sample matrices, and EPA's data establish that these measurements can be made.

EPA acknowledges that a portion of its Part 136 analytical method development was conducted using reagent water. As industry commenters correctly point out, every wastewater

sample from every plant in every industry is different. EPA must, however, use samples and analytical measurements as the fundamental mechanism for obtaining information used in the Agency's rulemaking. EPA's analytical methods were developed not only for regulating the OCPSF industry, but for all industries discharging pollutants into wastewater. As a partial solution to this problem, EPA used reagent water as a reference sample matrix, because reagent water can be made reliably and reproducibly in analytical laboratories and is therefore globally available. EPA also tested treated wastewaters in developing its methods, and found that its methods produced results nearly indistinguishable from results produced with reagent water, as stated above. Further, EPA uses reagent water as a reference matrix in nearly all of its methods, and measures deviations from the results produced with reagent water as an indicator of method performance (e.g., see section 8 of Methods 601–613, 624–625, and 1624–1625).

In addition to providing analytical methods that permit measurement of pollutants at or below the effluent limitations and standards that EPA is today promulgating, EPA has provided flexibility in its analytical methods to further deal with complex matrix problems that may arise. This flexibility is permitted in two forms. First, a permittee may apply to the Administrator for use of an alternate test procedure under 40 CFR 136.4 and 136.5. As of January 21, 1987, more than 800 applications for an alternate test procedure have been made. Second, use of alternate chromatographic columns and other minor changes to the methods are considered within the scope of the methods, provided that the quality assurance criteria in the methods are met.

EPA cannot develop a generic method that would prevent every non-regulated compound from interfering (coeluting) with every regulated compound, because of the sheer number of chemical compounds. (More than 8,000,000 have been registered with the Chemical Abstracts Service.) Rather, as noted above, EPA has provided flexibility in its methods, in terms of alternate methods, cleanup procedures, and the use of selective detectors. EPA also permits the user of its methods to improve the separations or lower the cost of measurements provided that the quality control requirements of the method are met. This flexibility allows laboratory chemists to apply their expertise in developing and using wastewater-specific techniques that are appropriate to addressing the specific co-eluting compounds for that wastewater.

EPA disagrees with the commenter that provided the results of a survey of detection limits in commercial analytical laboratories. This survey purports to show that laboratories cannot detect the pollutants at the effluent limits EPA has proposed, because of complex matrix problems. The values reported in this survey are estimates, based on unsupported judgements, and are not measured values. As indicated in a footnote to the table of data, the results are "based on a potential need for a tenfold dilution of wastewater samples." EPA assumes no need for such dilution, and has set effluent limits on the basis of pollutant levels actually measured, not on estimates.

In Methods 1624 and 1625, EPA has made provisions for dilution of "untreated effluents and other samples". These provisions were made so that the Agency could determine the efficiency of various treatment systems in removing the toxic organic pollutants. This efficiency is determined by measuring the influent to, and the effluent from, the treatment system. The influents to treatment contain higher concentrations and a greater variety of pollutants at measurable levels than the effluents, and the methods permit dilution of these influents to permit reliable measurement of the pollutant concentrations. EPA has not promulgated influent limits. EPA regulates effluents and has reliably measured pollutant concentrations in effluents without the need for dilution.

9. EPA Should Modify Its Approach to Determining Compliance

Comment: Some commenters have argued that the effluent limitations and standards do not reflect the entire range of variability that can be expected from well-designed, well-operated facilities. They recommend that some relief should be provided to facilities in the form of higher limits or a formal policy that allows periodic exceedances of the limits.

Response: The issue raised here by commenters is not unique to the OCPSF regulation. It has in fact been raised in comments on many other effluent guideline rulemakings and in NPDES permit proceedings. Moreover, it has been the subject of numerous lawsuits in various United States Courts of Appeals. Because the issue is really a generic Clean Water Act regulatory issue addressed by NPDES regulations rather than a specific OCPSF issue, EPA's response is outlined only briefly below. However, a detailed response is set forth in the Response to Comments document for this rulemaking.

Historically, in the face of comments by industries similar to those raised here by the OCPSF industry, EPA has not modified its basic conceptual approach to setting effluent limitations, but rather has provided explicitly in the NPDES regulations that demonstration of a treatment system upset in compliance with certain criteria and procedures shall constitute an affirmative defense to an enforcement action. See the discussion below in Section XII of this preamble and the cases cited therein. EPA's approach in this regard is consistent with all judicial decisions on this issue to date.

EPA has decided here to act consistently with its historical practice. The final limitations and standards have not been made less stringent to allow dischargers increased latitude. EPA believes that the current limits, developed by multiplying long-term averages by variability factors, adequately allow for discharge variability and should be achieved consistently by OCPSF dischargers.

Many techniques exist for minimizing waste stream variability, including frequent inspection and repair of equipment and the use of back-up systems; operator training and performance evaluations; management control; careful communication and coordination among production and wastewater treatment personnel; spill diversion and holding systems; equalization basins to make effluent flow and quality more uniform; and quality assurance/quality control (QA/QC) to minimize analytical variability. The use of these techniques should result in compliance at all times, apart from instances of upsets.

EPA believes that the suggestions offered by the commenters have serious drawbacks. Raising permit limits to allow increased variability would inevitably result in less vigilant day-to-day wastewater treatment and, on average, increased discharges of pollutants. This is directly contrary to the Congressional intent that dischargers consistently employ the best available technology economically achievable. Similarly, an enforcement policy that allows periodic exceedances of limits (a policy which would be generic and outside the scope of this OCPSF rulemaking) would be fraught with the potential for mischief. First, it could result in periodically excessive discharges. Second, it could result in time-consuming fact-finding disputes in enforcement cases as to the nature,

extent and frequencies of each alleged violation rather than the swift, factually simplified enforcement action envisioned by Congress.

10. Alternate BAT Limits or Pretreatment Standards for Small Plants

Comment: EPA lacks statutory authority to create alternative BAT limits or PSES for small plants even if they suffer greater economic impact than larger plants.

Response: EPA agrees with the comment that the Regulatory Flexibility Act does not provide independent authority for the fashioning of alternative BAT or PSES standards for small plants. The alternative BAT requirements promulgated today, i.e., BAT equals BPT for direct discharging plants with annual production of five million pounds or less, have been established solely under the authority of the Clean Water Act.

In its effluent guidelines program, EPA has often considered disproportionate small plant impacts and, where appropriate, fashioned alternative requirements or outright exemptions for small plants. For example, the electroplating pretreatment standards contained less stringent requirements for all electroplaters with flows less than 10,000 gallons per day. The Court in *National Association of Metal Finishers* v. *EPA*, 719 F.2d 624 (3rd Cir. 1983), noted this relaxed requirement with approval in the course of upholding EPA's regulation against an industry challenge that the regulation as a whole was not economically achievable.

The Act clearly requires EPA to consider economic impacts in setting BAT limitations. BAT means "best available technology *economically achievable*" (emphasis added). (CWA section 301(b)(2)(H)) Where economic impacts are significant, EPA is not only authorized but compelled to consider them.

The commenter argues that economic achievability can be considered only on an industry category-wide basis, not on a subcategory basis. EPA disagrees. EPA typically has considered a broad range of factors as bases for segmenting an industry for regulatory purposes: Section 304(b) of the Act authorizes the EPA Administrator to consider a variety of enumerated technical factors (mostly relevant to the "best available technology" aspect of the BAT definition), plus "such other factors as the Administrator deems appropriate." As mentioned previously, the Administrator has deemed it appropriate in many effluent guidelines regulations to consider plant size as a factor in considering segmentation/subcategorization, among other things to better take into account both technology availability and economic achievability. Where a particular size-based segment of the industry is so impacted by regulation as to bring into question whether the regulation is economically achievable for that segment, EPA may consider economic achievability in setting limitations for that segment. Nothing in the statute or legislative history precludes EPA from considering such a factor in establishing the regulations.

The commenter argues that while the Act provides for consideration of economic impacts upon an industry as a whole, certain statutory provisions and the Act's legislative history indicate that if a regulation is economically achievable for the industry as a whole, particular plants may not be exempt based upon their particular inability to comply. EPA agrees and notes that Congress clearly expected that some plants would be unable to comply and would be forced to close. (Indeed in this rulemaking, EPA projects closures as a result of compliance with BAT as well as with PSES.) However, EPA believes that this expectation extended only to the effect of requirements on particular plants; it did not imply a prohibition on taking adverse economic impact into account in defining and segmenting entire classes of plants. In fashioning alternative requirements for a segment of small direct dischargers, EPA has considered the fact that about half of the plants in that segment are projected to close and most of the remaining plants in the segment would suffer other significant economic impacts, while for the rest of the direct dischargers, the impacts are quite low. This strongly supports the conclusion that the class of small plants is significantly different from the larger plants because of their size and therefore appropriate to be treated as a separate group for regulatory purposes. Statutory provisions such as section 301 (c) and (n) limiting the consideration of economic factors in issuing permits to individual dischargers are irrelevant to the question of appropriate bases for segmenting industrial groups for regulations.

XI. Best Management Practices (BMPs)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" (BMPs), described under Legal Authority and Background, above. EPA is not promulgating BMPs for the OCPSF category at this time.

XII. Upset and Bypass Provisions

A recurring issue is whether industry limitations and standards should include provisions that authorize noncompliance during "upsets" or "bypasses." An upset, sometimes called an "excursion," is unintentional noncompliance beyond the reasonable control of the permittee. EPA believes that upset provisions are appropriate because upsets will sometimes occur, despite proper operation of industrial processes and pollution control equipment. Because technology-based limitations can require only what technology can achieve, many claim that liability for upsets is improper. When confronted with this issue, courts have been divided on the questions of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977), with *Weyerhaeuser* v. *Costle, supra* and *Corn Refiners Association, et al.* v. *Costle*, 594 F.2d 1223 (8th Cir. 1979). See also *Sierra Club* v. *Union Oil Co.*, 813 F.2d 1480 (9th Cir. 1987), *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976), *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976), and *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

An upset, as noted above, is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. EPA has, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated permit regulations that include upset and bypass permit provisions. See 40 CFR 122.41. The upset provision establishes an upset as an affirmative defense to prosecution for violation of, among other requirements, technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the OCPSF industry will be entitled to upset and bypass provisions in NPDES permits, this regulation does not address these issues. Upset and Bypass provisions are also contained in the General Pretreatment regulation, 40 CFR Parts 125 and 403.

XIII. Variances and Modifications

Once the OCPSF regulation is in effect, the numerical effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to OCPSF direct dischargers. The pretreatment standards are directly applicable to indirect dischargers and become effective as discussed in § 414.12 of the regulation.

For the BPT effluent limitations, the only exception to the limitations contained in the regulation is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra.* This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was originally set forth in EPA's 1973–1976 categorical industry regulations, it is now included in the general NPDES regulations and will not be included in the OCPSF or other specific industry regulations. See 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. However, section 306 of the Water Quality Act of 1987 added a new section 301(n) to the Act which somewhat limits the availability of FDF variances from BAT effluent limitations guidelines. An FDF application must be based solely on information and supporting data submitted to EPA during the rulemaking establishing the limitations that discussed the fundamentally different factors, or on information and supporting data that the applicant did not have a reasonable opportunity to submit during the rulemaking. The alternative requirement must be no less stringent than justified by the fundamental difference and must not result in markedly more adverse non-water quality environmental impacts than those considered by EPA in establishing the guideline.

Indirect dischargers subject to PSES are also eligible for the "fundamentally different factors" variance. See 40 CFR 403.13. They are subject to essentially the same new statutory provisions for FDF variances as discussed above for BAT.

Readers should note that EPA has not yet amended its FDF variance regulation to conform to the provisions of the Water Quality Act of 1987. The regulation promulgated today refers to the existing regulatory sections. However, EPA recognizes that the new section 301(n) of the Act overrides the existing FDF regulation to the extent of any inconsistency, and EPA does intend to modify the FDF regulation to conform to the new statutory requirements.

Indirect dischargers subject to PSES and PSNS are eligible for credits for toxic pollutants removed by a POTW. See section 307(b) of the CWA and 40 CFR 403.7. The removal credits regulation was remanded to EPA in *Natural Resources Defense Council* v. *EPA*, 790 F.2d 289 (3rd Cir. 1986). The court held that some of the means by which EPA considered local POTW removal efficiencies were not sufficiently stringent and that credits for POTW removals may not be authorized until comprehensive regulations for the use and disposal of sludge are promulgated under section 405(d) of the CWA. However, it should be noted that pretreatment standards for the OCPSF industry, like other categorical pretreatment standards, have been promulgated based upon the assumptions that indirect dischargers will be required to comply with the standards without removal credits, and thus that they are subject to the full costs of complying with PSES.

XIV. Implementation of Limitations and Standards

A. Flow Basis

The limitations promulgated today are concentration-based and thus do not regulate flow. The permit writer must use a reasonable estimate of process wastewater flows and the concentration limitations to develop mass limitations for the NPDES permit. Process wastewater discharge is defined in the regulation (40 CFR 401.11) to include wastewaters resulting from manufacture of OCPSF products that come in direct contact with raw materials, intermediate products, or final products, and surface runoff from the immediate process area that has the potential to become contaminated. Noncontact cooling waters, utility wastewaters, general site surface runoff, ground waters, and other nonprocess waters generated on site are specifically excluded from the definition of process wastewater discharges. In cases where the process wastewater flow claimed by industry may be excessive, the permit writer may develop a more appropriate process wastewater flow for use in computing the mass effluent or internal plant limitations. The following items should be considered in developing the more appropriate process wastewater flow:

1. A review of the component flows to insure that the claimed flows are, in fact, process wastewater flows as defined by the regulation;

2. A review of plant operations to insure that sound water conservation practices are being followed. Examples are: minimization of process water uses; cascading or countercurrent washes or rinses, where possible; reuse or recycle of intermediate process waters or treated wastewaters at the process area and in wastewater treatment operations (pump seals, equipment and area washdowns, etc.).

3. A review of barometric condenser use at the process level. Often, barometric condensers will generate relatively large volumes of water contaminated at low levels. Replacement of barometric condensers with surface condensers can reduce wastewater volumes significantly and result in collection of condensates that may be returned to the process.

The final NPDES permit limitations will be the sum of the mass effluent limitations derived as described above and any mass effluent limitations developed on a case-by-case basis using best professional judgment by the permit writer to take into account nonprocess wastewater discharges.

B. Relationship to NPDES Permits

The BPT and BAT limitations and NSPS in this regulation will be applied to individual OCPSF plants through NPDES permits issued by EPA or approved state agencies under section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all new, modified and reissued Federal and State NPDES permits except to the extent that variances are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One subject that has received different judicial rulings is the scope of NPDES permit proceedings when effluent limitations and standards do not exist. Under current EPA regulations, States and EPA regions that issue NPDES permits before regulations are promulgated must establish effluent limitations on a case-by-case basis. This regulation provides a technical and legal base for new or modified or reissued permits.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. EPA has developed the limitations and standards in this

regulation to cover typical facilities in the OCPSF point source category. In specific cases, the NPDES permitting authority may have to establish permit limits on toxic or nonconventional pollutants that are not covered by this regulation. The promulgation of this regulation will not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutant on a case-by-case basis when such action conforms with the purposes of the Act. In addition, to the extent that 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 limitations on covered pollutants), the permit-issuing authority must apply those limitations.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. *Sierra Club* v. *Train*, 557 F.2d 485 (5th Cir. 1977). EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

C. Indirect Dischargers

For indirect dischargers, PSES and PSNS are implemented under National Pretreatment Program procedures outlined in 40 CFR Part 403. The brief glossary below may be of assistance in resolving questions about the operation of that program.

A "request for category determination" is a written request, submitted by an indirect discharger or its POTW, for a determination of which categorical pretreatment standard applies to the indirect discharger. This assists the indirect discharger in knowing which PSES or PSNS limits it will be required to meet. See 40 CFR 403.6(a).

A request for "fundamentally different factors variance" is a mechanism by which a categorical pretreatment standard may be adjusted, making it more or less stringent, on a case-by-case basis. If an indirect discharger, a POTW, or any interested person believes that factors relating to a specific indirect discharger are fundamentally different from those factors considered during development of the relevant categorical pretreatment standard and that the existence of those factors justifies a different discharge limit from that specified in the categorical standard, then they may submit a request to EPA for such a variance. See the discussion above in Section XIII of this preamble. See 40 CFR 403.13.

A "baseline monitoring report" is the first report an indirect discharger must file following promulgation of an applicable standard. The baseline report includes: An identification of the indirect discharger; a description of its operations; a report on the flows of regulated streams and the results of sampling analyses to determine levels of regulated pollutants in those streams; a statement of the discharger's compliance or noncompliance with the standard; and a description of any additional steps required to achieve compliance. See 40 CFR 403.12(b).

A "report on compliance" is required of each indirect discharger within 90 days following the date for compliance with an applicable categorical pretreatment standard. The report must indicate the concentration of all regulated pollutants in the facility's regulated process wastestreams; the average and maximum daily flows of the regulated streams; and a statement of whether compliance is consistently being achieved, and if not, what additional operation and maintenance and/or pretreatment is necessary to achieve compliance. See 40 CFR 403.12(d).

A "periodic compliance report" is a report on continuing compliance with all applicable categorical pretreatment standards. It is submitted twice per year (June and December) by indirect dischargers subject to the standards. The report must provide the concentrations of the regulated pollutants in its discharge to the POTW; the average and maximum daily flow rates of the facility; the methods used by the indirect discharger to sample and analyze the data; and a certification that these methods conform to the methods outlined in the regulations. See 40 CFR 403.12(e).

XV. Availability of Technical Information

The basis for this regulation is detailed in four major documents each of which in turn is supported by additional information and analyses in the record. Analytical methods are discussed in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants." EPA's technical foundation for the regulations is detailed in the "Development Document for Effluent Guidelines, New Source Performance Standards, and Pretreatment Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category." The Agency's economic analysis is presented in the "Economic Impact Analysis Report for the Effluent Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Industry." A detailed response to the public comments received on the proposed regulation and subsequent notices is presented in a report entitled "Responses to Public Comments on the Proposed Organic Chemicals, Plastics and Synthetic Fibers Effluent Limitations Guidelines and Standards." Copies of the technical document and economic document may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487–4600. Additional information concerning the economic impact analysis may be obtained from Ms. Kathleen Ehrensberger, Economic Analysis Branch (WH–586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling (202) 382–5397. Technical information may be obtained from Mr. Elwood H. Forsht, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling (202) 382–7190.

XVI. Office of Management and Budget (OMB) Review

This regulation and the Regulatory Impact Analysis were submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulation does not contain any information collection requirements. There are information collection requirements associated with the general pretreatment requirements and permit requirements. These information collection requirements have been approved by OMB.

List of Subjects

40 CFR Part 414

Organic chemicals manufacturing, Plastics manufacturing, Synthetic fibers manufacturing, Water pollution control, Water treatment and disposal.

40 CFR Part 416

Plastics materials and synthetics, Waste treatment and disposal, Water pollution control.

Dated: October 2, 1987.

Lee M. Thomas,

Administrator.

Appendices

Appendix A—Abbreviations, Acronymns, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology under section 304(b)(4) of the Act.

BOD—For the purposes of this notice, BOD refers to 5-day biochemical oxygen demand.

BMP—Best management practices under section 304(e) of the Act.

BPT—The best practicable control technology currently available under section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 (Pub. L. 95–217) and Water Quality Act of 1987 (Pub. L. 100–4) (33 U.S.C. 1251 *et seq.*).

Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NSPS—New source performance standards under section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges under section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges under sections 307 (b) and (c) of the Act.

RCRA—Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580) and as further amended (42 U.S.C. 6901 *et seq*).

Appendix B—Toxic Pollutants Excluded from PSES and PSNS Because They Are Sufficiently Controlled by Existing Technologies

2,4-Dinitrophenol
Benzo(k)fluoranthene
Acenaphthylene

Appendix C—Toxic Pollutants Not Detected in the Treated Effluents of Direct Dischargers or in Wastewaters from Process Sources

Hexachlorocyclopentadiene
N-Nitrosodimethylamine
Aldrin
Dieldrin
Chlordane
4,4'-DDT
4,4'-DDE
4,4'-DDD
alpha-Endosulfan
beta-Endosulfan
Endosulfansulfate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide
alpha-BHC
beta-BHC
gamma-BHC
delta-BHC
Toxaphene
PCB–1242 (Arochlor 1242)
PCB–1254 (Arochlor 1254)
PCB–1221 (Arochlor 1221)
PCB–1232 (Arochlor 1232)
PCB–1248 (Arochlor 1248)
PCB–1260 (Arochlor 1260)
PCB–1016 (Arochlor 1016)
Asbestos

Appendix D—Toxic Pollutants (1) Detected in Treated Effluents From a Small Number of Discharge Sources and Uniquely Related to Those Sources, (2) Present Only in Trace Amounts and Neither Causing Nor Likely to Cause Toxic Effects, or (3) Sufficiently Controlled by Existing Technologies

Acrolein (1)
Benzidine (1)
Bis (2-chloroethyl)ether (2)
2-Chloroethyl vinyl ether (1)
2-Chloronaphthalene (1)
Parachlorometa cresol (1)
4-Chlorophenyl phenyl ether (1)
4-Bromophenyl phenyl ether (1)
1,2-Diphenylhydrazine (1)
Bis (2-chloroethoxy) methane (1)
Methylbromide (1)
Bromoform (2)
Dichlorobromomethane (2)
Chlorodibromomethane (2)
N-Nitrosodiphenylamine (1)
N-Nitrosodi-n-propylamine (1)
Pentachlorophenol (2)
Butyl benzyl phthalate (1)
Di-n-octyl phthalate (2)
Arsenic (1)
Beryllium (1)
Cadmium (1)
Mercury (1)
Selenium (1)
Silver (1)
Thallium (1)
Benzo(ghi)perylene (3)
Dibenzo(a,h) anthracene (3)
Indeno(1,2,3-c,d)pyrene (3)
Isophorone (2)
1,1,2,2-Tetrachloroethane (2)

Appendix E—Toxic Pollutants That Do Not Pass Through or Interfere With POTWs

Benzo(a) anthracene
Benzo(a) pyrene
Chrysene
Chromium
Copper
Nickel

For the reasons set out in the preamble, 40 CFR Part 414 and 416 are amended as set forth below.

1. 40 CFR Part 414 is revised to read as follows:

PART 414—ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS

Subpart A—General

Sec.

414.10 General definitions.
414.11 Applicability.
414.12 Compliance date for Pretreatment Standards for Existing Sources (PSES).

Subpart B—Rayon Fibers

414.20 Applicability; description of the rayon fibers subcategory.
414.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
414.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
414.23 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
414.24 New source performance standards (NSPS).
414.25 Pretreatment standards for existing sources (PSES).
414.26 Pretreatment standards for new sources (PSNS).

Subpart C—Other Fibers

414.30 Applicability; description of the other fibers subcategory.
414.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
414.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
414.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
414.34 New source performance standards (NSPS).
414.35 Pretreatment standards for existing sources (PSES).

414.36 Pretreatment standards for new sources (PSNS).

Subpart D—Thermoplastic Resins

414.40 Applicability; description of the thermoplastics resins subcategory.
414.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
414.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
414.43 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
414.44 New source performance standards (NSPS).
414.45 Pretreatment standards for existing sources (PSES).
414.46 Pretreatment standards for new sources (PSNS).

Subpart E—Thermosetting Resins

414.50 Applicability; description of the thermosetting resins subcategory.
414.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
414.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
414.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
414.54 New source performance standards (NSPS).
414.55 Pretreatment standards for existing sources (PSES).
414.56 Pretreatment standards for new sources (PSNS).

Subpart F—Commodity Organic Chemicals

414.60 Applicability; description of the commodity organic chemicals subcategory.
414.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
414.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
414.63 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
414.64 New source performance standards (NSPS).
414.65 Pretreatment standards for existing sources (PSES).
414.66 Pretreatment standards for new sources (PSNS).

Subpart G—Bulk Organic Chemicals

414.70 Applicability; description of the bulk organic chemicals subcategory.
414.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
414.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
414.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
414.74 New source performance standards (NSPS).
414.75 Pretreatment standards for existing sources (PSES).
414.76 Pretreatment standards for new sources (PSNS).

Subpart H—Specialty Organic Chemicals

414.80 Applicability; description of the specialty organic chemicals subcategory.
414.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
414.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
414.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
414.84 New source performance standards (NSPS).
414.85 Pretreatment standards for existing sources (PSES).
414.86 Pretreatment standards for new sources (PSNS).

Subpart I—Direct Discharge Point Sources That Use End-of-Pipe Biological Treatment

414.90 Applicability; description of the subcategory of direct discharge point sources that use end-of-pipe biological treatment.
414.91 Toxic pollutant effluent limitations and standards for direct discharge point sources that use end-of-pipe biological treatment.

Subpart J—Direct Discharge Point Sources That Do Not Use End-of-Pipe Biological Treatment

414.100 Applicability; description of the subcategory of direct discharge point sources that do not use end-of-pipe biological treatment.
414.101 Toxic pollutant effluent limitations and standards for direct discharge point sources that do not use end-of-pipe biological treatment.

Appendix A—Non-Complexed Metal-Bearing Waste Streams and Cyanide-Bearing Waste Streams

Appendix B—Complexed-Metal Bearing Waste Streams

Authority: Sections 301, 304, 306, 307, and 501, Pub. L. 92-500, 86 Stat. 816, Pub. L. 95-217, 91 Stat. 156, Pub. L. 100-4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

Subpart A—General

§ 414.10 General definitions.

As used in this part:

(a) Except as provided in this regulation, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this part.

(b) "Pretreatment control authority" means:

(1) The POTW if the POTW's submission for its pretreatment program has been approved in accordance with the requirements of 40 CFR 403.11, or

(2) The Approval Authority if the submission has not been approved.

(c) "Priority pollutants" means the toxic pollutants listed in 40 CFR 401.15.

§ 414.11 Applicability.

(a) The provisions of this part are applicable to process wastewater discharges from all establishments or portions of establishments that manufacture the organic chemicals, plastics, and synthetic fibers (OCPSF) products or product groups covered by Subparts B through H of this regulation and are included within the following U.S. Department of Commerce Bureau of the Census Standard Industrial Classification (SIC) major groups:

(1) SIC 2821—Plastic Materials, Synthetic Resins, and Nonvulcanizable Elastomers,

(2) SIC 2823—Cellulosic Man-Made Fibers,

(3) SIC 2824—Synthetic Organic Fibers, Except Cellulosic,

(4) SIC 2865—Cyclic Crudes and Intermediates, Dyes, and Organic Pigments,

(5) SIC 2869—Industrial Organic Chemicals, Not Elsewhere Classified.

(b) The provisions of this part are applicable to wastewater discharges from OCPSF research and development, pilot plant, technical service and laboratory bench scale operations if such operations are conducted in conjunction with and related to existing OCPSF manufacturing activities at the plant site.

(c) Notwithstanding paragraph (a) of this section, the provisions of this part are not applicable to discharges resulting from the manufacture of

OCPSF products if the products are included in the following SIC subgroups and have in the past been reported by the establishment under these subgroups and not under the SIC groups listed in paragraph (a) of this section:

(1) SIC 2843085—bulk surface active agents;

(2) SIC 28914—synthetic resin and rubber adhesives;

(3) Chemicals and Chemical Preparations, not Elsewhere Classified:

(i) SIC 2899568—sizes, all types

(ii) SIC 2899597—other industrial chemical specialties, including fluxes, plastic wood preparations, and embalming fluids;

(4) SIC 2911058—aromatic hydrocarbons manufactured from purchased refinery products; and

(5) SIC 2911632—aliphatic hydrocarbons manufactured from purchased refinery products.

(d) Notwithstanding paragraph (a) of this section, the provisions of this part are not applicable to any discharges for which a different set of previously promulgated effluent limitations guidelines and standards in this subchapter apply, unless the facility reports OCPSF products under SIC codes 2865, 2869, or 2821, and the facility's OCPSF wastewaters are treated in a separate treatment system or discharged separately to a publicly owned treatment works.

(e) The provisions of this part do not apply to any process wastewater discharges from the manufacture of organic chemical compounds solely by extraction from plant and animal raw materials or by fermentation processes.

(f) Discharges of chromium, copper, lead, nickel, and zinc in "complexed metal-bearing waste streams," listed in Appendix B of this part, are not subject to the requirements of this part.

§ 414.12 Compliance date for Pretreatment Standards for Existing Sources (PSES).

All dischargers subject to PSES in this part must comply with the standards by no later than three years after date of promulgation in the **Federal Register**.

Subpart B—Rayon Fibers

§ 414.20 Applicability; description of the rayon fibers subcategory.

The provisions of this subpart are applicable to process wastewater discharges resulting from the manufacture of rayon fiber by the viscose process only.

§ 414.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

Effluent characteristics	BPT effluent limitations [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	64	24
TSS	130	40
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 414.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The Agency has determined that for existing point sources whose total OCPSF production defined by § 414.11 is less than or equal to five (5) million pounds of OCPSF products per year, the BPT level of treatment is the best available technology economically achievable. Accordingly, the Agency is not promulgating more stringent BAT limitations for these point sources.

(b) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part.

(c) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part.

§ 414.24 New source performance standards (NSPS).

(a) Any new source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) Any new source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

Effluent characteristics	NSPS [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	64	24
TSS	130	40
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.25 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metals or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and

(2) That the combination of such streams, prior to treatment, with the Appendix A waste streams would result

in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Pretreatment standards [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-Trans-dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl) phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc [2]	2,610	1,050

[1] All units are micrograms per liter.
[2] Total Zinc for Rayon Fiber Manufacture that uses the viscose process is 6,796 μg/l and 3,325 μg/l for maximum for any one day and maximum for monthly average, respectively.

§ 414.26 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed above in § 414.25.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed above in § 414.25 for the metal pollutants times the flow from metal-bearing waste streams and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and

(2) That the combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Subpart C—Other Fibers

§ 414.30 Applicability; description of the other fibers subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the following SIC 2823 cellulosic man-made fibers and fiber groups, except Rayon, and SIC 2824 synthetic organic fibers and fiber groups. Product groups are indicated with an asterisk (*).

*Acrylic Fibers (85% Polyacrylonitrile)
*Cellulose Acetate Fibers
*Fluorocarbon (Teflon) Fibers
*Modacrylic Fibers
*Nylon 6 Fibers
Nylon 6 Monofilament
*Nylon 66 Fibers
Nylon 66 Monofilament
*Polyamide Fibers (Quiana)
*Polyaramid (Kevlar) Resin-Fibers
*Polyaramid (Nomex) Resin-Fibers
*Polyester Fibers
*Polyethylene Fibers
*Polypropylene Fibers
*Polyurethane Fibers (Spandex)

§ 414.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the (mass) quantity determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

Effluent characteristics	BPT effluent limitations [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	48	18
TSS	115	36
pH	([2])	([2])

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 414.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The Agency has determined that for existing point sources whose total OCPSF production defined by § 414.11 is less than or equal to five (5) million pounds of OCPSF products per year, the BPT level of treatment is the best available technology economically achievable. Accordingly, the Agency is not promulgating more stringent BAT limitations for these point sources.

(b) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part.

(c) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part.

§ 414.34 New source performance standards (NSPS).

(a) Any new source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part,

and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) Any new source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

Effluent characteristics	NSPS [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	48	18
TSS	115	36
pH	([2])	([2])

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.35 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for the metals pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Pretreatment standards [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl) phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc [2]	2,610	1,050

[1] All units are micrograms per liter.
[2] Total zinc for the manufacture of acrylic fibers using the zinc chloride/solvent process is 6,796 μg/l and 3,325 μg/l for maximum for any one day and maximum for monthly average, respectively.

§ 414.36 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed above in § 414.35.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed above in § 414.35 for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Subpart D—Thermoplastic Resins

§ 414.40 Applicability; description of the thermoplastic resins subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the following SIC 28213 thermoplastic resins and thermoplastic resin groups. Product groups are indicated with an asterisk (*).

*Abietic Acid—Derivatives
*ABS Resins
*ABS-SAN Resins
*Acrylate-Methacrylate Latexes
*Acrylic Latex
*Acrylic Resins
*Cellulose Acetate Butyrates
Cellulose Acetate Resin
*Cellulose Acetates
*Cellulose Acetates Propionates
Cellulose Nitrate
Cellulose Sponge
*Ethylene-Methacrylic Acid Copolymers
*Ethylene-Vinyl Acetate Copolymers
*Fatty Acid Resins
*Fluorocarbon Polymers
Nylon 11 Resin
*Nylon 6—66 Copolymers
*Nylon 6—Nylon 11 Blends
Nylon 6 Resin
Nylon 612 Resin

Nylon 66 Resin
*Nylons
*Petroleum Hydrocarbon Resins
*Polyvinyl Pyrrolidone—Copolymers
*Poly(Alpha)Olefins
Polyacrylic Acid
*Polyamides
*Polyarylamides
Polybutadiene
*Polybutenes
Polybutenyl Succinic Anhydride
*Polycarbonates
*Polyester Resins
*Polyester Resins, Polybutylene Terephthalate
*Polyester Resins, Polyoxybenzoate
Polyethylene
*Polyethylene—Ethyl Acrylate Resins
*Polyethylene—Polyvinyl Acetate Copolymers
Polyethylene Resin (HDPE)
Polyethylene Resin (LPDE)
Polyethylene Resin, Scrap
Polyethylene Resin, Wax (Low M.W.)
Polyethylene Resin, Latex
Polyethylene Resins
*Polyethylene Resins, Compounded
*Polyethylene, Chlorinated
*Polyimides
*Polypropylene Resins
Polystyrene (Crystal)
Polystyrene (Crystal) Modified
*Polystyrene—Copolymers
*Polystyrene—Acrylic Latexes
Polystyrene Impact Resins
Polystyrene Latex
Polystyrene, Expandable
Polystyrene, Expanded
*Polysulfone Resins
Polyvinyl Acetate
*Polyvinyl Acetate—PVC Copolymers
*Polyvinyl Acetate Copolymers
*Polyvinyl Acetate Resins
Polyvinyl Alcohol Resin
Polyvinyl Chloride
Polyvinyl Chloride, Chlorinated
*Polyvinyl Ether-Maleic Anhydride
*Polyvinyl Formal Resins
*Polyvinylacetate—Methacrylic Copolymers
*Polyvinylacetate Acrylic Copolymers
*Polyvinylacetate-2-Ethylhexylacrylate Copolymers
Polyvinylidene Chloride
*Polyvinylidene Chloride Copolymers
*Polyvinylidene-Vinyl Chloride Resins
*PVC Copolymers, Acrylates (Latex)
*PVC Copolymers, Ethylene-Vinyl Chloride
*Rosin Derivative Resins
*Rosin Modified Resins
*Rosin Resins
*SAN Resins
*Silicones: Silicone Resins
*Silicones: Silicone Rubbers
*Styrene Maleic Anhydride Resins
Styrene Polymeric Residue
*Styrene-Acrylic Copolymer Resins
*Styrene-Acrylonitrile-Acrylates Copolymers
*Styrene-Butadiene Resins
*Styrene-Butadiene Resins (<50% Butadiene)
*Styrene-Butadiene Resins (latex)
*Styrene-Divinyl Benzene Resins (Ion Exchange)
*Styrene-Methacrylate Terpolymer Resins
*Styrene-Methyl Methacrylate Copolymers
*Styrene, Butadiene, Vinyl Toluene Terpolymers
*Sulfonated Styrene-Maleic Anhydride Resins
*Unsaturated Polyester Resins
*Vinyl Toluene Resins
*Vinyl Toluene-Acrylate Resins
*Vinyl Toluene-Butadiene Resins
*Vinyl Toluene-Methacrylate Resins
*Vinylacetate-N-Butylacrylate Copolymers

§ 414.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

Effluent characteristics	BPT Effluent Limitations [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	64	24
TSS	130	40
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 414.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The Agency has determined that for existing point sources whose total OCPSF production defined by § 414.11 is less than or equal to five (5) million pounds of OCPSF products per year, the BPT level of treatment is the best available technology economically achievable. Accordingly, the Agency is not promulgating more stringent BAT limitations for these point sources.

(b) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part.

(c) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part.

§ 414.44 New source performance standards (NSPS).

(a) Any new source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) Any new source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

Effluent characteristics	NSPS [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	64	24
TSS	130	40
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.45 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Pretreatment standards [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl) phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc	2,610	1,050

[1] All units are micrograms per liter.

§ 414.46 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed above in § 414.45.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed above in § 414.45 for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Subpart E—Thermosetting Resins

§ 414.50 Applicability; description of the thermosetting resins subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the following SIC 28214 thermosetting resins and thermosetting resin groups. Product groups are indicated with an asterisk (*).

*Alkyd Resins
Dicyanodiamide Resin
*Epoxy Resins
*Fumaric Acid Polyesters
*Furan Resins
Glyoxal-Urea Formaldehyde Textile Resin
*Ketone-Formaldehyde Resins
*Melamine Resins
*Phenolic Resins
*Polyacetal Resins
Polyacrylamide
*Polyurethane Prepolymers
*Polyurethane Resins
*Urea Formaldehyde Resins
*Urea Resins

§ 414.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

Effluent characteristics	BPT effluent limitations [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	163	61
TSS	216	67
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 414.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The Agency has determined that for existing point sources whose total OCPSF production defined by § 414.11 is less than or equal to five (5) million pounds of OCPSF products per year, the BPT level of treatment is the best available technology economically achievable. Accordingly, the Agency is not promulgating more stringent BAT limitations for these point sources.

(b) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part.

(c) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part.

§ 414.54 New source performance standards (NSPS).

(a) Any new source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) Any new source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

Effluent characteristics	NSPS [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	163	61
TSS	216	67
pH	([2])	([2])

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.55 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Pretreatment standards [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-Trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl) phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc	2,610	1,050

[1] All units are micrograms per liter.

§ 414.56 Pretreatment Standards for New Sources (PSNS).

(a) Except as provided in 40 CFR 403.7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed above in § 414.55.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed above in § 414.55 for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Subpart F—Commodity Organic Chemicals

§ 414.60 Applicability; description of the commodity organic chemicals subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the following SIC 2865 and 2869 commodity organic chemicals and commodity organic chemical groups. Product groups are indicated with an asterisk (*).

(a) Aliphatic Organic Chemicals

Acetaldehyde
Acetic Acid
Acetic Anhydride
Acetone
Acrylonitrile
Adipic Acid
*Butylenes (Butenes)
Cyclohexane
Ethanol
Ethylene
Ethylene Glycol
Ethylene Oxide
Formaldehyde
Isopropanol
Methanol
Polyoxypropylene Glycol
Propylene
Propylene Oxide
Vinyl Acetate
1,2-Dichloroethane
1,3-Butadiene

(b) Aromatic Organic Chemicals

Benzene
Cumene
Dimethyl Terephthalate
Ethylbenzene
m-Xylene (impure)
p-Xylene
Phenol
*Pitch Tar Residues
*Pyrolysis Gasolines
Styrene
Terephthalic Acid
Toluene
*Xylenes, Mixed
o-Xylene

(c). Halogenated Organic Chemicals

Vinyl Chloride

§ 414.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

Effluent characteristics	BPT Effluent limitations [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	80	30
TSS	149	46
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 414.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The Agency has determined that for existing point sources whose total OCPSF production defined by § 414.11 is less than or equal to five (5) million pounds of OCPSF products per year, the BPT level of treatment is the best available technology economically achievable. Accordingly, the Agency is not promulgating more stringent BAT limitations for these point sources.

(b) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part.

(c) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part.

§ 414.64 New source performance standards (NSPS)

(a) Any new source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) Any new source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

Effluent characteristics	NSPS [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	80	30
TSS	149	46
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.65 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Pretreatment standards [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl) phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc	2,610	1,050

[1] All units are micrograms per liter.

§ 414.66 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403:7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed above in § 414.65.

(b) In the case of lead, zinc, and total cyanide, the discharge quantity (mass) shall be determined by multiplying the concentrations listed above in § 414.65 for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this Part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Subpart G—Bulk Organic Chemicals

§ 414.70 Applicability; description of the bulk organic chemicals subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the following SIC 2865 and 2869 bulk organic chemicals and bulk organic chemical groups. Product groups are indicated with an asterisk (*).

(a) Aliphatic Organic Chemicals

*Acetic Acid Esters
*Acetic Acid Salts
Acetone Cyanohydrin
Acetylene
Acrylic Acid
*Acrylic Acid Esters
*Alkoxy Alkanols
*Alkylates
*Alpha-Olefins
Butane (all forms)
*C-4 Hydrocarbons (Unsaturated)
Calcium Stearate
Caprolactam
Carboxymethyl Cellulose
Cellulose Acetate Butyrates
*Cellulose Ethers
Citric Acid
Cumene Hydroperoxide
Cyclohexanol
Cyclohexanol, Cyclohexanone (Mixed)
Cyclohexanone
Cyclohexene
*C12–C18 Primary Alcohols
*C5 Concentrates
*C9 Concentrates
Decanol
Diacetone Alcohol
*Dicarboxylic Acids—Salts
Diethyl Ether
Diethylene Glycol
Diethylene Glycol Diethyl Ether
Diethylene Glycol Dimethyl Ether
Diethylene Glycol Monoethyl Ether
Diethylene Glycol Monomethyl Ether
*Dimer Acids
Dioxane
Ethane
Ethylene Glycol Monophenyl Ether
*Ethoxylates, Misc.
Ethylene Glycol Dimethyl Ether
Ethylene Glycol Monobutyl Ether
Ethylene Glycol Monoethyl Ether
Ethylene Glycol Monomethyl Ether
*Fatty Acids
Glycerine (Synthetic)
Glyoxal
Hexane
*Hexanes and Other C6 Hydrocarbons
Isobutanol
Isobutylene
Isobutyraldehyde
Isophorone
Isophthalic Acid
Isoprene
Isopropyl Acetate
Ligninsulfonic Acid, Calcium Salt
Maleic Anhydride
Methacrylic Acid
*Methacrylic Acid Esters
Methane
Methyl Ethyl Ketone
Methyl Methacrylate
Methyl Tert-Butyl Ether
Methylisobutyl Ketone
*n-Alkanes
n-Butyl Alcohol
n-Butylacetate
n-Butyraldehyde
n-Butyric Acid
n-Butyric Anhydride
*n-Paraffins
n-Propyl Acetate
n-Propyl Alcohol
Nitrilotriacetic Acid
Nylon Salt
Oxalic Acid
*Oxo Aldehydes—Alcohols
Pentaerythritol
Pentane
*Pentenes
*Petroleum Sulfonates
Pine Oil
Polyoxybutylene Glycol
Polyoxyethylene Glycol
Propane
Propionaldehyde
Propionic Acid
Propylene Glycol
Sec-Butyl Alcohol
Sodium Formate
Sorbitol
Stearic Acid, Calcium Salt (Wax)
Tert-Butyl Alcohol
1-Butene

1-Pentene
1,4-Butanediol
Isobutyl Acetate
2-Butene (Cis and Trans)
2-Ethyl Hexanol
2-Ethylbutyraldehyde
2,2,4-Trimethyl-1,3-Pentanediol

(b) Amine and Amide Organic Chemicals

2,4-Diaminotoluene
*Alkyl Amines
Aniline
Caprolactam, Aqueous Concentrate
Diethanolamine
Diphenylamine
*Ethanolamines
Ethylamine
Ethylenediamine
Ethylenediaminetetracetic Acid
*Fatty Amines
Hexamethylene Diamine
Isopropylamine
m-Toluidine
Melamine
Melamine Crystal
*Methylamines
Methylene Dianiline
n-Butylamine
N,N-Diethylaniline
N,N-Dimethylformamide
*Nitroanilines
Polymeric Methylene Dianiline
Sec-Butylamine
Tert-Butylamine
Toluenediamine (Mixture)
*Toluidines
o-Phenylenediamine
2,6-Dimethylaniline
4-(N-Hydroxyethylethylamino)-2-Hydroxyethyl Analine
4,4'-Methylenebis (N,N'-dimethyl)-aniline
4,4'Methylenedianiline

(c) Aromatic Organic Chemicals

Alpha-Methylstyrene
*Alkyl Benzenes
*Alkyl Phenols
*Alkylbenzene Sulfonic Acids, Salts
Aminobenzoic Acid (Meta and Para)
Aspirin
Beta-Naphthalene Sulfonic Acid
Benzenedisulfonic Acid
Benzoic Acid
Bis(2-Ethylhexyl)Phthalate
Bisphenol A
BTX-Benzene, Toluene, Xylene (Mixed)
Butyl Octyl Phthalate
Coal Tar
*Coal Tar Products (Misc.)
Creosote
*Cresols, Mixed
Cyanuric Acid
*Cyclic Aromatic Sulfonates
Dibutyl Phthalate
Diisobutyl Phthalate
Diisodecyl Phthalate
Diisooctyl Phthalate
Dimethyl Phthalate
Dinitrotoluene (Mixed)
Ditridecyl Phthalate
m-Cresol
Metanilic Acid
Methylenediphenyldiisocyanate
Naphthalene
*Naphthas, Solvent
Nitrobenzene
Nitrotoluene
Nonylphenol
p-Cresol
Phthalic Acid
Phthalic Anhydride
*Tars—Pitches
Tert-Butylphenol
*Toluene Diisocyanates (Mixture)
Trimellitic Acid
o-Cresol
1-Tetralol, 1-Tetralone Mix
2,4-Dinitrotoluene
2,6-Dinitrotoluene

(d) Halogenated Organic Chemicals

1,4-Phenylenediamine Dihydrochloride
Allyl Chloride
Benzyl Chloride
Carbon Tetrachloride
*Chlorinated Paraffins, 35–64 PCT, Chlorine
Chlorobenzene
*Chlorobenzenes (Mixed)
Chlorodifluoroethane
Chloroform
*Chloromethanes
2-Chloro-5-Methylphenol (6-chloro-m-cresol)
*Chlorophenols
Chloroprene
Cyanogen Chloride
Cyanuric Chloride
Dichloropropane
Epichlorohydrin
Ethyl Chloride
*Fluorocarbons (Freons)
Methyl Chloride
Methylene Chloride
Pentachlorophenol
Phosgene
Tetrachloroethylene
Trichloroethylene
Trichlorofluoromethane
Vinylidene Chloride
1,1-Dichloroethane
1,1,1-Trichloroethane
2,4-Dichlorophenol

(e) Other Organic Chemicals

Adiponitrile
Carbon Disulfide
Dithiophosphates, Sodium Salt
Fatty Nitriles
*Organo-Tin Compounds
*Phosphate Esters
Tetraethyl Lead
Tetramethyl Lead
*Urethane Prepolymers
*Waxes, Emulsions—Dispersions

§ 414.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

Effluent characteristics	BPT Effluent limitations [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	92	34
TSS	159	49
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 414.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The Agency has determined that for existing point sources whose total OCPSF production defined by § 414.11 is less than or equal to five (5) million pounds of OCPSF products per year, the BPT level of treatment is the best available technology economically achievable. Accordingly, the Agency is not promulgating more stringent BAT limitations for these point sources.

(b) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part.

(c) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part.

§ 414.74 New source performance standards (NSPS)

(a) Any new source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part,

and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) Any new source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

Effluent characteristics	NSPS [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	92	34
TSS	159	49
pH	([2])	([2])

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.75 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide, the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Pretreatment standards [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Napthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl) phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc	2,610	1,050

[1] All units are micrograms per liter.

§ 414.76 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed above in § 414.75.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed above in §414.75 for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Subpart H—Specialty Organic Chemicals

§ 414.80 Applicability; description of the specialty organic chemicals subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of all SIC 2865 and 2869 organic chemicals and organic chemical groups which are not defined as commodity or bulk organic chemicals in § 414.60 and § 414.70, respectively.

§ 414.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

Effluent characteristics	BPT effluent limitations [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	120	45
TSS	183	57

Effluent characteristics	BPT effluent limitations [1]	
	Maximum for any one day	Maximum for monthly average
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 414.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The Agency has determined that for existing point sources whose total OCPSF production defined by § 414.11 is less than or equal to five (5) million pounds of OCPSF products per year, the BPT level of treatment is the best available technology economically achievable. Accordingly, the Agency is not promulgating more stringent BAT limitations for these point sources.

(b) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part.

(c) Except as provided in paragraph (a) of this section and in 40 CFR 125.30 through 125.32, any existing point source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part.

§ 414.84 New source performance standards (NSPS).

(a) Any new source that uses end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.91 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) Any new source that does not use end-of-pipe biological treatment and is subject to this subpart must achieve discharges in accordance with § 414.101 of this part, and also must not exceed the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

Effluent characteristics	NSPS [1]	
	Maximum for any one day	Maximum for monthly average
BOD5	120	45
TSS	183	57
pH	(2)	(2)

[1] All units except pH are milligrams per liter.
[2] Within the range of 6.0 to 9.0 at all times.

§ 414.85 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this Part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Pretreatment standards [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl) phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc	2,610	1,050

[1] All units are micrograms per liter.

§ 414.86 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed above in § 414.85.

(b) In the case of lead, zinc, and total cyanide, the discharge quantity (mass) shall be determined by multiplying the

concentrations listed above in § 414.85 for the metal pollutants times the flow from metal-bearing waste streams for metals and times the flow from cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Subpart I—Direct Discharge Point Sources That Use End-of-Pipe Biological Treatment

§ 414.90 Applicability; description of the subcategory of direct discharge point sources that use end-of-pipe biological treatment.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the OCPSF products and product groups defined by § 414.11 from any point source that uses end-of-pipe biological treatment or installs end-of-pipe biological treatment to comply with BPT effluent limitations.

§ 414.91 Toxic pollutant effluent limitations and standards for direct discharge point sources that use end-of-pipe biological treatment.

(a) Any point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) In the case of chromium, copper, lead, nickel, zinc, and total cyanide, the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for these pollutants times the flow from metal-bearing waste streams for the metals and times the flow from cyanide-bearing waste streams for total cyanide. Metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the permitting authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and that

(2) The combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Effluent limitations BAT and NSPS [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	59	22
Acrylonitrile	242	96
Benzene	136	37
Carbon Tetrachloride	38	18
Chlorobenzene	28	15
1,2,4-Trichlorobenzene	140	68
Hexachlorobenzene	28	15
1,2-Dichloroethane	211	68
1,1,1-Trichloroethane	54	21
Hexachloroethane	54	21
1,2-Dichloroethane	59	22
1,1,1-Trichloroethane	54	21
Chloroethane	268	104
Chloroform	46	21
2-Chlorophenol	98	31
1,2-Dichlorobenzene	163	77
1,3-Dichlorobenzene	44	31
1,4-Dichlorobenzene	28	15
1,1-Dichloroethylene	25	16
1,2-trans-Dichloroethylene	54	21
2,4-Dichlorophenol	112	39
1,2-Dichloropropane	230	153
1,3-Dichloropropylene	44	29
2,4-Dimethylphenol	36	18
2,4-Dinitrotoluene	285	113
2,6-Dinitrotoluene	641	255
Ethylbenzene	108	32
Fluoranthene	68	25
Bis(2-Chloroisopropyl) ether	757	301
Methylene Chloride	89	40
Methyl Chloride	190	86
Hexachlorobutadiene	49	20
Naphthalene	59	22
Nitrobenzene	68	27
2-Nitrophenol	69	41
4-Nitrophenol	124	72
2,4-Dinitrophenol	123	71
4,6-Dinitro-o-cresol	277	78
Phenol	26	15
Bis(2-ethylhexyl) phthalate	279	103
Di-n-butyl phthalate	57	27
Diethyl phthalate	203	81
Dimethyl phthalate	47	19
Benzo(a)anthracene	59	22
Benzo(a)pyrene	61	23
3,4-Benzofluoranthene	61	23
Benzo(k)fluoranthene	59	22
Chrysene	59	22
Acenaphthylene	59	22
Anthracene	59	22
Fluorene	59	22
Phenanthrene	59	22
Pyrene	67	25
Tetrachloroethylene	56	22
Toluene	80	26
Trichloroethylene	54	21
Vinyl Chloride	268	104
Total Chromium	2,770	1,110
Total Copper	3,380	1,450
Total Cyanide	1,200	420
Total Lead	690	320
Total Nickel	3,980	1,690
Total Zinc[2]	2,610	1,050

[1] All units are micrograms per liter.

[2] Total Zinc for Rayon Fiber Manufacture that uses the viscose process and Acrylic Fiber Manufacture that uses the zinc chloride/solvent process is 6,796 μg/l and 3,325 μg/l for maximum for any one day and maximum for monthly average, respectively.

Subpart J—Direct Discharge Point Sources That Do Not Use End-of-Pipe Biological Treatment

§ 414.100 Applicability; description of the subcategory of direct discharge point sources that do not use end-of-pipe biological treatment.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the OCPSF products and product groups defined by § 414.11 from any point source that does not use end-of-pipe biological treatment and does not install end-of-pipe biological treatment to comply with BPT effluent limitations.

§ 414.101 Toxic pollutant effluent limitations and standards for direct discharge point sources that do not use end-of-pipe biological treatment.

(a) Any point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentrations in the following table.

(b) In the case of chromium, copper, lead, nickel, zinc, and total cyanide, the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for these pollutants times the flow

from metal-bearing waste streams for the metals and times the cyanide-bearing waste streams for total cyanide. Metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional process wastewater streams identified by the permitting authority on a case-by-case basis as metal or cyanide bearing based upon a determination—

(1) That such streams contain significant amounts of the pollutants identified above and

(2) That the combination of such streams, prior to treatment, with the Appendix A waste streams would result in substantial reduction of these pollutants.

This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	BAT effluent limitations and NSPS [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Acrylonitrile	232	94
Benzene	134	57
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
1,2,4-Trichlorobenzene	794	196
Hexachlorobenzene	794	196
1,2-Dichloroethane	574	180
1,1,1-Trichloroethane	59	22
Hexachloroethane	794	196
1,1-Dichloroethane	59	22
1,1,2-Trichloroethane	127	32
Chloroethane	295	110
Chloroform	325	111
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
2,4-Dimethylphenol	47	19
Ethylbenzene	380	142
Fluoranthene	54	22
Bis(2-chloroisopropyl)ether	794	196
Methylene Chloride	170	36
Methyl Chloride	295	110
Hexachlorobutadiene	380	142
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
2,4-Dinitrophenol	4,291	1,207
4,6-Dinitro-o-cresol	277	78
Phenol	47	19
Bis(2-ethylhexyl)phthalate	258	95
Di-n-butyl phthalate	43	20
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
Benzo(a)anthracene	47	19
Benzo(a)pyrene	48	20
3,4-Benzofluoranthene	48	20
Benzo(k)fluoranthene	47	19
Chrysene	47	19
Acenaphthylene	47	19
Anthracene	47	19
Fluorene	47	19
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Trichloroethylene	69	26
Vinyl Chloride	172	97
Total Chromium	2,770	1,110
Total Copper	3,380	1,450
Total Cyanide	1,200	420
Total Lead	690	320
Total Nickel	3,980	1,690
Total Zinc [2]	2,610	1,050

[1] All units are micrograms per liter.

[2] Total Zinc for Rayon Fiber Manufacture that uses the viscose process and Acrylic Fibers Manufacture that uses the zinc chloride/solvent process is 6,796 μg/l and 3,325 μg/l for maximum for any one day and maximum for monthly average, respectively.

Appendix A to Part 414—Non-Complexed Metal-Bearing Waste Streams and Cyanide-Bearing Waste Streams

Chromium

Methylhydroabietate/Esterification of hydroabietic acid (rosin) with methanol
Acrylic acid/Oxidation of propylene via acrolein
N-butyl alcohol/Hydrogenation of n-Butyraldehyde, Oxo process
Cyclohexanone/From phenol via cyclohexanol by hydrogenation-dehydrogenation
Fatty amines/Hydrogenation of fatty nitriles (batch)
Helioptropin/Oxidation of isosafrole, chromium catalyst
Isobutanol/Hydrogenation of isobutyraldehyde, Oxo process
Cyclohexyl Mercaptan/Cyclohexanol + Hydrogen sulfide
Ethyl Mercaptan/Ethanol + Hydrogen sulfide
Methanol/H.P. Synthesis from natural gas via synthetic gas
Oxo Alcohols, C7–C11/Carbonation & hydrogenation of C6–C10 Olefins
Polyoxypropylene diamine/Polypropylene glycol + Ammonia
n-Propyl alcohol/Hydrogenation of propionaldehyde, Oxo process
SAN resin/Suspension polymerization
Styrene/Dehydrogenation of ethylbenzene
Styrene/Dehydration of methyl benzyl alcohol (coproduct of propylene oxide)
1-Tetralol, 1-Tetralone mix/Oxidation of tetralin (1,2,3,4-Tetrahydronaphthalene)
3,3,3-Trifluoropropene/Catalyzed hydrogen fluoride exchange with chlorinated propane
Vinyl toluene/Dehydrogenation (thermal) of ethyltoluene

Copper

Methylhydroabietate/Esterification of hydroabietic acid (rosin) with methanol
Acetaldehyde/Oxidation of ethylene with cupric chloride catalyst
Acetic acid/Catalytic oxidation of butane
Acetone/Dehydrogenation of isopropanol
Acrylamide/Catalytic hydration of acrylonitrile
Acrylic acid/Oxidation of propylene via acrolein
Acrylonitrile/Propylene ammoxidation
Adipic acid/Oxidation of cyclohexanol-cyclohexanone mixture
Adipic acid/Oxidation of cyclohexane via cyclohexanol-cyclohexanone mixture
Allynitrile/Allychloride + sodium cyanide
Aniline/Hydrogenation of nitrobenzene
Benzofurans, 2,3-Dihydro-2,2-dimethyl-7-benzofuranol/ from o-Nitrophenol + Methallyl chloride
n-Butyl alcohol/Hydrogenation of n-Butyraldehyde, Oxo process
1,4-Butanediol/Hydrogenation of 1,4-butynediol
Butryolactone/Dehydrogenation of 1,4-butanediol
Caprolactam/From cyclohexane via cyclohexanone and its oxime
Lilian (hydroxydihydrocitronellal)/Hydration and oxidation of citronellol
1,2-Dichloroethane/Oxyhydrochlorination of ethylene
Dialkyldithiocarbamates, metal salts/Dialkylamines + carbon disulfide
2-Ethylhexanol/from n-Butyraldehyde by Aldo condensation and hydrogenation
Fatty amines/Hydrogenation of fatty nitriles (batch)
Geraniol/B-Myrcene + Hydrogen chloride, esterification of geranyl chloride, hydrolysis of geranyl acetate
Furfuryl alcohol/Hydrogenation of furfural
Geranial (Citral)/Oxidation of geraniol (copper catalyst)
Glyoxal/Oxidation of ethylene glycol
Isobutanol/Hydrogenation of isobutyraldehyde, Oxo process
Isopropanol/Catalytic hydrogenation of acetone
2-Mercaptobenzothiazoles, copper salt/2-Mercaptobenzothiazole + copper salt
Methanol/High pressure synthesis from natural gas via synthetic gas
Methanol/Low pressure synthesis from natural gas via synthetic gas
Methyl ethyl ketone/Dehydrogenation of sec-Butanol
Oxo alcohols, C7–C11/Carbonation & hydrogenation of C6–C10 olefins
Phenol/Liquid phase oxidation of benzoic acid

Polyoxyalkylene amines/Polyoxyalkylene glycol + ammonia
Polyphenylene oxide/Solution polymerization of 2,6-xylenol by oxidative coupling (cuprous salt catalyst)
Polyoxypropylene diamine/Polypropylene glycol + Ammonia
Quinaldine (dye intermediate)/Skraup reaction of aniline + crotonaldehyde
Silicones, silicone fluids/Hydrolysis and condensation of chlorosilanes
Silicones, silicone rubbers/Hydrolysis and condensation of chlorosilanes
Silicones, silicone specialties (grease, dispersion agents, defoamers & other products)
Silicones: Silicone resins/Hydrolysis & condensation of methyl, phenyl & vinyl chlorosilanes
Silicones: Silicone fluids/Hydrolysis of chlorosilanes to acyclic & cyclic organosiloxanes
Styrene/Dehydration of a-Methylbenzyl alcohol (coproduct of propylene oxide)
Tetrachloroethylene (perchloroethylene)/Oxyhydrochlorination of tetrachloroethane
Tris(anilino)s-triazine/Cyanuric chloride + aniline + cogeners
Trichloroethylene/Oxyhydrochlorination of tetrachloroethane
Unsaturated polyester resin/Reaction of maleic anhydride + phthalic anhydride + propylene glycol polyester with styrene or methyl methacrylate

Lead

Alkyd resin/Condensation polymerization
Alkyd resins/Condensation polymerization of phthalic anhydride + glycerin + vegetable oil esters
Anti-knock fuel additive/Blending purchased tetraethyl lead & tetramethyl lead additives
Dialkydithiocarbamates, metal salts/Dialkylamines + carbon disulfide
Thiuram (dimethyldithiocarbamate) hexasulfide/Dimethyldithiocarbamate + sulfur
Triphenylmethane dyes (methyl violet)/Condensation of Formaldehyde + N-Methylaniline + N,N-dimethylaniline, oxidation of reaction product
4,4'-Bis-(N,N-dimethylaniline) carbinol, Michler's hydrol/Oxidation of 4,4'-Methylene-bis(N,N-dimethylaniline) with lead oxide
Naphthenic acid salts
Stearic acid, metal salts/Neutralization with a metallic base
Tetraethyl lead/Alkyl halide + sodium-lead alloy
Tetramethyl lead/Alkyl halide + sodium-lead alloy

Nickel

Acetates, 7,11-Hexadecadien-1-ol (gossyplure)/Coupling reactions, low pressure hydrogenation, esterification
Acetates, 9-dodecen-1-ol (pheromone)/Coupling reactions, low pressure hydrogenation, esterification
Acrylic acid/oxidation of propylene via acrolein
Acrylonitrile/Propylene ammoxidation
n-Alkanes/Hydrogenation of C6-C22 alpha olefins (ethylene oligomers)
Adiponitrile/Direct cyanation of butadiene
Alkyl amines/Amination of alcohols
4-Aminoacetanilide/Hydrogenation of 4-Nitroacetanilide
BTX/Hydrogenation of olefins (cyclohexenes)
Terphenyls, hydrogenated/Nickel catalyst, hydrogenation of terphenyl
Bisphenol-A, hydrogenated (Biscyclohexanol-A)/Hydrogenation of Bisphenol-A
Butadiene (1,3)/Extractive distillation of C-4 pyrolyzates
n-Butanol/Hydrogenation of n-Butyraldehyde, Oxo process
1,3-Butylene glycol/Hydrogenation of acetaldol
1,4-Butanediol/Hydrogenation of 1,4-butynediol
Butylenes (mixed)/Distillation pf C4 pyrolyzates
4-Chloro-2-aminophenol/Hydrogenation of 4-Chloro-2-nitrophenol
Lilial (hydroxydihydrocitronellal)/Hydration and oxidation of citronellol
Cycloparaffins/Catalytic hydrogenation of aromatics in kerosene solvent
Cyclohexanol/Hydrogenation of phenol, distillation
Cyclohexanone/From phenol via cyclohexanol by hydrogenation-dehydrogenation
Dialkyldithiocarbamates, metal salts/Dialkylamines + carbon disulfide
Ethylamine/Reductive amination of ethanol
Ethylamines (mono, di, tri)/Reductive ammination (ammonia + hydrogen) of ethanol
Isoeugenol, high % trans/Separation of mixed cis & trans isoeugenols
2-Ethylhexanol/from n-Butyraldehyde by Aldol condensation and hydrogenation
Fatty acids, hydrogenated/tallow & coco acids + Hydrogen
Fatty amines/Hydrogenation of fatty nitriles (batch)
Fatty amines/Hydrogenation of tallow & coco nitriles
Glyoxal-urea formaldehyde textile resin/condensation to N-bis(hydroxymethyl) ureas & N,N'-(dihydroxyethyl) ureas
11-hexadecenal/Coupling rxns, low pressure hydrogenation
Hexahydrophthalic anhydride/Condensation of butadiene & maleic anhydride (Diels-Alder reaction) + hydrogenation
Isobutanol/Hydrogenation of isobutyraldehyde, Oxo process
Diisobutyl amine/Ammonolysis of isobutanol
Isopropyl amines (mono, di)/Reductive ammination (Ammonia + Hydrogen) of isopropanol
Linalool/Pyrolysis of 2-Pinanol
Methanol/High pressure synthesis from natural gas via synthetic gas
Methanol/Low pressure sythesis fron natural gas via synthetic gas
Methanol/Butane oxidation
Tris-(hydroxymethyl) methyl amine/Hydrogenation of tris(hydroxymethyl) nitromethane
N-Methyl morpholine/Morpholine + Methanol
N-Ethyl morpholine/Morpholine + Ethanol
2-Methyl-7,8-epoxy octadecane/Coupling reactions, low pressure hydrogenation, epoxidation
Alpha-Olefins/Ethylene oligomer, & Zeigler Cat.
Petroleum hydrocarbon resins, hydrogenated/Hydrogenation of petroleum hydrocarbon resin products
Pinane/Hydrogenation of A-Pinene
2-Pinanol/Reduction of pinane hydroperoxide
Bis-(p-Octylphenol) sulfide, Nickel salt/p-Octylphenol + sulfur chloride (S2C12), neutralize with Nickel base
Piperazine/Reductive amination of ethanol amine (ammonia & hydrogenation, metal catalyst)
N,N-Dimethylpiperazine/Condensation piperazine + formaldehyde, hydrogenation
Polyoxylalkylene amines/Polyoxyalkylene glycol + Ammonia
Polyoxypropylene diamine/Polypropylene glycol + Ammonia
2-Amino-2-methyl-1-propanol/Hydrogenation of 2-Nitro 2-methyl-1-propanol
3-Methoxypropyl amine/Reductive amination of acrylamide with methanol & hydrogen
N-Propylamine/Reductive ammination (ammonia + hydrogen) of n-propanol
Sorbitol/Hydrogenation of sugars
Sulfolane/Condensation butadiene + sulfur dioxide, Hydrogenation
Thionocarbamates, N-Ethyl-o-isopropyl/Isopropyl xanthate + Ethylamine
Toluene diamine (mixture)/Catalytic hydrogenation of dinitrotoluene
Methylated urea-formaldehyde resins (textile)/Methylation of urea-formaldehyde adduct
Methylated urea-formaldehyde glyoxol (textile resin)/Reaction of methylated urea-formaldehyde + glyoxal

Zinc

Methylhydroabietate, diels-alder adducts/Derivatives of abietic esters from rosin
Acrylic resins/Emulsion or solution polymerization to coatings
Acrylic resins (latex)/Emulsion polymerization of acrylonitrile with polybutadiene
Acrylic fibers (85% polyacrylonitrile) by solution polymerization/Wet spinning
Alkyd Resins/Condensation polymerization of phthalic anhydride + glycerin + vegetable oil esters
Benzene/By-product of styrene by ethylbenzene dehydrogenation
Benzene/By-product of vinyl toluene (from ethyltoluene)
n-butyl alcohol/Hydrogenation of n-Butyraldehyde, Oxo process
Coumarin (benz-a-pyrone)/Salicylaldehyde, Oxo process
Cycloparaffins/Catalytic hydrogenation of aromatics in kerosene solvent
Dithiocarbamates, zinc salt/Reaction of zinc oxide + Sodium dithiocarbamates
Dialkyldithiocarbamates, metal salts/Diakylamines + Carbon disulfide
Dithiocarbamates, metal salts/Dithiocarbamic acid + metal oxide
Thiuram (dimethyldithiocarbamate) hexasulfide/Dimethyldithiocarbamate + sulfur
Fluorescent brighteners/Coumarin based
Ethyl acetate/Redox reaction (Tschenko) of acetaldehyde
Ethylbenzene/Benzene alkylation in liquid phase

Ethylbenzyl chloride/Chloromethylation (Hydrogen chloride + formaldehyde, zinc chloride) of ethylbenzene
2-Ethyl hexanol/Aldol condensation-hydrogenation of n-Butyraldehyde
Glyoxal-urea formaldehyde textile resin/Condensation to N-bis (hydroxymethyl) ureas + N,N'-(Dihydroxyethyl) ureas
Isobutanol/Hydrogenation of isobutyraldehyde, Oxo process
Isopropanol/Catalytic hydrogenation of acetone
Methallylidene diacetate/Condensation of 2-Methypropenal + acetic anhydride
Methanol/Low pressure sythesis from natural gas via synthetic gas
Methyl chloride/Hydrochlorination of methanol
Methylethyl ketone/Dehydrogenation of sec-Butanol
Naphthenic acid salts
Nylon
Nylon 6 & 66 copolymers/Polycondensation of Nylon salt + Caprolatam
Nylon 6 fiber/Extrusion (melt spinning)
Oxo alcohols, C12-C15/Hydroformylation & hydrogenation of C11-C14 olefins
Phenolic urethan resins/Phenol + excess formaldehyde + Methylene aniline diisocyanate
Polystyrene (crystal) modified/Polystyrene + sulfonation, chloromethylation and/or amination
Rayon/Viscose process
SAN resin/Emulsion polymerization
Silicones: Silicone rubbers/Hydrolysis and condensation of chlorosilanes
Silicones: Silicone specialties (grease, dispersion agents, defoamers & other products)
Silicones: Silicone resins/Hydrolysis & condensation of methyl, phenyl & vinyl chlorosilanes
Silicones: Silicone fluids/Hydrolysis of chlorosilanes to acyclic & cyclic organosiloxanes
Stearic acid, metal salts/Neutralization with a metallic base
Styrene/Dehydrogenation of ethylbenzene
Styrene-butadiene resin/Emulsion polymerization
Vinyl acetate/Reduction of acetylene + acetic acid
Vinyl toluene/Dehydrogenation (thermal) of ethyltoluene
Xylenes, mixed/By-product vinyl toluene (from ethyltoluene)

Cyanide

Acetone cyanohydrin/Acetone + Hydrogen cyanide
Acetonitrile/By-product of acrylonitrile from propylene by ammoxidation
Acrylic resins/Solution polymerization
Acrylic fiber (85% acrylonitrile)/Suspension polymerization, and wet spinning
Acrylic fiber (85% acrylonitrile)/Solution polymerization, and wet spinning
Acrylonitrile/Ammoxidation of propylene
Adiponitrile/Butadiene + Hydrogen cyanide (direct cyanation)
Allylnitrile/Allyl chloride + Sodium cyanide
Dimethoxybenzaldehyde/Hydroquinone dimethyl ether + Hydrogen cyanide, hydrolysis
Benzyl cyanide/Benzyl chloride + Sodium cyanide
Coal tar products/Distillation of coal tar condensate
Cyanoacetic acid/Chloracetic acid + sodium cyanide
Cyanuric chloride/Catalyzed trimerization of cyanogen chloride
Vat dyes, Indigo paste as Vat Blue 1/Sodamide + potassium N-Phenylglycine, fused with caustic/N-phenylglycine + Aniline + Formaldehyde + Sodium bisulfite, sodium cyanide, hydrolysis with potassium hydroxide
Disperse dyes, Azo and Vat
Ethylenediamine tetraacetic acid/Ethylenediamine + Formaldehyde + Sodium cyanide
Diethylenetriamine pentaacetic acid/Diethylenetriamine + Formaldehyde + Sodium cyanide
N,N'-bis(o-Acetamidophenol)ethylenediamine, ferric complex/ Salicyladehyde + Ethylenediamine + Hydrogen cyanide, hydrolysis to amide
Diethylenetriamine pentaacetic acid, pentasodium salt/Diethylenetriamine pentaacetic acide + caustic
Ethylenediamine tetraacetic acid, metal salts/Ethylenediamine tetraacetic acid + metal bases
Hydroxyethyl ethylenediamine triacetic acid, trisodium salt/ Ethylenediamine + Ethylene oxide + Formaldehyde + Sodium cyanide, hydrolysis
Hexamethylene diisocyanate/Hexamethylene diamine (1,6-Diaminohexane) + phosgene
5,5-Dimethyl hyantoin/Acetone + ammonia + carbon dioxide + hydrogen cyanide
Hydrogen cyanide/By-product of acrylonitrile by ammoxidation of propylene
Iminodiacetic acid/Hexamethylene tetraamine + Hydrogen cyanide, hydrolysis of iminoacetonitrile salt
Methionine/Acrolein + Methyl mercaptan, with hydrogen cyanide and ammonium carbonate
Methylene Diphenylisocyanate (MDI)/Phosgenation of methylene dianiline from Aniline + Formaldehyde
Nitrilotriacetic acid/Hexamethylene tetraamine + Hydrogen cyanide, hydrolysis of nitrilotriacetonitrile salt
Picolines, mixed/Condensation of acetaldehyde + formaldehyde + ammonia
Organic pigments, Azo/Diazotization of aniline cogener, coupling to B-Napthol
Polyurethane resins/Diisocyanate + Polyoxyalkylene glycol
Polyurethane fibers (Spandex)/Polyoxyalkylene glycol + Tolylene diisocyanate + dialkylamine
Pyrimidines, 2-Isopropyl-4-methoxy-/Isobutyronitrile + methanol, ammonia and methylacetoacetate (ring closure)
Pyridine (synthetic)/Condensation of acetaldehyde + ammonia + formaldehyde
Cyanopyridine/Ammoxidation of picoline
Sarcosine (N-Methyl glycine), sodium salt/Hexamethylene tetraamine + Sodium cyanide, hydrolysis
Thiophene acetic acid/Chloromethylation (Hydrogen chloride + Formaldehyde) + Sodium cyanide, hydrolysis
Tolylene diisocyanate (isomeric mixture)/Tolylene diamines + Phosgene
Tris(anilino)S-triazine/Cyanuric chloride + Aniline and its cogeners
Triethylorthoformate/Ethanol + Hydrogen cyanide
Trimethylorthoformate/Methanol + Hydrogen cyanide

Appendix B to Part 414—Complexed Metal-Bearing Waste Streams

Chromium

Azo dye intermediates/Substituted diazonium salts + coupling compounds
Vat dyes/Mixing purchased dyestuffs (Anthraquinones, polycyclic Quinones and Indigoids)
Acid dyes
Azo dyes, metallized/Azo dye + metal acetate
Acid dyes, Azo (including metallized)
Organic pigments, miscellaneous lakes and toners

Copper

Disperse dyes
Vat dyes/Mixing purchased dyestuffs (Anthraquinones, polycyclic Quinones and Indigoids)
Acid dyes
Direct dyes
Vat dyes
Sulfur dyes
Disperse dye coupler/N-substitution of 2-Amino-4-acetamidoanisole
Azo dyes, metallized/Azo dye + metal acetate
Direct dyes, Azo
Disperse dyes, Azo and Vat
Organic pigment Green 7/Copper phthalocyanine
Organic pigments
Organic pigments/Phthalocyanine pigments
Organic pigments/Copper phthalocyanine (Blue Crude)
Organic pigments, miscellaneous lakes and toners

Lead

Organic pigments, Quinacridines
Organic pigments, Thioindigoids

Nickel

Azo dyes, metallized/Azo dye + metal acetate

Zinc

Organic pigments/Azo pigments by diazotization and coupling

PART 416—[REMOVED]

2. 40 CFR is amended by removing Part 416.

[FR Doc. 87-23568 Filed 11-4-87; 8:45 am]
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federal register

Thursday
November 5, 1987

Part V

Department of the Interior

Bureau of Land Management

43 CFR Parts 5460 and 5470
Sales Administration; Contract Modification—Extension—Assignment; Interim Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-230-07-6310-02]

43 CFR Parts 5460 and 5470

Sales Administration; Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rulemaking.

SUMMARY: This interim final rulemaking would amend provisions of the existing regulations in 43 CFR Parts 5460—Sales Administration, and 5470—Contract Modification—Extension—Assignment. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning the extension of time for cutting and removing contract timber in limited circumstances and conditions resulting from fires and other natural disasters.

EFFECTIVE DATE: November 5, 1987. Comments on this interim final rulemaking will be accepted until January 4, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Department of the Interior, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Estola (503) 231-6873 or Gary Ryan (202) 653-8864.

SUPPLEMENTARY INFORMATION: Disastrous fires in August and September, 1987, in southwestern Oregon damaged a volume of timber exceeding, in preliminary field estimates, a third of a billion board feet. Planning for the salvage of as much of the value of this damaged timber as possible disclosed a problem that would tend to prevent the public from receiving full value for the timber.

Timber purchasers will bid on salvage timber only if they have personnel and equipment available during the period required without interfering with other contract commitments. This means that purchasers with active Federal timber contracts are less likely to be able to bid on the salvage timber unless there is a reasonable opportunity to postpone their other commitments without suffering economic hardship. Also, increasing the pool of possible bidders will increase the likelihood that there will be sufficient purchasers to absorb the large volumes of timber associated with events of the magnitude of the fires of 1987.

The present regulations at 43 CFR 5463.2 allow contracts to be extended for 1 year for reasons other than market fluctuations, and for additional 1-year periods upon written request. However, the present regulations at 43 CFR 5473.1 require that in all cases extensions shall not be granted without a reappraisal of the timber that is subject to the contract being extended. While 43 CFR 5473.4-1(b) provides that reappraisals shall not reduce the purchase price below the original contract price, there are no exceptions that would prevent the purchase price from increasing upon extension, regardless of the circumstances of or reasons for the extension, even if it were for the convenience or benefit of the public.

This prospect of an increase with no countervailing possibility of a decrease upon reappraisal would discourage any potential bidder holding a contract for green timber from seeking an extension on that contract in order to have an opportunity to bid on and harvest less valuable salvage timber. This would reduce the pool of potential bidders and in turn likely reduce the bids received on the salvage timber. Also, the costs of reappraising the timber subject to an extension would be added to the costs to the public of the entire transaction, if contract holders requiring extensions joined the bidding.

Therefore, in order to broaden the opportunity to bid on salvage timber when extraordinary damage is caused by fire, whether natural or man-caused, or other disaster, § 5473.4-1(b) is being amended to allow waiver by the appropriate State Director, Bureau of Land Management, of the reappraisal requirement for timber sale contract extensions in such cases. This rulemaking does not affect the reappraisal requirement for extension requests arising from other circumstances.

This interim final rulemaking also amends § 5463.2 to allow extensions for periods sufficient to allow orderly completion of the salvage contracts, again only to accommodate harvest of salvage timber.

This rulemaking is being published on an interim final basis in the public interest, effective upon publication rather than 30 days after publication, in order to allow the Bureau of Land Management to apply it to the current emergency situation caused by the extensive fires of the summer of 1987. Public comments are being solicited, which will be considered preparatory to publishing final regulations on this subject. Such regulations will be applied in all subsequent situations caused by natural or other disasters.

The Department of the Interior finds that an opportunity for public comment before this rulemaking becomes effective is unnecessary and contrary to the public interest. Several species of the fire-damaged timber must be harvested within 1 year of the incidence of the damage or be lost. While it is possible to harvest this timber within the time constraints under the current regulations, the requirement that existing contracts be reappraised upon extension, regardless of the reason, will reduce the field of bidders on the salvage timber to the extent that bids may be reduced significantly.

It is true that by allowing the State Director to waive reappraisal upon contract extension in the event of a natural or other disaster, the Government would be permitting the waiver of contractual rights provided for under the current regulations. However, the public would be receiving valuable consideration for the potential losses in revenue caused by failure to reappraise, in view of the desirability of having the fire-damaged timber removed as expeditiously as possible for as great an economic return as possible.

The principal authors of this proposed rulemaking are Dave Estola, Oregon State Office, and Gary Ryan, Division of Forestry, Washington Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Bureau of Land Management sells timber valued at approximately $100 million annually, but this rulemaking would affect only a minimal proportion of those sales, and not every year. The last incident to occur to which this proposed procedure would have been an appropriate response was 25 years ago. Also, all purchasers would be affected equally, regardless of size.

This rulemaking does not contain information collection requirements that require approval by the Office of

Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 5460

Forest and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forest and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5460—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5463.2 is amended by designating the present section as paragraph (a) and adding a new paragraph (b) to read:

§ 5463.2 Extension of time.

* * * * *

(b) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed that necessary to meet the salvage objectives.

PART 5470—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*, unless otherwise noted.

2. Section 5473.1 is revised to read:

§ 5473.1 Application.

Written requests for extension shall be received prior to the expiration of the time for cutting or removal. No extension may be granted without reappraisal as provided in § 5473.4–1 of this title, except for an extension granted under § 5463.2(b) of this title to allow the purchaser to harvest salvage timber damaged by fire or other disaster. Reappraisal may be waived for an extension granted under § 5463.2(b) of this title only in a decision approved by the appropriate State Director, Bureau of Land Management.

J. Steven Griles,

Assistant Secretary of the Interior.

October 7, 1987.

[FR Doc. 87–25663 Filed 11–4–87; 8:45 am]

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November 5, 1987

Part VI

Department of State

Bureau of Consular Affairs

22 CFR Parts 40, 41 and 42

Visas; Regulations and Documentation Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act; Final Rule

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 40, 41 and 42

[108.865]

Visas; Regulations and Documentation Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final Rule.

SUMMARY: This rule reorganizes the Department's present regulations which have been set forth in Part 41 and Part 42 of Title 22. This reorganization is intended to facilitate consular operations by placing the regulations in a more logical sequence. The reorganization of the regulations includes transfer of certain portions to a new Part 40 and a renumbering of those portions retained in Parts 41 and 42. In addition, grammatical and stylistic changes have been made for purposes of clarity and uniformity of usage, as well as to remove gender-specific usages. This change is being published as a Final Rule, without Notice and Comment, since no substantive changes are made by this publication.

EFFECTIVE DATE: November 29, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services; or Guida Evans-Magher, Consular Officer, Washington, DC 20520, (202) 663-1204 or 663-1206.

SUPPLEMENTARY INFORMATION: The Department's visa regulations under the Immigration and Nationality Act (Act) were originally promulgated in 1953 as Parts 40, 41, and 42 of Title 22, Code of Federal Regulations. In 1959 and 1960 they were extensively edited, reorganized, and republished as Parts 41 and 42 only, and, although frequently amended, have existed in that form since that time.

Several years ago the Department undertook a detailed study of the organization of the Department's Visa Manual (Volume 9—VISAS, Foreign Affairs Manual). The Visa Manual contains not only the visa regulations, but also both interpretive information and procedural instructions. Although it is available to the public, it is intended principally as a substantive and procedural guide for consular officers in their administration of the Act generally and in the processing and adjudication of individual visa applications. The study concluded that the Visa Manual was too long, that it was not organized in a way most efficient for consular officers and that it contained many obsolete usages and obscure locations. The study also concluded, however, that the principle of subdividing the Manual according to sections of the regulations should be retained.

Taken together, these conclusions have necessitated an editorial revision, reorganization and republication of the visa regulations. In order to avoid confusion, it was decided that any substantive changes would be published separately, either before or after the publication of the reorganized regulations. Thus, there are no substantive changes included in this publication.

The most significant features of the reorganization are—

1. The creation of a new Part 40 to include regulatory provisions of general applicability, thus eliminating publication of duplicate regulations;
2. The reorganization of Part 41 (nonimmigrants) to group the regulations into subdivisions dealing with similar classifications; and
3. The renumbering of Parts 41 and 42 because of the first two changes.

New Part 40 contains two general subparts—the first containing regulatory definitions and certain other general matters, the second containing the regulations relating to ineligibility to receive visas and the reliefs from ineligibility. All of these materials were included in Parts 41 and/or 42 in the former regulations.

New Part 41 has been reorganized to group the regulations relating to the nonimmigrant classifications into subparts containing related classifications.

New Part 42 has been retained in substantially the same organization as previously, except for those changes required by transfers of material to New Part 40.

The sections of both Parts 41 and 42 have been renumbered.

Two noteworthy procedural changes in Part 41 relate first to the elimination of the distinction between invalidation and revocation of nonimmigrant visas and, secondly, to the elimination of the term "revalidation" of visas. As a result of the changes, a visa can be revoked regardless of whether the basis for ineligibility arose before or after issuance of the visa since the concepts of "revocation" and "invalidation" have been merged.

The use of the term "revalidation" to denote a second (or later) visa issued in the same category has been discontinued. There was no substantive distinction between the issuance and the revalidation of a visa. There appeared to be no need to maintain the distinction. All former revalidations abroad will be treated as visa issuances under the terms of the regulations in § 41.113. What have been termed revalidations in the United States will be treated as reissuances in accordance with the authority in § 41.111(b).

The exemption from the labor certification requirement of the Act formerly set forth in § 42.91(a)(14) for female fiancees seeking nonpreference visas has been eliminated because it contained discrimination based on sex. A gender-neutral exemption from § 212(a)(14) of the Act has been explicitly set forth in § 41.81(c) which requires fiance(e)s generally to meet the eligibility standards for an immigrant visa.

Changes contained in this rule which were made for administrative reasons only involve: The elimination of the term "revalidation" of nonimmigrant visas; the merging of the concepts of invalidation and revocation of nonimmigrant visas; the explication in § 41.81 (Fiance(e) of U.S. Citizen) of the exemption from the labor certification requirement of the Act for aliens otherwise eligible for an immigrant visa and, thus, a nonimmigrant visa under section 101(a)(15)(K).

In view of the extensive reorganization of Parts 41 and 42 and as an additional aid, Tables which show the restructuring of Title 22, Parts 40, 41 and 42 appear at the end of this preamble. The information in the Tables should be of assistance to persons using the visa regulations.

The changes in the final rule relate to a reorganization and compilation of Departmental regulations, and to the consolidation of substantive rules which have previously been subject to the standard rulemaking process. Additionally, since these amendments deal solely with agency organization, procedure and practice, compliance with the provisions of the Administrative Procedure Act (APA) relative to notice and comment, is not applicable in this instance and further public comment would under the circumstances be both unduly burdensome and unnecessary within the meaning of 5 U.S.C. 553(b) (A) and (B).

This publication is also exempt, under the provisions of section 1(a)(3) of E.O. 12291, from giving notice of a proposed rulemaking and from a delayed effective date because the regulations relate to agency organization and management.

In addition, this rule does not fall

within the provisions of section 1(b) of E.O. 12291 or within the criteria of the Regulatory Flexibility Act since it is not expected to have an annual effect on the economy of $100 million or more, nor is it expected to have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Parts 40, 41 and 42

Aliens, Immigration, Passport and visas.

Key reorganization tables are herein provided as a guide for the aid of users of the regulations in Title 22 CFR Chapter 1, Subchapter E—Visas, Parts 40, 41 and 42. Sections of Part 40 are listed in the first column of the Derivation Table, in numerical order, with the source section or sections in the former regulations listed in the second column. The Redesignation Tables are provided for sections of Parts 41 and 42 which have been rearranged and renumbered.

DERIVATION TABLE

[Part 40—General Provisions]

New section	Old section
40.1—Definitions	42.1 (in part); 41.1 (in part).
40.2—Documentation of Nationals.	41.3; 42.3
40.3—Entry into Areas Under U.S. Administration.	41.145; 42.145
40.4—Furnishing Records and Information from Visa Files for court proceedings.	41.150; 42.150
40.5—(Unassigned)	None.
40.6—Basis for Refusal.	41.90; 42.90
40.7—Grounds of Ineligibility.	
40.7(a)—Ineligibility under INA 212(a).	41.91(a); 42.91(a)
40.7(b)—Failure of application to comply with INA.	41.91(c); 42.91(b)
40.7(c)—Former exchange visitors.	41.91(d); 42.91(c)
40.7(d)—Alien entitled to A, E or G NIV classification.	42.91(d)
40.8—Waiver for ineligible nonimmigrant under INA 212(d)(3)(A).	41.95

REDESIGNATION TABLE

[Part 41—Nonimmigrant Visas]

Old section	New section
41.1	40.1; 41.21; 41.24; 41.26; 41.27; 41.101; 41.104
41.3	40.2
41.5	41.1
41.6	41.2
41.7	41.3
41.10	41.11
41.12	41.12
41.13	41.107
41.14	Deleted.
41.20	41.22
41.21	41.22
41.22	41.22
41.25	41.31
41.30	41.71
41.31	41.71
41.32	41.23
41.35	41.41
41.36	41.3
41.40	41.51
41.41	41.51
41.45	41.61
41.50	41.24
41.55	41.53
41.60	41.52
41.65	41.62
41.66	41.81
41.67	41.54
41.68	41.61
41.70	41.25
41.90	40.6
41.91	40.7
41.95	40.8
41.100	41.101
41.102	41.26
41.104	41.27
41.110	41.101
41.111	41.105
41.112	41.104
41.113	41.108
41.114	41.102
41.115	41.103
41.116	41.103; 41.105
41.117	41.103
41.120	41.111
41.121	41.107
41.122	41.112
41.123	41.107
41.124	41.113
41.125(f)	41.112
41.125(a)–(e), (g), (h)	Deleted.
41.126	41.114
41.127	41.42
41.128	41.32
41.129	41.33
41.130	41.121
41.132	41.42
41.134	41.122
41.145	40.3
41.150	40.4

REDESIGNATION TABLE

[Part 42—Immigrant Visas]

Old section	New section
42.1	40.1
42.3	40.2
42.5	42.1
42.6	42.2
42.12	42.11
42.20	42.12; 42.21
42.21	42.21
42.22	Deleted.
42.23	42.22
42.24	42.23
42.25	42.24
42.26	42.25
42.27	Repealed.
42.28	42.27
42.30	42.31
42.31	42.31
42.32	42.33
42.33	42.31
42.34	42.31
42.35	42.34
42.36	42.35
42.37	42.26
42.40	42.41
42.41	42.42
42.42	42.42
42.43	42.43
42.50	42.12
42.51	42.12
42.52	42.12
42.53	42.12
42.54	42.12
42.55	42.12
42.60	42.51
42.61	42.52
42.62	42.53
42.63	42.54
42.64	42.55
42.65	42.83
42.90	40.6
42.91	40.7
42.95	42.22
42.100	42.52
42.110	42.61
42.111	42.65
42.112	42.64
42.113	42.66
42.114	42.62
42.115	42.63
42.116	42.67
42.117	42.62; 42.67
42.118	42.68
42.120	42.71
42.121	42.71
42.122	42.72
42.124	42.73
42.125	42.74
42.130	42.81
42.134	42.82
42.140	42.61
42.145	40.3
42.150	40.4

In view of the foregoing, Title 22, Chapter I, Subchapter E-Visas of the Code of Federal Regulations is amended by adding Part 40 and revising Part 41 and Part 42 as follows:

1. Part 40 is added to read as follows:

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Subpart A—General Provisions

Sec.
40.1 Definitions.
40.2 Documentation of nationals.
40.3 Entry into areas under U.S. administration.
40.4 Furnishing records and information from visa files for court proceedings.

Subpart B-Ineligibility

40.6 Basis for refusal.
40.7 Grounds of ineligibility.
40.8 Waiver for ineligible nonimmigrant under INA 212(d)(3)(A).

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 95–105, 91 Stat. 847.

Subpart A—General Provisions

§ 40.1 Definitions.

The following definitions supplement definitions contained in the Immigration and Nationality Act (INA). As used in these regulations, the term:

(a) "Accompanying" or "accompanied by" means not only an alien in the physical company of a principal alien but also an alien who is issued an immigrant visa within 4 months of either the date of issuance of a visa to, or the date of adjustment of status in the United States of, the principal alien, or the date on which the principal alien personally appears and registers before a consular officer abroad to confer alternate foreign state chargeability or immigrant status upon a spouse or child. An "accompanying" relative may not precede the principal alien to the United States.

(b) "Act" means the Immigration and Nationality Act (or INA), as amended.

(c) "Competent officer," as used in INA 101(a)(26), means a "consular officer" as defined in INA 101(a)(9).

(d) "Consular officer," as used in INA 101(a)(9), includes commissioned consular officers and the Director of the Visa Office of the Department and such other officers as the Director may designate for the purpose of issuing nonimmigrant visas only, but does not include a consular agent, an attache or an assistant attache. The assignment by the Department of any Foreign Service Officer to a diplomatic or consular office abroad in a position administratively designated as requiring, solely, partially, or principally, the performance of consular functions, and the initiation of a request for a consular commission, constitutes designation of the officer as a "consular officer" within the meaning of INA 101(a)(9).

(e) "Department" means the Department of State of the United States of America.

(f) "Dependent area" means a colony or other competent or dependent area overseas from the governing foreign state, natives of which are subject to the limitation prescribed by INA 202(c).

(g) "Documentarily qualified" means that the alien has reported that all the documents specified by the consular officer as sufficient to meet the requirements of INA 222(b) have been obtained, and that necessary clearance procedures of the consular office have been completed. This term shall be used only with respect to the alien's qualification to apply formally for an immigrant visa; it bears no connotation that the alien is eligible to receive a visa.

(h) "Entitled to immigrant classification" means that the alien:

(1) Is the beneficiary of an approved petition granting immediate relative or preference status;

(2) Has satisfied the consular officer as to entitlement to special immigrant status under INA 101(a)(27); or

(3) Has obtained an individual labor certification, or is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations, or is within one of the classes described in § 40.7(a)(14)(iii) and is therefore not within the purview of INA 212(a)(14).

(i) With respect to alternate chargeability pursuant to INA 202(b), the term "foreign state" is not restricted to those areas to which the numerical limitation prescribed by INA 202(a) applies but includes dependent areas, as defined in this section.

(j) "INA" means the Immigration and Nationality Act, as amended.

(k) "INS" means the Immigration and Naturalization Service.

(l) "Not subject to numerical limitation" means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b), or as a special immigrant within the meaning of INA 101(a)(27), unless specifically subject to a limitation other than under INA 201(a).

(m) "Parent," "father," and "mother," as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries.

(n) "Port of entry" means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply to INS for admission into the United States.

(o) "Principal alien" means an alien from whom another alien derives a privilege or status under the law or regulations.

(p) "Regulation" means a rule which is established under the provisions of INA 104(a) and is duly published in the **Federal Register**.

(q) "Son" or "daughter" includes only a person who would have qualified as a "child" under INA 101(b)(1) if the person were under 21 and unmarried.

(r) "Western Hemisphere" means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in INA 101(b)(5).

§ 40.2 Documentation of nationals.

(a) *Nationals of the United States.* A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) *Former nationals of the United States.* A former national of the United States who seeks to enter the United States must comply with the documentary requirements applicable to aliens under the INA.

§ 40.3 Entry into areas under U.S. administration.

An immigrant or nonimmigrant seeking to enter an area which is under U.S. administration but which is not within the "United States", as defined in INA 101(a)(38), is not required by the INA to be documented with a visa unless the authority contained in INA 215 has been invoked.

§ 40.4 Furnishing records and information from visa files for court proceedings.

Upon recept of a request for information from a visa file or record for use in court proceedings, as contemplated in INA 222(f), the consular officer must, prior to the release of the information, submit the request together with a full report to the Department.

Subpart B—Ineligibility

§ 40.6 Basis for refusal.

A visa can be refused only upon a ground specifically set out in the law or implementing regulations. The term "reason to believe," as used in INA 221(g), shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in INA and as implemented by the regulations. Consideration shall be given to any evidence submitted indicating that the ground for a prior

refusal of a visa may no longer exist. The burden of proof is upon the applicant to establish eligibility to receive a visa under INA 212 or any other provision of law or regulation.

§ 40.7 Grounds of ineligibility.

(a) *Aliens ineligible under INA 212(a).* Determinations relating to ineligibility of aliens under INA 212(a) shall be governed by the following:

(1)–(6) *Medical grounds of ineligibility*—(i) *Decision on eligibility based on findings of medical doctor.* A finding of a panel physician designated by the post in whose jurisdiction the examination is performed pursuant to INA 212(a)(1) through (6), shall be binding on the consular officer, except that the officer may refer a panel physician finding in an individual case to USPHS for review.

(ii) *Waivers of ineligibility for certain immigrants.* The provisions of INA 212(g) shall apply to an immigrant alien ineligible under INA 212(a)(1) or (3) or afflicted with tuberculosis in any form who is the spouse, unmarried son or daughter, the minor unmarried lawfully adopted child, or the parent of a U.S. citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa.

(7) *Physical defect affecting alien's ability to earn a living.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(7) upon receipt of a notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g)(3), if the consular officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of INA 212(a)(15) and the alien is otherwise eligible to receive a visa.

(8) *Pauper, professional beggar, or vagrant.* The provisions of INA 212(a)(8) shall apply only in the case of an alien who is at the time of visa application a pauper, professional beggar, or vagrant.

(9) *Crime involving moral turpitude*—(i) *Acts must constitute a crime under criminal law of jurisdiction where they occurred.* A determination that a crime involves moral turpitude shall be based upon the moral standards generally prevailing in the United States. Before a finding of ineligibility under INA 212(a)(9) may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred.

(ii) *Conviction for crime committed when under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(9) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under INA 212(a)(9) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, shall be subject to the provisions of INA 212(a)(9) regardless of whether at that time juvenile courts existed within the jurisdiction of the convictions.

(iii) *Two or more crimes committed while under age 18.* An alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude is ineligible under INA 212(a)(9), even though the crimes were committed while the alien was under the age of 18 years.

(iv) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(9) but has the requisite family relationship to seek the benefits of INA 212(h), the consular officer shall advise the alien of the procedure for applying to INS for relief under that section. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(v) *Conviction in absentia.* A conviction *in absentia* of a crime involving moral turpitude does not constitute a conviction within the meaning of INA 212(a)(9).

(vi) *Effect of pardon by appropriate U.S. authorities/foreign States.* An alien shall not be considered ineligible under INA 212(a)(9) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(9).

(vii) *Political offenses.* The term "purely political offense", as used in INA 212(a)(9), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(10) *Conviction of two or more offenses*—(i) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(10) but has the requisite family relationship to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that section. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(ii) *Conviction(s) for crime(s) committed under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(10) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible under INA 212(a)(10) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien, tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, and who has also been convicted of at least one other such offense or any other offense committed as an adult, shall be subject to the provisions of INA 212(a)(10) regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

(iii) *Conviction in absentia.* A conviction *in absentia* shall not constitute a conviction within the meaning of INA 212(a)(10).

(iv) *Effect of pardon by appropriate U.S. authorities/foreign States.* An alien shall not be considered ineligible under INA 212(a)(10) by reason in part of having been convicted of an offense for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(10).

(v) *Poltical offense.* The term "purely political offense", as used in INA 212(a)(10), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(vi) *Suspended sentence.* A sentence to confinement that has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of INA 212(a)(10).

(11) *Polygamy—(i) Nonimmigrants not subject to INA 212(a)(11).* A nonimmigrant visa applicant is exempted from the provisions of INA 212(a)(11) by INA 212(d)(1).

(ii) *Immigrant must personally be a polygamist.* An immigrant visa applicant who is a member of a religious organization which tolerates polygamy is not ineligible under INA 212(a)(11) unless the alien is personally a polygamist, or practices or advocates the practice of polygamy.

(12) *Prostitution, procuring, and related activities*—(i) *Prostitute defined.* The term "prostitute" means a person given to promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(ii) *Former prostitute ineligible.* The fact that an alien may have ceased to engage in prostitution shall not serve to remove the existing ground of ineligibility under INA 212(a)(12).

(iii) *Where prostitution not illegal.* A person who comes under one or more of the categories of persons described in INA 212(a)(12) is ineligible to receive a visa under that section even if the acts engaged in are not prohibited under the laws of the foreign country where the acts occurred.

(iv) *Waiver of ineligibility—INA 212(h).* If an alien applying for an immigrant visa is ineligible under INA 212(a)(12) but qualifies for the benefits of INA 212(h) the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(13) *Immoral sexual act.* An alien shall not be ineligible under INA 212(a)(13), unless the alien's primary purpose in coming to the United States is to engage in an immoral sexual act.

(14) *Aliens entering the United States to perform skilled or unskilled labor*—(i) *INA 212(a)(14) applies only to certain immigrant aliens.* INA 212(a)(14) applicable only to immigrant aliens described in INA 203(a)(3), (6), or (7) who are seeking to enter for the purpose of engaging in gainful employment. It does not apply to nonimmigrant aliens or to immigrant aliens described in INA 101(a)(27)(A) through (I), 201(b) or 203(a)(1), (2), (4), or (5).

(ii) *Determination of need for alien's labor skills.* An alien within one of the classes described in INA 203(a)(3), (6), or (7), who seeks to enter the United States for the purpose of engaging in gainful employment, is ineligible under INA 212(a)(14) to receive a visa unless the Secretary of Labor has certified to the Attorney General and the Secretary of State, that—

(A) There are not sufficient workers in the United States who are able, willing, qualified, (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts) and available at the time of application for a visa and at the place to which the alien is destined to perform such skilled or unskilled labor, and

(B) The employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

(iii) *Labor certification not required in certain cases.* The following persons are not considered to be within the purview of INA 212(a)(14) and do not require a labor certification:

(A) An alien who establishes to the satisfaction of the consular officer that the alien does not intend to seek employment;

(B) A spouse or child accompanying or following to join an alien spouse or parent who either has a labor certification or is a nondependent alien not requiring such certification; or

(C) An alien who establishes by documentary evidence that the purpose of admission is to engage in an enterprise in which the alien:

(1) Has invested, or is actively in the process of investing, capital totaling at least $100,000;

(2) Will be a principal manager of the enterprise; and

(3) Will employ at least one person in the United States who is a citizen or an alien lawfully admitted for permanent residence, exclusive of the principal alien and the spouse and children of such principal alien.

(iv) *Western Hemisphere aliens registered prior to January 1, 1977.* Notwithstanding the provisions of paragraphs (a)(14)(i) and (ii) of this section, an alien who is within the purview of 22 CFR 42.53(c) is deemed to have met the requirements of INA 212(a)(14) for the purpose of applying for an immigrant visa, if the status, relationship, or other qualification which formed the basis for the alien's original registration as an intending immigrant still exists when the alien applies for a visa. If such status, relationship, or other qualification no longer exists, the alien must again become entitled to nonpreference immigrant classification.

(15) *Public charge*—(i) *Basis for determination of ineligibility.* Any determination that an alien is ineligible under INA 212(a)(15) must be predicated upon circumstances indicating that the alien will probably become a public charge after admission.

(ii) *Posting of bond.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(15) upon receipt of notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INS 221(g), provided the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

(iii) *Prearranged employment.* An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(15), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(14), must establish the offer of employment by a document that confirms the essential elements of the employment offer. Any document presented to confirm the employment offer must be sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the Signature.

(iv) *Significance of income poverty guidelines.* An immigrant visa applicant relying solely on personal income to establish eligibility under INA 212(a)(15), who does not demonstrate an annual income above the income poverty guidelines published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(15).

(16)–(17) *Alien deported*—(i) *Aliens excluded and deported under INA 212(a)(16).* An alien who was excluded

and deported from the United States under INA 212(a)(16) may not be issued a visa within 1 year from the date of deportation unless the alien has obtained permission from INS to reapply for admission.

(ii) *Aliens arrested and deported or removed from the United States under INA 212(a)(17).* An alien who was arrested and deported from the United States or who was removed from the United States as stated in INA 212(a)(17) shall not be issued a visa unless the alien has remained outside the United States for at least five successive years following the last deportation or removal or has obtained permission from the Immigration and Naturalization Service to reapply for admission to the United States.

(18) *Stowaways.* INA 212(a)(18) is not applicable at the time of visa application.

(19) *Fraud and misrepresentation*—(i) *Fraud and misrepresentation and INA 212(a)(19) applicability to certain refugees.* An alien who seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the Act by fraud or willfully misrepresenting a material fact at any time shall be ineligible under INA 212(a)(19); provided, that the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States; provided further, that the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

(ii) *Misrepresentation in application under Displaced Persons Act or Refugee Relief Act.* Subject to the conditions stated in paragraph (a)(19)(i) of this section, an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible thereunder, shall be considered ineligible under the provisions of INA 212(a)(19).

(iii) *Waiver of ineligibility—INA 212(i).* If an alien applying for an immigrant visa is ineligible under INA 212(a)(19) but qualifies to seek the benefits of INA 212(i), the consular officer shall advise the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(i).

(20) *Immigrant documentary requirements.* INA 212(a)(20) is not applicable at time of visa application. (For waiver of documentary requirements for immigrants see 22 CFR 42.1 and 42.2.)

(21) *Noncompliance with INA 203.* INA 212(a)(21) is not applicable at time of visa application.

(22) *Alien who is ineligible for U.S. citizenship or who departed to avoid service in the Armed Forces*—(i) *Applicability to nonimmigrants.* An alien is ineligible for a nonimmigrant visa under INA 212(a)(22) *only* if, having had at the time other than nonimmigrant status, the alien departed from or remained outside the United States between September 8, 1939 and September 24, 1978 to avoid or evade training or service in the U.S. Armed Forces.

(ii) *Applicability to immigrants.* An alien shall be ineligible to receive an immigrant visa under INA 212(a)(22) if the alien either is ineligible to citizenship or departed from or remained outside the United States between September 8, 1939 and September 24, 1978, to avoid or evade training or service in the United States Armed Forces.

(23) *Controlled substance violators*—(i) *Date of conviction not pertinent.* An alien shall be ineligible under INA 212(a)(23) irrespective of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.

(ii) *Waiver under INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(23) for possession of 30 grams or less of marijuana but has the requisite family relationship to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that section. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(24) (INA 212(a)(24) was repealed by the Act of November 14, 1986 (Pub. L. 99-653) [Reserved].)

(25) *Illiterates.* INA 212(a)(25) is not applicable to nonimmigrants or the following classes or immigrants:

(i) *Permanent residents.* An alien who has been lawfully admitted for permanent residence and is returning from a temporary visit abroad;

(ii) *Certain children.* An alien who is not over 16 years of age;

(iii) *Persons physically incapacitated.* An alien who is physically incapable of reading;

(iv) *Certain relatives.* An alien who is the parent, grandparent, spouse, son or daughter of an alien independently eligible to receive a visa, or of an alien lawfully admitted for permanent residence, or of a U.S. citizen, if accompanying such eligible alien or accompanying or coming to join such citizen or lawfully admitted alien in the United States; or

(v) *Certain persecutees.* An alien who seeks admission to the United States to avoid religious persecution in the country of the alien's last permanent residence whether such persecution is evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or any group to which the alien belongs because of religious faith.

(26) *Nonimmigrant documentary requirements.* A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in INA 212(a)(26).

(27) *Prejudicial activity.* [Reserved]

(28) *Affiliates and members of proscribed organizations*—(i) *Definition of "affiliate".* The term "affiliate," as used in INA 212(a)(28)(C) and (I), means an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other thing of value for any purpose to any proscribed association or party is presumed to be an "affiliate" of such association or party, but nothing contained in this paragraph shall be

construed as an exclusive definition of the term "affiliate."

(ii) *Service in Armed Forces.* Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(iii) *Voluntary service in a political capacity.* Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(iv) *Voluntary membership after age 16.* If an alien continues or continued membership in or affiliation with a proscribed organization on or after reaching 16 years of age, only the alien's activities after reaching that age shall be pertinent to a determination of whether the continuation of membership or affiliation is or was voluntary.

(v) *"Operation of law" defined.* The term "operation of law", as used in INA 212(a)(28)(I)(i), includes any case wherein the alien automatically, and without personal acquiescence, automatically became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.

(vi) *Membership in organization advocating totalitarian dictatorship in U.S.* In accordance with the definition of "totalitarian party" contained in INA 101(a)(37), a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, is not considered ineligible under INA 212(a)(28)(C) to receive a visa, unless the alien is known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship within the meaning of INA 212(a)(28)(D).

(vii) *"Actively opposed" explained.* The words "actively opposed," as used in INA 212(a)(28)(I)(ii), shall be considered as embracing speeches, writings, and other overt or covert activities in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a voluntary member.

(29) *Espionage, sabotage, or other subversive activities.* [Reserved]

(30) *Alien accompanying excludable alien.* INA 212(a)(30) is not applicable at time of visa application.

(31) *Alien who aided illegal entrant.* [Reserved]

(32) *Foreign medical graduates.* INA 212(a)(32) is not applicable to nonimmigrant aliens and is applicable only to immigrant aliens in the classes described in INA 203(a) (3), (6), and (7) (other than those who come within such classes by virtue of INA 203(a)(8)).

(33) *Certain former Nazis.* [Reserved]

(b) *Failure of application to comply with INA.*—(1) *Refusal under INA 221(g).* The consular officer shall refuse an alien's visa application under INA 221(g)(2) as failing to comply with the provisions of INA or the implementing regulations if:

(i) The applicant fails to furnish information as required by law or regulations;

(ii) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under INA 212(a)(19);

(iii) The application is not supported by the documents required by law or regulations;

(iv) The applicant refuses to be fingerprinted as required by law or regulations;

(v) The necessary fee is not paid for such application or for the issuance of the immigrant visa;

(vi) The alien fails to swear to, or affirm, the application before the consular officer; or

(vii) The application otherwise fails to meet specific requirements of law or regulations for reasons for which the alien is responsible.

(2) *Reconsideration of refusals.* A refusal of a visa application under paragraph (b)(1) of this section does not bar reconsideration of the application upon compliance by the applicant with the requirements of INA and the implementing regulations or consideration of a subsequent application submitted by the same applicant.

(c) *Certain former exchange visitors.* An alien who was admitted into the United States as an exchange visitor, or who acquired such status after admission, and who is within the purview of INA 212(e) as amended by the Act of April 7, 1970, (84 Stat. 116) and by the Act of October 12, 1976, (90 Stat. 2301), is not eligible to apply for or receive an immigrant visa or a nonimmigrant visa under INA 101(a)(15) (H), (K), or (L), notwithstanding the approval of a petition on the alien's behalf, unless:

(1) It has been established that the alien has resided and has been physically present in the country of the alien's nationality or last residence for an aggregate of at least 2 years following the termination of the alien's exchange visitor status as required by INA 212(e), or

(2) The foreign residence requirement of INA 212(e) has been waived by the Attorney General in the alien's behalf.

(d) *Alien entitled to A, E, or G nonimmigrant classification.* An alien entitled to nonimmigrant classification under INA 101(a)(15) (A), (E) or (G) who is applying for an immigrant visa and who intends to continue the activities required for such nonimmigrant classification in the United States is not eligible to receive an immigrant visa until the alien executes a written waiver of all rights, privileges, exemptions and immunities, which would accrue by reason of such occupational status.

§ 40.8 Waiver for ineligible nonimmigrant under INA 212(d)(3)(A).

(a) *Report or recommendation submitted to Department.* Except as provided in paragraph (b) of this section, consular officers may, upon their own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of INA 212(d)(3)(A) in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of INA 212(a), other than for § 40.7(a) (27), (29), and (33).

(b) *Delegated approval authority.*—(1) *Consular officers.* A consular officer may, in certain categories defined by the Secretary of State, approve on behalf of the Attorney General a recommendation by a consular officer, other than the approving officer, that the temporary admission of an alien ineligible to receive a visa solely under section 212(a)(28)(C) of the Act be authorized under the provisions of section 212(d)(3)(A) of the Act;

(2) *Designated INS officers abroad.* A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated INS officers that the temporary admission of an alien ineligible to receive a visa, other than an alien described in paragraph (b)(1) of this section, be authorized under INA 212(d)(3)(A).

(c) *Attorney General may impose conditions.* When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant

and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions, if any, imposed by the Attorney General.

2. Part 41 is revised to read as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Subpart A—Passport and Visas Not Required for Certain Nonimmigrants

Sec.
41.1 Exemption by law or treaty from passport and visa requirements.
41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.
41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.

Subpart B—Classification of Nonimmigrants

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Subpart G—Students and Exchange Visitors

41.61 Students—academic and nonacademic.
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Subpart H—Transit Aliens

41.71 Transit aliens.

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41.101 Place of application.
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Subpart K—Issuance of Nonimmigrant Visa

41.111 Authority to issue visa.
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Subpart L-Refusals and Revocations

41.121 Refusal of individual visas.
41.122 Revocation of visas.

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 95-105, 91 Stat. 847.

Subpart A-Passport and Visas Not Required for Certain Nonimmigrants

§ 41.1 Exemption by law or treaty from passport and visa requirements.

Nonimmigrants in the following categories are exempt from the passport and visa requirements of INA 212(a)(26):

(a) *Alien members of the U.S. Armed Forces.* An alien member of the U.S. Armed Forces in uniform or bearing proper military identification, who has not been lawfully admitted for permanent residence coming to the United States under official orders or permit of such Armed Forces. (Sec. 284, 86 Stat. 232; 8 U.S.C. 1354.)

(b) *American Indians born in Canada.* An American Indian born in Canada, having at least 50 per centum of blood of the American Indian race (Sec. 289, 66 Stat. 234; 8 U.S.C. 1359.)

(c) *Aliens entering from Guam, Puerto Rico, or the Virgin Islands.* An alien departing from Guam, Puerto Rico, or the Virgin Islands of the United States, and seeking to enter the continental United States or any other place under the jurisdiction of the United States (Sec. 212, 66 Stat. 188; 8 U.S.C. 1182.)

(d) *Armed Services personnel of a NATO member.* Personnel belonging to the armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed at London on June 19, 1951, and entering the United States under Article III of that Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending state or of NATO (TIAS 2846; 4 U.S.T. 1792.)

(e) *Armed Services personnel attached to a NATO headquarters in the United States.* Personnel attached to a NATO Headquarters in the United States set up pursuant to the North Atlantic Treaty, belonging to the armed services of a government which is a Party to the Treaty and entering the United States in connection with their official duties under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty (TIAS 2978; 5 U.S.T. 875.)

(f) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment (59 Stat. 1252; TS 994.)

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

Pursuant to the authority of the Secretary of State and the Attorney General under INA 212(d)(4), the passport and/or visa requirements of INA 212(a)(26) are waived as specified below for the following categories of nonimmigrants:

(a) *Canadian nationals.* A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

(b) *Aliens resident in Canada or Bermuda having a common nationality with nationals of Canada or with British subjects in Bermuda.* A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

(c) *Bahamian nationals and British subjects resident in the Bahamas.* A passport is required. A visa is not required if, prior to the embarkation of such an alien for the United States on a vessel or aircraft, the examining U.S. immigration officer at Freeport or Nassau determines that the individual is clearly and beyond a doubt entitled to admission.

(d) *British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.* A passport is required. A visa is not required if the alien arrives directly from the Cayman Islands or the Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(e) *British, French, and Netherlands nationals and nationals of certain adjacent islands of the Caribbean which are independent countries.* A passport is required. A visa is not required of a British, French or Netherlands national, or of a national of Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or has residence in Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, if the alien:

(1) Is proceeding to the United States as an agricultural worker; or

(2) Is the beneficiary of a valid, unexpired, indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding thereto for employment, or is the spouse or child of such an alien accompanying or following to join the alien.

(f) *Nationals and residents of the British Virgin Islands proceeding to the Virgin Islands of the United States.* A passport is required. A visa is not required of a national of the British Virgin Islands who resides therein and is proceeding to the Virgin Islands of the United States.

(g) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national in possession of a border crossing identification card and applying for admission as a temporary visitor for business or pleasure from contiguous territory.

(2) A visa is not required of a Mexican national possessing a border crossing identification card and applying for admission to the United States as a temporary visitor for business or pleasure or in transit from noncontiguous territory.

(3) A visa is not required of a Mexican national employed as a crew member on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States.

(4) A visa is not required of a Mexican national bearing a Mexican diplomatic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for a stay of up to 6 months for any purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States. A visa is also not required of the official's spouse or any of the official's dependent family members under 19 years of age who hold diplomatic or official passports and are in the actual company of the official at the time of entry. This waiver does not apply to the spouse or any of the official's family members classifiable under INA 101(a)(15) (F) or (M).

(h) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(i) *Aliens in immediate transit without visa (TWOV).* A passport and visa are not required of an alien in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the carrier and INS on Form I-426, Immediate and Continuous Transit Agreement Between a Transportation Line and United States of America, pursuant to INA 238(d) to ensure transit through and departure from the United States en route to a specified foreign country. The alien must be in possession of travel documentation establishing identity, nationality, and ability to enter a country other than the United States. This waiver of visa and passport requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan or Sri Lanka. This waiver of visa and passport requirements is also not available to an alien who is a citizen of North Korea ("Socialist Peoples' Republic of Korea") or Vietnam ("Socialist Republic of Vietnam"), and is a resident of one of the said countries. It is, on a basis of reciprocity, available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republic, resident in one of those countries, only if he is transiting the United States by aircraft of a transportation line signatory to an agreement with the Immigration and Naturalization Service on Form 1-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(j) *Individual cases of unforeseen emergencies.* A visa and passport are not required of an alien if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible INS district director in charge of the port of entry concludes, with the concurrence of the Director of the Visa Office, that the alien was unable to obtain the required documents because of an unforeseen emergency.

(k) *Fiance(e) of a U.S. citizen.* Notwithstanding the provisions of paragraphs (a) through (h) of this section, a visa is required of an alien described in such paragraphs who is classified, or who seeks classification, under INA 101(a)(15)(K).

§41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(26) may be waived for any alien in whose case the consular officer serving the port or place of embarkation is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

(a) *Residents of foreign contiguous territory; visa and passport waiver.* An alien residing in foreign contiguous territory who does not qualify for any waiver provided in § 41.1 and is a member of a visiting group or excursion proceeding to the United States under circumstances which make it impractical to procure a passport and visa in a timely manner.

(b) *Aliens for whom passport extension facilities are unavailable; passport waiver.* As alien whose passport is not valid for the period prescribed in INA 212(a)(26) and who is embarking for the United States at a port or place remote from any establishment at which the passport could be revalidated.

(c) *Aliens precluded from obtaining passport extensions by foreign government restrictions; passport waiver.* An alien whose passport is not valid for the period prescribed in INA 212(a)(26) and whose government, as a matter of policy, does not revalidate passports more than 6 months prior to expiration or until the passport expires.

(d) *Emergent circumstances; visa waiver.* An alien well and favorably known at the consulat office, who was previously issued a nonimmigrant visa which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) *Members of armed forces of foreign countries; visa and passport waiver.* An alien on active duty in the armed forces of a foreign country and a member of a group of such armed forces traveling to the United States, on behalf of the alien's government or the United Nations, under advance arrangements made with the appropriate military authorities of the United States. The waiver does not apply to a citizen or resident of Albania, Bulgaria, Cuba, Czechoslovakia, Estonia, German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic,

North Korea (Democratic People's Republic of Korea), Vietnam (Socialist Republic of Vietnam), People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics.

(f) *Landed immigrants in Canada; passport waiver.* An alien applying for a visa at a consular office in Canada:

(1) Who is a landed immigrant in Canada;

(2) Whose port and date of expected arrival in the United States are known; and

(3) Who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity.

(g) *Authorization to individual consular office; visa and/or passport waiver.* An alien within the district of a consular office which has been authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specific categories of cases, and whose case falls within one of those categories.

Subpart B—Classification of Nonimmigrants.

§41.11 Entitlement to nonimmigrant status.

(a) *Presumption of immigrant status and burden of proof.* An applicant for a nonimmigrant visa shall be presumed to be an immigrant until the consular officer is satisfied that the applicant is entitled to a nonimmigrant status described in INA 101(a)(15) or otherwise established by law or treaty. The burden of proof is upon the applicant to establish entitlement for nonimmigrant status and the type of nonimmigrant visa for which application is made.

(b) *Aliens unable to establish nonimmigrant status.* (1) A nonimmigrant visa shall not be issued to an alien who has failed to overcome the presumption of immigrant status established by INA 214(b). An alien shall be considered to have established bona fide nonimmigrant status only if the consular officer is satisfied that his case falls within one of the nonimmigrant categories described in INA 101(a)(15) or otherwise established by law or treaty.

(2) In a borderline case in which an alien appears to be otherwise entitled to receive a visa under INA 101(a)(15)(B) or (F) but the consular officer concludes that the maintenance of the alien's status or the departure of the alien from the United States as required is not fully assured, a visa may nevertheless be issued upon the posting of a bond with the Attorney General under terms and conditions prescribed by the consular officer.

§41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided in the visa stamp. The following visa symbols shall be used:

Class	Section of law or treaty citation	Visa symbol
Ambassador, public, minister, career, diplomatic or consular officer, and members of immediate family	101(a)(15)(A)(i)	A-1
Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii)	A-2
Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immeidate family	101(a)(15)(A)(iii)	A-3
Temporary visitor for business	101(a)(15)(B)	B-1
Temporary visitor for pleasure	101(a)(15)(B)	B-2
Temporary visitor for business and pleasure	101(a)(15)(B)	B-1 and B-2
Alien in transit	101(a)(15)(C)	C-1
Alien in transit to United Nations Headquarters District under 11(3), (4), or (5) of the Headquarters Agreement with the United Nations	101(a)(15)(C)	C-2
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8)	C-3
Crew member (ship or aircraft crew)	101(a)(15)(D)	D
Treaty trader, spouse and children	101(a)(15)(E)(i)	E-1
Treaty investor, spouse and children	101(a)(15)(E)(ii)	E-2
Student (academic or language training program)	101(a)(15)(F)(i)	F-1
Spouse and children of alien classified F-1	101(a)(15)(F)(ii)	F-2
Principal resident representative of recognized foreign member government to international organization, representative's staff, and members of immediate family.	101(a)(15)(G)(i)	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii)	G-2
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(iii)	G-3
International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv)	G-4
Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes, and members of immediate family	101(a)(15)(G)(v)	G-5
Temporary worker of distinguished merit and ability	101(a)(15)(H)(i)	H-1
Temporary worker performing agricultural services unavailable in the United States	101(a)(15)(H)(ii)(a)	H-2(A)
Temporary worker performing other services unavailable in the United States	101(a)(15)(H)(ii)(b)	H-2(B)
Trainee	101(a)(15)(H)(iii)	H-3
Spouse and children of alien classified H-1, H-2, or H-3	101(a)(15)(H)	H-4
Representative of foreign information media, spouse and children	101(a)(15)(I)	I
Exchange visitor	101(a)(15)(J)	J-1
Spouse and children of alien classified J-1	101(a)(15)(J)	J-2
Fiance (e) of U.S. citizen	101(a)(15)(K)	K-1
Children of alien classified K-1	101(a)(15)(K)	K-2
Intracompany transferee (executive, managerial, and specialized personnel continuing employment with international firm or corporation)	101(a)(15)(L)	L-1
Spouse and children of alien classified L-1	101(a)(15)(L)	L-2
Student (vocational or other recognized nonacademic)	101(a)(15)(M)(i)	M-1
Spouse and children of alien classified M-1	101(a)(15)(M)(ii)	M-2
The parent of an alien child classified SK-3 under section 101(a)(27)(I)(i)	101(a)(15)(N); 100 Stat. 3359	N-8
The child of parent classified N-8 or of alien classified SK-1; SK-2; SK-4 under section 101(a)(27)(I)(ii),(iii), or (iv)	101(a)(15)(N), 100 Stat. 3359	N-9
Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family.	Art. 12, 5 UST 1094, Art. 20, 5 UST 1098	NATO-1
Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas.	Art. 13, 5 UST 1094, Art. 1, 4 UST 1794, Art. 3, 4 UST 1796	NATO-2
Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family.	Art. 14, 5 UST 1096	NATO-3
Officials of NATO (other than those classifiable under NATO-1) and members of immediate family	Art. 18, 5 UST 1098	NATO-4
Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO and their dependents	Art. 21, 5 UST 1100	NATO-5
Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an Allied. Headquarters under the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty; and their dependents.	Art. 1, 4 UST 1794, Art. 3, 5 UST 877	NATO-6

Class	Section of law or treaty citation	Visa symbol
Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 classes, and members of immediate family	Arts, 12-20, 5 UST	NATO-7

Subpart C—Foreign Government Officials

§ 41.21 General.

(a) *Definitions.* In addition to pertinent INA definitions, the following definitions are applicable:

(1) "*Accredited,*" as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), means an alien holding an official position, other than an honorary official position, with a government or international organization and possessing a travel document or other evidence of intention to enter or transit the United States to transact official business for that government or international organization.

(2) "*Attendants,*" as used in INA 101(a)(15)(A)(iii), 101(a)(15)(G)(v), and 212(d)(8), and in the definition of the NATO-7 visa symbol, means aliens paid from the public funds of a foreign government or from the funds of an international organization, accompanying or following to join the principal alien to whom a duty or service is owed.

(3) "*Immediate family,*" as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO-1 through NATO-5 visa symbols, means the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. "Immediate family" also includes any other close relatives of the principal alien or spouse who:

(i) Are relatives of the principal alien or spouse by blood, marriage, or adoption;

(ii) Are not members of some other household;

(iii) Will reside regularly in the household of the principal alien;

(iv) Are recognized as dependents by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport and travel and other allowances, which would be granted to the spouse and children of the principal alien; and

(v) Are individually authorized by the Department.

(4) "*Servants" and "personal employees,*" as used in INA 101(a)(15)(A)(iii), 101(a)(15)(G)(v), and 212(d)(8), and in classification under the NATO-7 visa symbol, means aliens employed in a domestic or personal capacity by a principal alien, who are paid from the private funds of the principal alien and seek to enter the United States solely for the purpose of such employment.

(b) *Exception to passport validity requirement for aliens in certain A, G, and NATO classes.* A nonimmigrant alien for whom the passport requirement of INA 212(a)(26) has not been waived and who is within one of the classes:

(1) Described in INA 101(a)(15)(A)(i) and (ii); or

(2) Described in INA 101(a)(15)(G)(i), (ii), (iii), and (iv); or

(3) NATO-1, NATO-2, NATO-3, NATO-4, or NATO-6 may present a passport which is valid only for a sufficient period to enable the alien to apply for admission at a port of entry prior to its expiration.

(c) *Exception to passport validity requirement for foreign government officials in transit.* An alien classified C-3 under INA 212(d)(8) needs to present only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least 30 days from the date of application for admission into the United States.

(d) *Grounds for refusal of visas applicable to certain A, C, G, and NATO classes.* (1) An A-1 or A-2 visa may not be issued to an alien the Department has determined to be persona non grata.

(2) Only the provisions of INA 212(a) cited below apply to the indicated classes of nonimmigrants:

(i) Class A-1: INA 212(a)(27) in accordance with a directive of the President and the issuance of appropriate rules and regulations;

(ii) Class A-2: INA 212(a)(26)(A), (27), (28), and (29);

(iii) Class C-2: INA 212(a)(26)(A), (27), (28), and (29);

(iv) Class C-3: INA 212(a)(26(A), (27) and (29);

(v) Class G-1: INA 212(a)(27);

(vi) Class G-2, G-3, and G-4: INA 212(a) (27) and (29);

(vii) Class NATO-1: INA 212(a) (27);

(viii) Classes NATO-2, NATO-3, NATO-4 and NATO-6: INA 212(a)(27) and (29).

(3) An alien within class A-3 or G-5 is subject to all grounds of refusal specified in INA 212, which are applicable to nonimmigrants in general, except for those specified in INA 212(a)(28).

§ 41.22 Officials of foreign governments.

(a) *Criteria for classification of foreign government officials.* (1) An alien is classifiable A-1 or A-2 under INA 101(a)(15)(A) (i) or (ii) if the principal alien:

(i) Has been accredited by a foreign government recognized de jure by the United States;

(ii) Intends to engage solely in official activities for that foreign government while in the United States; and

(iii) Has been accepted by the President, the Secretary of State, or a consular officer acting on behalf of the Secretary of State.

(2) A member of the immediate family of a principal alien is classifiable A-1 or A-2 under INA 101(a)(15)(A) (i) or (ii) if the principal alien is so classified.

(b) *Classification under INA 101(a)(15)(A).* An alien entitled to classification under INA 101(a)(15)(A) shall be classified under this section even if eligible for another nonimmigrant classification.

(c) *Classification of attendants, servants, and personal employees.* An alien is classifiable as a nonimmigrant under INA 101(a)(15)(A)(iii) if the consular officer is satisfied that the alien qualifies under those provisions.

(d) *Referral to the Department of special cases concerning principal alien applicants.* In any case in which there is uncertainty about the applicability of these regulations to a principal alien applicant requesting such nonimmigrant status, the matter shall be immediately referred to the Department for consideration as to whether acceptance of accreditation will be granted.

(e) *Change of classification to that of a foreign government official.* In the case of an alien in the United States seeking a change of nonimmigrant classification under INA 248 to a classification under INA 101(a)(15)(A) (i) or (ii), the question of acceptance of accreditation is determined by the Department.

(f) *Termination of status.* The Department may, in its discretion, cease to recognize as entitled to classification under INA 101(a)(15)(A) (i) or (ii) any alien who has nonimmigrant status under that provision.

(g) *Classification of foreign government official.* A foreign government official or employee seeking to enter the United States temporarily other than as a representative or

employee of a foreign government is not classifiable under the provisions of INA 101(a)(15)(A).

(h) *Courier and acting courier on official business.*—(1) *Courier of career.* An alien regularly and professionally employed as a courier by the government of the country to which the alien owes allegiance is classifiable as a nonimmigrant under INA 101(a)(15)(A)(i), if the alien is proceeding to the United States on official business for that government.

(2) *Official acting as courier.* An alien not regularly and professionally employed as a courier by the government of the country to which the alien owes allegiance is classifiable as a nonimmigrant under INA 101(a)(15)(A)(ii), if the alien is holding an official position and is proceeding to the United States as a courier on official business for that government.

(3) *Nonofficial serving as courier.* An alien serving as a courier but not regularly and professionally employed as such who holds no official position with, or is not a national of, the country whose government the alien is serving, shall be classified as a nonimmigrant under INA 101(a)(15)(B).

(i) *Official of foreign government not recognized by the United States.* An official of a foreign government not recognized de jure by the United States, who is proceeding to or through the United States on an official mission or to an international organization shall be classified as a nonimmigrant under INA 101(a)(15) (B), (C), or (G)(iii).

§ 41.23 Accredited officials in transit.

An accredited official of a foreign government intending to proceed in immediate and continuous transit through the United States on official business for that government is entitled to the benefits of INA 212(d)(8) if that government grants similar privileges to officials of the United States, and is classifiable C-3 under the provisions of INA 101(a)(15)(C). Members of the immediate family, attendants, servants, or personal employees of such an official receive the same classification as the principal alien.

§ 41.24 International organization aliens.

(a) *Definition of international organization.* "International organization," means any public international organization which has been designated by the President by Executive Order as entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act. (59 Stat. 669)

(b) *Aliens coming to international organizations.* (1) An alien is classifiable under INA 101(a)(15)(G) if the consular officer is satisfied that the alien is within one of the classes described in that section and seeks to enter or transit the United States in pursuance of official duties. If the purpose of the entry or transit is other than pursuance of official duties, the alien is not classifiable under INA 101(a)(15)(G).

(2) An alien applying for a visa under the provisions of INA 101(a)(15)(G) may not be refused solely on the grounds that the applicant is not a national of the country whose government the applicant represents.

(3) An alien seeking to enter the United States as a foreign government representative to an international organization, who is also proceeding to the United States on official business as a foreign government official within the meaning of INA 101(a)(15)(A), shall be issued a visa under that section, if otherwise qualified.

(4) An alien not classifiable under INA 101(a)(15)(A) but entitled to classification under INA 101(a)(15)(G) shall be classified under the latter section, even if also eligible for another nonimmigrant classification.

§ 41.25 NATO representatives, officials, and employees.

(a) *Classification.* An alien shall be classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5 if the consular officer is satisfied that the alien is seeking admission to the United States under the applicable provision of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, or is a member of the immediate family of an alien classified NATO-1 through NATO-5. (See § 41.12 for classes of aliens entitled to classification under each symbol.)

(b) *Armed services personnel.* Armed services personnel entering the United States in accordance with the provisions of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces or in accordance with the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty may enter the United States under the appropriate treaty waiver of documentary requirements contained in § 41.1 (d) or (e). If a visa is issued it is classifiable under the NATO-2 symbol.

(c) *Dependents of armed services personnel.* Dependents of armed services personnel referred to in paragraph (b) of this section shall be classified under the symbol NATO-2.

(d) *Members of civilian components and dependents.* Alien members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, and dependents, or alien members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters, and dependents shall be classified under the symbol NATO-6.

(e) *Attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6.* An alien attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6, and any member of the immediate family of such attendant, servant, or personal employee, shall be classified under the symbol NATO-7.

§ 41.26 Diplomatic visas.

(a) *Definitions.* (1) "Diplomatic passport" means a national passport bearing that title and issued by a competent authority of a foreign government.

(2) "Diplomatic visa" means any nonimmigrant visa, regardless of classification, which bears that title and is issued in accordance with the regulations of this section.

(3) "Equivalent of a diplomatic passport" means a national passport, issued by a competent authority of a foreign government which does not issue diplomatic passports to its career diplomatic and consular officers, indicating the career diplomatic or consular status of the bearer.

(b) *Place of application.* With the exception of certain aliens in the United States issued nonimmigrant visas by the Department under the provisions of § 41.111(b), application for a diplomatic visa shall be made at a diplomatic mission or at a consular office authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant.

(c) *Classes of aliens eligible to receive diplomatic visas.* (1) A nonimmigrant alien who is in possession of a diplomatic passport or its equivalent shall, if otherwise qualified, be eligible to receive a diplomatic visa irrespective of the classification of the visa under § 41.12 if within one of the following categories:

(i) Heads of states and their alternates;

(ii) Members of a reigning royal family;

(iii) Governors-general, governors, high commissioners, and similar high

administrative or executive officers of a territorial unit, and their alternates;

(iv) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;

(v) Presiding officers of chambers of national legislative bodies;

(vi) Justices of the highest national court of a foreign country;

(vii) Ambassadors, public ministers, other officers of the diplomatic service and consular officers of career;

(viii) Military officers holding a rank not inferior to that of a brigadier general in the United States Army or Air Force and Naval officers holding a rank not inferior to that of a rear admiral in the United States Navy;

(ix) Military, naval, air and other attaché and assistant attaché assigned to a foreign diplomatic mission;

(x) Officers of foreign-government delegations to international organizations so designated by Executive Order;

(xi) Officers of foreign-government delegations to, and officers of, international bodies of an official nature, other than international organizations so designated by Executive Order;

(xii) Officers of a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(xiii) Officers of foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xiv) Members of the immediate family of a principal alien who is within one of the classes described in paragraphs (a) to (k) inclusive, of this section;

(xv) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in paragraphs (c)(1)(xii) and (c)(1)(xiii) of this section;

(xvi) Diplomatic couriers proceeding to or through the United States in the performance of their official duties.

(2) Aliens Classifiable G–4, who are otherwise qualified, are eligible to receive a diplomatic visa if accompanying these officers:

(i) The Secretary General of the United Nations;

(ii) An Under Secretary General of the United Nations;

(iii) An Assistant Secretary General of the United Nations;

(iv) The Administrator or the Deputy Administrator of the United Nations Development Program;

(v) An Assistant Administrator of the United Nations Development Program;

(vi) The Executive Director of the:

(A) United Nation's Children's Fund;

(B) United Nations Institute for Training and Research;

(C) United Nations Industrial Development Organization;

(vii) The Executive Secretary of the:

(A) United Nations Economic Commission for Africa;

(B) United Nations Economic Commission for Asia and the Far East;

(C) United Nations Economic Commission for Latin America;

(D) United Nations Economic Commission for Europe;

(viii) The Secretary General of the United Nations Conference on Trade and Development;

(ix) The Director General of the Latin American Institute for Economic and Social Planning;

(x) The United Nations High Commissioner for Refugees;

(xi) The United Nations Commissioner for Technical Co-operation;

(xii) The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

(xiii) The spouse or child of any nonimmigrant alien listed in paragraph (c)(2)(i) through (c)(2)(xii) of this section.

(3) Other individual aliens or classes of aliens are eligible to receive diplomatic visas upon authorization of the Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

§ 41.27 Official visas.

(a) *Definition.* "Official visas" means any nonimmigrant visa, regardless of classification, which bears that title and is issued in accordance with these regulations.

(b) *Place of application.* Official visas are ordinarily issued only when application is made in the consular district of the applicant's residence. When directed by the Department, or in the discretion of the consular officer, official visas may be issued when application is made in a consular district in which the alien is physically present but does not reside. Certain aliens in the United States may be issued official visas by the Department under the provisions of § 41.111(b).

(c) *Classes of aliens eligible to receive official visas.* (1) A nonimmigrant within one of the following categories who is not eligible to receive a diplomatic visa shall, if otherwise qualified, be eligible to receive an official visa irrespective of classification of the visa under § 41.12:

(i) Aliens within a class described in § 41.26(c)(2) who are ineligible to receive a diplomatic visa because they are not in possession of a diplomatic passport or its equivalent;

(ii) Aliens classifiable under INA 101(a)(15)(A);

(iii) Aliens, other than those described in 22 CFR 41.26(c)(3) who are classifiable under INA 101(a)(15)(G), except those classifiable under INA 101(a)(15)(G)(iii) unless the government of which the alien is an accredited representative is recognized *de jure* by the United States;

(iv) Aliens classifiable under INA 101(a)(15)(C) as nonimmigrants described in INA 212(d)(8);

(v) Members and members-elect of national legislative bodies;

(vi) Justices of the lesser national and the highest state courts of a foreign country;

(vii) Officers and employees of national legislative bodies proceeding to or through the United States in the performance of their official duties;

(viii) Clerical and custodial employees attached to foreign-government delegations to, and employees of, international bodies of an official nature, other than international organizations so designated by Executive Order, proceeding to or through the United States in the performance of their official duties;

(ix) Clerical and custodial employees attached to a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(x) Clerical and custodial employees attached to foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xi) Officers and employees of foreign governments recognized *de jure* by the United States who are stationed in foreign contiguous territories or adjacent islands;

(xii) Members of the immediate family, attendants, servants and personal employees of, when accompanying or following to join, a principal alien who is within one of the classes referred to or described in paragraphs (a) through (k) inclusive of this section;

(xiii) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in paragraphs (a) through (m) inclusive of § 41.26(c)(2).

(2) Other individual aliens or classes of aliens are eligible to receive official visas upon the authorization of the

Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

Subpart D—Temporary Visitors

§ 41.31 Temporary visitors for business or pleasure.

(a) *Classification.* An alien is classifiable as a nonimmigrant visitor of business (B-1) or pleasure (B-2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(B), and that:

(1) The alien intends to leave the United States at the end of the temporary stay (consular officers are authorized, if departure of the alien as required by law does not seem fully assured, to require the posting of a bond with the Attorney General in a sufficient sum to ensure that at the end of the temporary visit, or upon failure to maintain temporary visitor status, or any status subsequently acquired under INA 248, the alien will depart from the United States);

(2) The alien has permission to enter a foreign country at the end of the temporary stay; and

(3) Adequate financial arrangements have been made to enable the alien to carry out the purpose of the visit to and departure from the United States.

(b) *Definitions.* (1) The term "business," as used in INA 101(a)(15)(B), refers to conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include local employment or labor for hire. For the purposes of this section building or construction work, whether on-site or in plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building or construction work) shall not be deemed to constitute purely local employment or labor for hire if the alien is otherwise qualified as a B-1 nonimmigrant. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement is required to qualify under the provisions of § 41.53. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.

(2) The term "pleasure," as used in INA 101(a)(15)(B), refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature.

§ 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B-1/B-2 visitor visa.

(a) *Border crossing identification cards (BCC)*—(1) *Posts authorized to issue.* Consular officers assigned to consular offices in Ciudad Juarez, Hermosillo, Nuevo Laredo, Matamoros, and Tijuana may issue a nonresident alien border crossing identification card (BCC), as that term is defined in INA 101(a)(6), to a nonimmigrant alien who:

(i) Is a citizen and resident of Mexico; and

(ii) Is a temporary visitor who, if applying for a B-1 or B-2 visitor visa for business or pleasure, would be eligible to receive such visa.

(2) *Procedures for application.* A citizen of Mexico shall apply for a BCC on Form OF-156, Nonimmigrant Visa Application. The application shall be supported by:

(i) Evidence of Mexican citizenship and residence;

(ii) A valid or expired Mexican Federal passport or a valid Mexican identity document (Form FM13); and

(iii) One photograph (1-½-inches square), if the alien is 16 years of age or older. Each applicant shall appear in person before a consular officer and be interviewed regarding eligibility for a temporary visitor visa, unless personal appearance is waived by the officer.

(3) *Issuance and format.* A Mexican BCC shall consist of a stamp placed in the alien's valid or expired Mexican Federal passport or valid Mexican identity document by a consular officer stationed at one of the posts designated in paragraph (a)(1) of this section. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They must be in the format prescribed by the Department and contain the following data:

(i) Post symbol;

(ii) Number of the card;

(iii) Title and location of the issuing office;

(iv) Date of issuance;

(v) Name(s) of the person(s) to whom issued; and

(vi) Signature and title of the issuing officer.

(b) *Combined border crossing identification cards and B-1/B-2 visitor visas (B-1/B-2—BCC)*—(1)—Posts authorized to issue. Consular officers assigned to any consular office in Mexico may issue a nonresident alien border crossing identification card, as that term is defined in INA 101(a)(6), in combination with a B-1/B-2 nonimmigrant visitor vias (B-1/B-2—BCC, to a nonimmigrant alien who:

(i) Is a citizen of Mexico;

(ii) Seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding 6 months; and

(iii) Is otherwise eligible to receive a B-1 or B-2 temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which is valid for multiple applications for admission into the United States and for an indefinite period of time and which contains no restrictions as to extensions of temporary stay or itinerary.

(2) *Procedure for application.* Application for a B-1/B-2—BCC may be made by a Mexican applicant at any U.S. consular office in Mexico on Form OF-156. The application shall be supported by:

(i) Evidence of Mexican citizenship and residence;

(ii) A valid Mexican Federal passport; and

(iii) One photograph (1-½-inches square), if 16 years of age or older.

Each applicant shall appear in person before a consular officer to be interviewed regarding eligibility for a visitor visa, unless personal appearance is waived by the consular officer.

(3) *Issuance and format.* A Mexican B-1/B-2—BCC shall consist of a numbered stamp placed in the alien's valid Mexican Federal passport by a consular officer in Mexico. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They must be in the format prescribed by the Department and contain the following data:

(i) Post symbol;

(ii) Number of the card;

(iii) Title and location of the issuing office;

(iv) Date of issuance;

(v) Indicia "Mexican Border Crossing Identification Card and B-1/B-2 Nonimmigrant Visa";

(vi) Name(s) of the person(s) to whom issued;

(vii) Caption "Valid indefinitely for multiple applications for admission to the United States as a temporary visitor for business or pleasure" in the middle portion of the stamp; and

(viii) Signature and title of the issuing officer.

(c) *Validity.* A Mexican BCC or B-1/B-2—BCC, issued pursuant to the provisions of this section, is valid until revoked. A BCC previously issued by a consular officer in Mexico on Form I-186, Nonresident Alien Mexican Border Crossing Card, or Form I-586, Nonresident Alien Border Crossing Card, is valid until revoked or voided, regardless of any expiration date on the card.

(d) *Revocation.* A Mexican BCC or B-1/B-2—BCC may be revoked under the provisions of § 41.122. Upon revocation, the consular or immigration officer shall cancel the card by writing or stamping the word "Canceled" plainly acoss the face of the card stamp and shall indicate the location of the consular or immigration office where the card was revoked.

(e) *Voidance of Mexican border crossing cards issued in Mexico on form I-186 or form I-586.* A consular officer in Mexico may declare void, without notice, a BCC previously issued in Mexico on Form I-186 or Form I-586, upon a finding that the holder is ineligible to receive a nonimmigrant visas. The card must be surrendered immediately upon voidance.

(f) *Replacement.* When a Mexican BCC or B-1/B-2—BCC issued under the provisions of this section has been lost, mutilated, or destroyed, the person to whom such card was issued may apply for a new card as provided in this section. A nonresident alien whose BCC previously issued on Form I-186 or Form I-586 by a consular officer in Mexico, has been lost, mutiliated, or destroyed, may apply for a B-1/B-2—BCC at any consular office in Mexico, provided the alien qualifies under paragraph (b) of this section.

§ 41.33 Nonresident alien Canadian border crossing identification card (BCC).

(a) *Aliens eligible to apply.* A consular officer assigned to a consular office in Canada may issue a nonresident alien border crossing identification care (BCC), as that term is defined in INA 101(a)(6), to a nonimmigration alien who:

(1) Has been admitted to Canada for permanent residence as a landed immigrant;

(2) Seeks to enter the United States from Canada, or will seek to enter the United States from Mexico and will not have visited any countries other than Mexico and the United States since departing Canada, only as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding 6 months; and

(3) Is otherwise eligible to receive a temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which is valid for multiple applications for admission into the United States and for an indefinite period of time and which contains no restrictions as to extensions of temporary stay or itinerary.

(b) *Procedure for application.* Application for a Canadian BCC shall be made on Form OF-156, Nonimmigrant Visa Application. The application shall be supported by:

(1) Evidence of the applicant's landed immigrant status in Canada;

(2) A valid or expired passport or other travel document showing origin, identity, and nationality, if any; and

(3) One photograph (1½ inches square), if the applicant is 16 years of age or over. Each applicant must appear in person before a consular officer and be interviewed regarding eligibility for a visitor visa unless personal appearance is waived by the consular officer.

(c) *Issuance and format of border crossing identification card.* A Canadian BCC shall consist of a stamp placed in the alien's passport or other travel document by a consular officer in Canada. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They shall be in the format prescribed by the Department and contain the following data:

(1) Post symbol;

(2) Number of the card;

(3) Title and location of the issuing office;

(4) Date of issuance;

(5) Name(s) of the person(s) to whom issued; and

(6) Signature and title of the issuing officer.

(d) *Validity of Canadian BCC.* A Canadian BCC, issued pursuant to the provisions of this section, is valid until revoked.

(e) *Revocation of Canadian BCC.* (1) A Canadian BCC shall be revoked by a consular officer if information is developed indicating that the holder is ineligible to receive a nonimmigrant visa, or by a District Director of the Immigration and Naturalization Service if it is found that the alien has violated the conditions of admission into the United States.

(2) In canceling such a card the consular or immigration officer shall write or stamp the word "Canceled" plainly across the face of the card stamp, indicate the location of the consular or immigration office where the card was revoked and follow the procedures of § 41.122.

Subpart E—Crewman and Crew-List Visas

§ 41.41 Crewmen.

(a) *Alien classifiable as crewman.* An alien shall be classifiable as a nonimmigrant crewman upon establishing to the satisfaction of the consular officer the qualifications prescribed by INA 101(a)(15)(D) provided that the alien has permission to enter some foreign country after a temporary landing in the United States.

(b) *Alien not classifiable as crewman.* An alien employed on board a vessel or aircraft in a capacity not required for normal operation and service, or an alien employed or listed as a regular member of the crew in excess of the number normally required, shall not be classified as a crewman.

§ 41.42 Crew-List visas.

(a) *Definition.* A crew-list visa is a nonimmigrant visa issued on a manifest of crewmen of a vessel or aircraft and includes all aliens listed in the manifest unless otherwise stated. It constitutes a valid nonimmigrant visa within the meaning of INA 212(a)(26)(B).

(b) *Application.* (1) A list of all alien crewmen serving on a vessel or aircraft proceeding to the United States and not in possession of a valid individual D visa or INS Form I-151 or Form I-551, Alien Registration Receipt Card, shall be submitted in duplicate to a consular officer on INS Form I-418, Passenger List-Crew List, or other prescribed forms. The duplicate copy of Form I-418 must show in column (4) the date, city, and country of birth of each person listed and in column (5) the place of issuance and the issuing authority of the passport held by that person. For aircraft crewmen, the manifest issued by the International Civil Aviation Organization (ICAO) or Customs Form 7507, General Declaration, may be used in lieu of Form I-418 if there is adequate space for the list of names.

(2) The formal application for a crew-list visa is the crew list together with any other information the consular officer finds necessary to determine eligibility. No other application form is required.

(3) The crew list submitted should contain in alphabetical order the names of those alien crew members to be considered for inclusion in a crew-list visa. If the list is not alphabetical, the consular officer may require a separate alphabetical listing if this will not unduly delay the departure of the vessel or aircraft.

(4) If a vessel or aircraft destined to the United States will not call at a port

or place where there is a consular office, the crew list can be submitted for visaing to a consular office at the place nearest the vessel's port of call.

(c) *Fee.* A fee in an amount determined by the Schedule of Fees for Consular Services shall be charged for a crew-list visa except that no fee shall be charged in the case of an American vessel or aircraft.

(d) *Validity.* A crew-list visa is valid for a period of 6 months from the date of issuance and for a single application for admission into the United States.

(e) *Procedure in issuing.* (1) In issuing a crew-list visa the regular nonimmigrant visa stamp as prescribed in § 41.113(d) shall be placed on the last page of the manifest immediately following the last name listed.

(2) The symbol D shall be inserted in the space provided in the visa stamp.

(3) The name of the vessel or identifying data regarding the aircraft shall be entered in the space provided for the name of the visa recipient.

(4) The signature and title of the consular officer shall be recorded on the visa. The post impression seal shall be affixed on the visa stamp if the visa has been stamped by a rubber handstamp.

(5) When a crew-list visa is issued, the consular officer delivers the original of the document to the master of the vessel or captain of the aircraft or to an authorized agent for presentation to the immigration officer at the first port of arrival in the U.S. The dated duplicate copy is retained for the consular files.

(f) *Supplemental crew-list visas.* (1) A supplemental crew-list visa shall be issued at the consular office at which the crew-list visa was issued or at another consular office to cover any crewman signed on after the issuance of the crew-list visa and not in possession of a valid individual D visa.

(2) If the crewman is substituted for another member previously included in the visa, the substitution shall be indicated in the supplemental crew list presented for visaing.

(g) *Exclusion from and refusal of crew-list visas*—(1) *Exclusion from crew-list visas.* If there is reason to believe that a crew list submitted for visaing contains the name of any person who is not a bona fide crewman or who is otherwise ineligible to receive an individual D visa under INA 101(a)(15)(D), the consular officer shall exclude any such person from the visa by listing the name of each excluded crew member below the visa stamp. An excluded crew member's name may not be stricken from the crew list.

(2) *Refusal of crew-list visa.* A crew-list visa shall be refused if all aliens listed thereon are found by the consular officer not to be bona fide crewmen or otherwise ineligible to receive individual visas as crew members. In any case where a crew-list visa is refused, a full report shall be forwarded to reach the Department before the arrival of the vessel or aircraft at the first port of entry. In any case of refusal the original crew list shall be returned to the master, aircraft captain, or authorized agent, and the duplicate shall be filed in the consular office.

Subpart F—Business and Media Visas

§ 41.51 Treaty trader or investor.

(a) *Treaty trader.* An alien is classifiable as a nonimmigrant treaty trader (E-1) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(i) and that the alien:

(1) Will be in the United States solely to carry on trade of a substantial nature, which is international in scope, either on the alien's behalf or as an agent of a foreign person or organization engaged in trade, principally between the United States and the foreign state of which the alien is a national, consideration being given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on such substantial trade; and

(2) Intends to depart from the United States upon the termination of E-1 status.

(b) *Treaty investor.* An alien is classifiable as a nonimmigrant treaty investor (E-2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(ii) and that the alien:

(1) Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living; and

(2) Intends to depart from the United States upon the termination of E-2 status.

(c) *Employee of treaty trader or investor.* An alien employee of a treaty trader may be classified E-1 and an alien employee of a treaty investor may be classified E-2 if the employee is or will be engaged in duties of an executive or supervisory character, or, if employed in a minor capacity, the employee has special qualifications that make the services to be rendered essential to the efficient operation of the enterprise. The employer must be:

(1) A person having the nationality of the treaty country, who is maintaining the status of treaty trader or investor if in the United States; or

(2) An organization at least 50 percent owned by persons having the nationality of the treaty country who are maintaining nonimmigrant treaty trader or investor status if residing in the United States.

(d) *Spouse and children of treaty alien.* The spouse and children of a treaty alien accompanying or following to join the treaty alien are entitled to the same classification as the principal alien. The nationality of a spouse or child of a treaty alien is not material to the classification of the spouse or child under the provisions of INA 101(a)(15)(E).

(e) *Representatives of foreign information media.* Representatives of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of INA 101(a)(15)(I), before consideration is given to their possible classification as nonimmigrants under the provisions of INA 101(a)(15)(E) and of this section.

§ 41.52 Information media representative.

(a) *Representative of foreign press, radio, film, or other information media.* An alien is classifiable as a nonimmigrant information media representative if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(I) and is a representative of a foreign press, radio, film, or other information medium having its home office in a foreign country, the government of which grants reciprocity for similar privileges to representatives of such a medium having home offices in the United States.

(b) *Classification when applicant eligible for both I visa and E visa.* An alien who will be engaged in foreign information media activities in the United States and meets the criteria set forth in paragraph (a) of this section shall be classified as a nonimmigrant under INA 101(a)(15)(I) even if the alien may also be classifiable as a nonimmigrant under the provisions of INA 101(a)(15)(E).

(c) *Spouse and children of information media representative.* The spouse or child of an information media representative is classifiable under INA 101(a)(15)(I) if accompanying or following to join the principal alien.

§ 41.53 Temporary workers and trainees.

(a) *Requirements for H classification; visa validity.* An alien shall be classifiable under the provisions of INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(3) The alien shall have presented to the consular officer official confirmation of the approval by INS of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(4) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien. The period of validity of a visa issued on the above basis must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of (3) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(b) *Alien not entitled to H classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(H) is not qualified to perform the services or to undertake the training specified in the employer's petition.

(c) *"Trainee" defined.* The term "trainee," as used in INA 101(a)(15)(H)(iii), means a nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor (other than graduate medical education or training), including agriculture, commerce, communication, finance, government, transportation, and the professions as well as in a purely industrial establishment.

(d) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(H) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

§ 41.54 Intracompany transferees (executives, managers, and specialists).

(a) *Requirements for L classification; visa validity.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The consular officer has received an individual petition approved by INS under INA 214(c) to accord such classification to the alien or an official notification of the approval thereof; or

(3) The alien shall have presented to the consular officer official confirmation of approval by INS of an individual petition according such classification to the alien or confirmation of the alien's authorized stay in such classification; or

(4) The alien shall have presented to the consular officer an approved blanket petition or a notification of approval listing only those intracompany relationships and positions which were found to qualify under INA 101(a)(15)(L); or

(5) The alien shall have presented to the consular officer a blanket petition to accord such classification to qualified aliens who are being transferred to managerial or executive positions identified in the approved blanket petition; or

(6) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

The period of validity of a visa issued on the above basis must not exceed the period indicated in the petition, notification, or confirmation required in paragraphs (a) (2), (3), (4) or (5) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(b) *Ineligible alien under individual petition.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa as the beneficiary of an approved individual petition under INA 101(a)(15)(L) has not been continuously employed for 1 year by the same employer or an affiliate or subsidiary thereof, or has not been employed in an executive or managerial capacity, or does not possess specialized knowledge, as specified in the employer's petition.

(c) *Alien not entitled to L-1 classification under blanket petition.* The consular officer shall deny L classification based on a blanket petition if the documentation presented by the alien claiming to be a beneficiary thereof does not establish to the satisfaction of the consular officer that

(1) The alien has been continuously employed by the same employer, an affiliate or subsidiary thereof, for the one year immediately preceding the application for the L visa,

(2) The alien was occupying an executive or managerial position throughout that year, or

(3) The alien is destined to a position identified as executive or managerial in the petition and in an organization listed in the petition.

(d) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year foreign residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(L) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

Subpart G—Students and Exchange Visitors

§ 41.61 Students—academic and nonacademic.

(a) *Definitions*—(1) *"Academic"*, in INA 101(a)(15)(F), refers to an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution, or a language training program.

(2) *"Nonacademic"*, in INA 101(a)(15)(M), refers to an established vocational or other recognized nonacademic institution (other than a language training program).

(b) *Classification.* (1) An alien is classifiable under INA 101(a) (15) (F) (i) of INA 101(a) (15) (M) (i) if the consular officer is satisfied that the alien qualifies under one of those sections, and:

(i) The alien has been accepted for attendance solely for the purpose of pursuing a full course of study in an academic institution approved by the Attorney General for foreign students under INA 101(a) (15) (F) (i) or a nonacademic institution approved under INA 101(a) (15) (M) (i), as evidenced by submission of a Form I-20A-B, Certificate of Eligibility For Nonimmigrant (F-1) Student Status — For Academic and Language Students, or Form I-20M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students, properly completed and signed by the alien and a designated school official;

(ii) The alien possesses sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses;

(iii) The alien, unless coming to participate exclusively in an English language training program, has sufficient knowledge of the English language to undertake the chosen course of study or training. If the alien's knowledge of English is inadequate, the consular officer may nevertheless find the alien so classifiable if the accepting institution offers English language training, and has accepted the alien expressly for a full course of study in a language with which the alien is familiar, or will enroll the alien in a

combination of courses and English instruction which will constitute a full course of study; and

(iv) The alien intends, and will be able, to depart upon termination of student status.

(2) An alien otherwise qualified for classification as a student, who intends to study the English language exclusively, may be classified as a student under INA 101(a) (15) (F) (i) even though no credits are given by the accepting institution for such study. The accepting institution, however, must offer a full course of study in the English language and must accept the alien expressly for such study.

(3) The alien spouse and minor children of an alien who has been or will be issued a visa under INA 101(a) (15) (F) (i) or 101(a) (15) (M) (i) may receive nonimmigrant visas under INA 101(a) (15) (F) (ii) or 101(a) (15) (M) (ii) if the consular officer is satisfied that they will be accompanying or following to join the principal alien; that sufficient funds are available to cover their expenses in the United States; and, that they intend to leave the United States upon the termination of the status of the principal alien.

(c) *Posting of bond.* In borderline cases involving an alien otherwise qualified for classification under INA 101(a) (15) (F), the consular officer is authorized to require the posting of a bond with the Attorney General in a sum sufficient to ensure that the alien will depart upon the conclusion of studies or in the event of failure to maintain student status.

§ 41.62 Exchange visitors.

(a) *J-1 classification.* An alien is classifiable as an exchange visitor if qualified under the provisions of INA 101(a) (15) (J) and the consular officer is satisfied that the alien:

(1) Has been accepted to participate, and intends to participate, in an exchange visitor program designed by the United States Information Agency as evidenced by the presentation of a properly executed Form IAP-66, Certificate of Eligibility for Exchange Visitor (J-1) Status;

(2) Has sufficient funds to cover expenses or has made other arrangements to provide for expenses;

(3) Has sufficient knowledge of the English language to undertake the program for which selected, or, except for an alien coming to participate in a graduate medical education or training program, the sponsoring organization is aware of the language deficiency and has nevertheless indicated willingness to accept the alien; and

(4) Meets the requirements of INA 212(j) if coming to participate in a graduate medical education or training program.

(b) *J-2 Classification.* The spouse or minor child of an alien classified J-1 is classifiable J-2.

(c) *Applicability of INA 212(e).* (1) An alien is subject to the 2-year foreign residence requirement of INA 212(e) if:

(i) The alien's participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the U.S. Government or by the government of the alien's country of nationality or last residence; or

(ii) At the time of the issuance of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of admission as an exchange visitor, or at the time of acquisition of such status after admission, the alien is a national and resident or, if not a national, a lawful permanent resident (or has status equivalent thereto) of a country which the Director of the United States Information Agency has designated, through publication by public notice in the **Federal Register**, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage during the exchange visitor program; or

(iii) The alien acquires exchange visitor status in order to receive graduate medical education or training in the United States.

(2) For the purposes of this paragraph the terms "financed directly" and "financed indirectly" are defined as set forth in section § 514.1 of Chapter V.

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of INA 212(e) in the case of an alien determined to be subject to such requirements is the country of which the alien is a national and resident, or, if not a national, a lawful permanent resident (or has status equivalent thereto).

(4) If an alien is subject to the 2-year foreign residence requirement of INA 212(e), the spouse or child of that alien, accompanying or following to join the alien, is also subject to that requirement if admitted to the United States pursuant to INA 101(a) (15) (J) or if status is acquired pursuant to that section after admission.

(d) *Notification to alien concerning 2-year foreign residence requirement.* Before the consular officer issues an exchange visitor visa, the consular officer must inform the alien whether the alien will be subject to the 2-year residence and physical presence requirement of INA 212(e) if admitted to the United States under INA 101(a) (15) (J) and, if so, the country in which 2 years' residence and physical presence will satisfy the requirement.

Subpart H—Transit Aliens

§ 41.71 Transit aliens.

(a) *Transit aliens—general.* An alien is classifiable as a nonimmigrant transit alien under INA 101(a) (15) (C) if the consular officer is satisfied that the alien:

(1) Intends to pass in immediate and continuous transit through the United States;

(2) Is in possession of a common carrier ticket or other evidence of transportation arrangements to the alien's destination;

(3) Is in possession of sufficient funds to carry out the purpose of the transit journey, or has sufficient funds otherwise available for that purpose; and

(4) Has permission to enter some country other than the United States following the transit through the United States, unless the alien submits satisfactory evidence that such advance permission is not required.

(b) *Certain aliens in transit to United Nations.* An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may upon request or at the direction of the Secretary of State be issued a nonimmigrant visa bearing the symbol C-2. If such a visa is issued, the recipient shall be subject to such restrictions on travel within the United States as may be provided in regulations prescribed by the Attorney General.

Subpart I—Fiance(e) of a U.S. Citizen

§ 41.81 Fiance(e) of a U.S. Citizen.

(a) *Petition requirement.* An alien is classifiable as a nonimmigrant fiance(e) under INA 101(a)(15)(K) if the consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by the U.S. citizen to confer nonimmigrant status as a fiance(e) on the alien, which has been approved by the INS under INA 214(d), or a notification of such approval from that Service.

(b) *Certification of legal capacity and intent to marry.* Upon receipt of a petition approved by INS and the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States, the consular officer

shall grant the alien the nonimmigrant status accorded in the petition and shall determine the eligibility of the alien to receive a K-1 visa.

(c) *Eligibility as immigrant required.* The consular officer, insofar as practicable, shall determine the eligibility of an alien to receive a nonimmigrant visa under INA 101(a)(15)(K) as if the alien were an applicant for an immigrant visa. If the consular officer determines that the alien would be eligible, under INA 212 (a) and (e) and in all other respects to receive an immigrant visa, except the alien shall be exempt from the labor certification requirement of INA 212(a)(14), the officer may issue a nonimmigrant visa under this section.

Subpart J—Application for Nonimmigrant Visa

§ 41.101 Place of application.

(a) *Application for regular visa made in consular district of alien's residence or alien's presence.* Unless a consular officer, at the direction of the Department or as a matter of discretion, will accept a visa application from an alien who is not a resident of the consular district but is physically present therein, or the alien is in the United States and entitled to apply for issuance or reissuance of a visa under the provisions of § 41.111(b), an alien seeking a nonimmigrant visa shall apply to a consular in the consular district in which the applicant resides or, if the applicant is a resident of Taiwan, to an officer of the American Institute in Taiwan.

(b) *Regular visa defined.* "Regular visa" means a nonimmigrant visa of any classification which does not bear the title "Diplomatic" or "Official." A nonimmigrant visa is issued as a regular visa unless the alien falls within one of the classes entitled to a diplomatic or an official visa as described in § 41.26(c) or § 41.27(c).

§ 41.102 Personal appearance of applicant.

(a) *Personal appearance required or waived.* Except as otherwise provided in this section, every alien seeking a nonimmigrant visa is required to apply in person before a consular officer. The requirement of personal appearance may be waived by the consular officer in the case of any alien who is:

(1) A child under 14 years of age;

(2) Within a class of nonimmigrants classifiable under the visa symbols A, C-2, C-3, G, or NATO;

(3) An applicant for a diplomatic or official visa;

(4) Within a class of nonimmigrants classifiable under the visa symbols B, C-1, H-1, or I;

(5) Within a class of nonimmigrants classifiable under the visa symbol J-1 who qualifies as a leader in a field of specialized knowledge or skill and also is the recipient of a U.S. Government grant, and such an alien's spouse and children qualifying for J-2 classification;

(6) An aircraft crewman, applying for a nonimmigrant officer visa under the provisions of INA 101(a)(15)(D), if the application is supported by a letter from the employing carrier certifying that the applicant is employed as an aircraft crewman, and the consular officer is satisfied that the personal appearance of the alien is not necessary to determine visa eligibility; or

(7) A nonimmigrant in any category, provided the consular officer determines that a waiver of personal appearance in the individual case is warranted in the national interest or because of unusual circumstances, including hardship to the visa applicant.

(b) *Interview by consular officer.* Except when the requirement of personal appearance has been waived by the consular officer pursuant to paragraph (a) of this section, each applicant for a nonimmigrant visa must be interviewed by a consular officer, who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation (1) the proper nonimmigrant classification, if any, of the alien and (2) the alien's eligibility to receive a visa.

§ 41.103 Filing an application and form OF-156.

(a) *Filing an application*—(1) *Filing of application on form OF-156 required unless waived.* The consular officer may waive submission of an application, under paragraph (a)(3) of this section, for certain aliens for whom personal appearance has been waived under § 41.102. Except for persons for whom such waivers have been granted, every alien seeking a nonimmigrant visa must make application therefor on Form OF-156, Nonimmigrant Visa Application, unless a prior Form OF-156 is readily available at the consular office which can be appropriately amended to bring the application up to date.

(2) *Filing of form OF-156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(3) *Waiver of filing of application.* (i) When personal appearance is waived under § 41.102(a)(2) or (3) the consular officer may also waive the filing of a visa application.

(ii) When personal appearance is waived under § 41.102(a)(7), the consular officer may also waive the filing of a visa application in cases of hardship, emergency, or national interest.

(iii) Even if personal appearance is waived pursuant to any other subparagraph of § 41.102(a), the requirement for filing an application may not be waived.

(b) *Application form*—(1) *Preparation of form OF-156, Nonimmigrant Visa Application.*

(i) The consular officer shall ensure that Form OF-156 is fully and properly completed in accordance with the applicable regulations and instructions.

(ii) If the filing of a visa application is waived by the consular officer, the officer shall prepare a Form OF-156 on behalf of the applicant, using the data available in the passport or other documents which have been submitted.

(2) *Additional information as part of application.* The consular officer may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided in Form OF-156 is inadequate to permit a determination of the alien's eligibility to receive a nonimmigrant visa. Additional statements made by the alien become a part of the visa application. All documents required by the consular officer under the authority of § 41.105(a) are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

(3) *Signature.* When personal appearance is required, Form OF-156 shall be signed and verified by, or on behalf of, the applicant in the presence of the consular officer. If personal appearance is waived, but the submission of an application form by the alien is not waived, the form shall be signed by the applicant. If the filing of an application form is also waived, the consular officer shall indicate that the application has been waived on the Form OF-156 prepared on behalf of the applicant, as provided in paragraph (b)(1)(ii) of this section. The consular officer, in every instance, shall initial the Form OF-156 over or adjacent to the officer's name and title stamp.

(4) *Registration.* Form OF-156, when duly executed, constitutes the alien's

registration record for the purposes of INA 221(b).

§ 41.104 Passport requirements.

(a) *Passports defined.* "Passport" as defined in INA 101(a)(30) is not limited to a national passport or to a single document. A passport may consist of two or more documents which, when considered together, fulfill the requirements of a passport, provided that the documentary evidence of permission to enter a foreign country has been issued by a competent authority and clearly meets the requirements of INA 101(a)(30).

(b) *Passport requirement.* Except for certain persons in the A, C-3, G, and NATO classifications and persons for whom the passport requirement has been waived pursuant to the provisions of INA 212(d)(4), every applicant for a nonimmigrant visa is required to present a passport, as defined above and in INA 101(a)(30), which is valid for the period required by INA 212(a)(26).

(c) *A single passport including more than one person.* The passport requirement for a nonimmigrant visa may be met by the presentation of a passport including more than one person, if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each visa applicant 16 years of age or over has been attached to the passport by the issuing authority.

(d) *Applicants for diplomatic visas.* Every applicant for a diplomatic visa must present a diplomatic passport, or the equivalent thereof, having the period of validity required by INA 212(a)(26), unless such requirement has been waived pursuant to the authority contained in INA 212(d)(4) or unless the case falls within the provisions of § 41.21(b).

§ 41.105 Supporting documents and fingerprinting.

(a) *Supporting documents*— (1) *Authority to require documents.* The consular officer is authorized to require documents considered necessary to establish the alien's eligibility to receive a nonimmigrant visa. All documents and other evidence presented by the alien, including briefs submitted by attorneys or other representatives, shall be considered by the consular officer.

(2) *Unobtainable documents.* If the consular officer is satisfied that a document or record required under the authority of this section is unobtainable, the consular officer may accept satisfactory alternative pertinent evidence. A document or other record shall be considered unobtainable if it cannot be procured without causing the applicant or a member of the applicant's family actual hardship as distinct from normal delay and inconvenience.

(3) *Photographs required or waived.* Except as otherwise provided in this paragraph, every applicant for a nonimmigrant visa must furnish photographs in such numbers as the consular officer may require. The photographs must be a reasonable recent likeness, 1½ by 11/2 inches in size, unmounted, with no head covering, and showing a full, front-face view of the alien against a light background. The alien must sign (full name) the reverse side of the photographs. The photograph requirement may be waived by the consular officer for any alien who is:

(i) Within a class of nonimmigrants classifiable under the visa symbol A, C-3, G, or NATO; or

(ii) An applicant for a diplomatic or official visa; or

(iii) Under 16 years of age. A notation of any such waiver shall be made on the application in the space provided for the photograph. A new photograph need not be required by the consular officer, if there is readily available at post a photograph submitted with a prior application which reflects a reasonable current likeness of the applicant.

(4) *Police certificates.* A police certificate is a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alien. An applicant for a nonimmigrant visa is required to present a police certificate if the consular officer has reason to believe that a police or criminal record exists, except that no police certificate is required in the case of an alien who is within a class of nonimmigrants classifiable under visa symbols A-1, A-2, C-3, G-1 through G-4, NATO-1 through NATO-4 or NATO-6.

(b) *Fingerprinting.* The consular officer may require an alien making a preliminary or informal application for a visa to have a set of fingerprints taken on Form AR-4, Alien Registration Fingerprint Chart, if the officer considers this necessary for the purposes of identification and investigation. Consular officers may use the fingerprint card in order to ascertain from the appropriate authorities whether they have information pertinent to the applicant's eligibilty to receive a visa.

§ 41.106 Processing.

Consular officers must ensure that Form OF-156, Nonimmigrant Visa Application, is properly and promptly processed in accordance with the applicable regulations and instructions.

§ 41.107 Visa fees.

(a) *Fees based on reciprocity.* The fees for the issuance of visas, including official visas, to nonimmigrant nationals or stateless residents of each foreign country shall be collected in the amounts prescribed by the Secretary of State unless, on the basis of reciprocity, no fee is chargeable. If practicable, fees will correspond to the total amount of all visa, entry, residence, or other similar fees, taxes or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents.

(b) *Fees when more than one alien included in visa.* A single nonimmigrant visa may be issued to include all eligible family members if the spouse and unmarried minor children of a principal alien are included in one passport. Each alien must execute a separate application. The name of each family member shall be inserted in the space provided in the visa stamp. The visa fee to be collected shall equal the total of the fees prescribed by the Secretary of State for each alien included in the visa, unless upon a basis of reciprocity a lesser fee is chargeable.

(c) *Certain aliens exempted from fees.* Upon a basis of reciprocity, or as provided in section 13(a) of the Headquarters Agreement with the United Nations (61 Stat. 716; 22 U.S.C. 287, Note), no fee shall be collected for the issuance of a nonimmigrant visa to an alien who is within a class of nonimmigrants classifiable under the visa symbols A, G, C-2, C-3, or NATO, or who is issued a diplomatic visa.

(d) *Refund of fees.* A fee collected for the issuance of a nonimmigrant visa is refundable only if the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action taken by the U.S. Government for which the alien was not responsible and over which the alien had no control.

§ 41.108 Medical examination.

(a) *Requirements for medical examination.* An applicant for a nonimmigrant visa shall be required to take a medical examination if:

(1) The alien is an applicant for a K nonimmigrant visa as a fiance(e) of a U.S. citizen or as the child of such an applicant; or,

(2) The alien is seeking admission for medical treatment and the consular officer considers a medical examination advisable; or,

(3) The consular officer has reason to believe that a medical examination

might disclose that the alien is medically ineligible to receive a visa.

(b) *Examination by panel physician.* The required examination, which must be carried out in accordance with United States Public Health Service regulations, shall be conducted by a physician selected by the alien from a panel of physicians approved by the consular officer or, if the alien is in the United States, by a medical officer of the United States Public Health Service or by a contract physician from a list of physicians approved by the INS for the examination of INA 245 adjustment of status applicants.

(c) *Panel physician facility requirements.* A consular officer may not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless the physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

Subpart K—Issuance of Nonimmigrant Visa

§ 41.111 Authority to issue visa.

(a) *Issuance outside the United States.* Any consular officer is authorized to issue regular and official visas. Diplomatic visas may be issued only by:

(1) A consular officer attached to a U.S. diplomatic mission, if authorized to do so by the Chief of Mission; or

(2) A consular officer assigned to a consular office under the jurisdiction of a diplomatic mission, if so authorized by the Department or the Chief, Deputy Chief, or Counselor for Consular Affairs of that mission, or, if assigned to a consular post not under the jurisdiction of a diplomatic mission, by the principal officer of that post.

(b) *Issuance in the United States in certain cases.* The Director of the Visa Office of the Department and such other officers of the Department as the former may designate are authorized, in their discretion, to issue nonimmigrant visas, including diplomatic visas, to:

(1) Qualified aliens who are currently maintaining status and are properly classifiable in the A, C-2, C-3, G or NATO category and intend to reenter the United States in that status after a temporary absence abroad and who also present evidence that:

(i) They have been lawfully admitted in that status or have, after admission, had their classification changed to that status; and

(ii) Their period of authorized stay in the United States in that status has not expired; and

(2) Other qualified aliens who are currently maintaining satus in an E, H, I, or L nonimmigrant category and intend to reenter the United States in that status after a temporary absence abroad and who also present evidence that:

(i) They were previously issued visas at a consular office abroad and admitted to the United States in the status which they are currently maintaining; and

(ii) Their period of authorized admission in that status has not expired.

§ 41.112 Validity of visa.

(a) *Significance of period of validity of visa.* The period of validity of a nonimmigrant visa is the period during which the alien may use it in making application for admission. The period of visa validity has no relation to the period of time the immigration authorities at a port of entry may authorize the alien to stay in the United States.

(b) *Validity of visa and number of applications for admission.* (1) Except as provided in paragraph (c) of this section, a nonimmigrant visa shall have the validity prescribed in schedules provided to consular officers by the Department, reflecting insofar as practicable the reciprocal treatment accorded U.S. nationals by the government of the country of which the alien is a national or stateless resident.

(2) Nonimmigrant visas issued pursuant to INA 101(a)(15)(B) may be made valid indefinitely and for unlimited applications for admission for aliens who:

(i) Are nationals of countries that offer reciprocal treatment to U.S. citizens, as determined by the Department;

(ii) Are in possession of a valid passport; and

(iii) Are bona fide visitors and will continue to seek to enter the United States only for such purpose for an indefinite period of time, in the judgment of the consular officer.

(3) An indefinite validity visa is valid for application for admission even if the passport in which the visa is stamped has expired, provided the alien is also in possession of a valid passport issued by the authorities of the country of which the alien is a national.

(c) *Limitation on validity.* If warranted in an individual case, a consular officer may issue a nonimmigrant visa for:

(1) A period of validity that is less than that prescribed on a basis of reciprocity,

(2) A number of applications for admission within the period of the validity of the visa that is less than that prescribed on a bais of reciprocity,

(3) Application for admission at a specified port or at specified ports of entry, or

(4) Use on and after a given date subsequent to the date of issuance.

(d) *Automatic extension of validity at ports of entry.* (1) Provided that the requirements set out in paragraph (d)(2) of this section are fully met, the following provisions apply to nonimmigrant aliens seeking readmission at ports of entry:

(i) The validity of an expired nonimmigrant visa issued under INA 101(a)(15) may be considered to be automatically extended to the date of application for readmission, and

(ii) In cases where the original nonimmigrant classification of an alien has been changed by INS to another nonimmigrant classification, the validity of an expired or unexpired nonimmigrant visa may be considered to be automatically extended to the date of application for readmission, and the visa may be converted as necessary to that changed classification.

(2) The provisions in paragraph (1) of this section are applicable only in the case of a nonimmigrant alien who:

(i) Is in possession of a Form I-94, Arrival-Departure Record, endorsed by INS to show an unexpired period of initial admission or extension of stay, or, in the case of a qualified F or J student or exchange visitor or the accompanying spouse or child of such an alien, is in possession of a current Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, or Form IAP-66, Certificate of Eligibility for Exchange Visitor Status, issued by the school the student has been authorized to attend by INS, or by the sponsor of the exchange program in which the alien has been authorized to participate by INS, and endorsed by the issuing school official or program sponsor to indicate the period of initial admission or extension of stay authorized by INS;

(ii) Is applying for readmission after an absence not exceeding 30 days solely in contiguous territory, or, in the case of a student or exchange visitor or accompanying spouse or child meeting the stipulations of paragraph (a) of this section, after an absence not exceeding 30 days in contiguous territory or adjacent islands other than Cuba;

(iii) Has maintained and intends to resume nonimmigrant status;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport; and

(vi) Does not require authorization for admission under INA 212(d)(3).

§ 41.113 Procedures in issuing visas.

(a) *Visa evidenced by stamp placed in the passport.* Except as provided in paragraph (b) of this section, a nonimmigrant visa shall be evidenced by a stamp placed in the alien's passport. The appropriate symbol as prescribed in § 41.12, showing the classification of the alien shall be entered in the visa.

(b) *Cases in which visa not placed in passport.* In the following cases the visa shall be placed on the prescribed Form OF-232, Form for Nonimmigrant Visa Stamp, to which a photograph of the alien shall be attached under seal. In issuing such a visa, a notation shall be made on the Form OF-232 on which the visa is placed specifying the pertinent subparagraph of this paragraph under which the action is taken.

(1) The alien's passport was issued by a government with which the United States does not have formal diplomatic relations, unless the Department has specifically authorized the placing of the visa in such passport;

(2) The alien's passport does not provide sufficient space for the visa stamp;

(3) The passport requirement has been waived; or

(4) In other cases as authorized by the Department.

(c) *Indefinite validity visa.* In no instance may a visa issued pursuant to INA 101(a)(15)(B) and having indefinite validity as provided in § 41.112(b) be placed in any document other than a valid passport.

(d) *Visa stamp.* (1) The nonimmigrant visa shall be in the format designated by the Department and contain the following data:

(i) The number of the visa;

(ii) The location of the issuing office;

(iii) The classification of the visa;

(iv) The date of issuance;

(v) The expiration date or, if an indefinite validity visa is issued on the baisis of reciprocity, the word "indefinitely";

(vi) The number of applications for admission for which it is valid or the word "multiple";

(vii) The name(s) of the person(s) to whom issued, unless the word "Bearer(s)" is used as authorized by paragraph (e)(1) of this section; and

(viii) The signature or facsimile signature of the issuing officer.

(2) The format of a diplomatic visa is the same as a regular nonimmigrant visa, except that it bears the title "DIPLOMATIC".

(3) The format of an official visa is the same as a regular nonimmigrant visa, except that it bears the title "OFFICIAL".

(e) *Insertion of name; petition and derivative status notation.* (1) Except as otherwise provided in this paragraph, the name(s) of the alien(s) to whom a nonimmigrant visa is issued shall be shown on the visa just after the word "to." In visas issued in passports (or in other travel documents meeting the requirements of INA 101(a)(30)) which have been approved by the Department for this purpose, consular officers may insert the word "Bearer(s)" in lieu of the name of the alien and in lieu of the names of accompanying family members who are included in the alien's passport. The procedure for a "Bearer(s)" insert may not be applied in the case of aliens who are the beneficiaries of waivers granted under INA 212(d)(3) or in the issuance of a visa on Form OF-232.

(2) If the visa is being issued upon the basis of a petition approved by the Attorney General, the number of the petition, if any, the period for which the alien's admission has been authorized, and the name of the petitioner shall be noted immediately below the visa.

(3) In the case of an alien who derives status from a principal alien, the name and position of the principal alien shall be written below the lower margin of the visa.

(f) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "multiple" shall be appropriately placed in the visa. Otherwise the number of permitted applications for admission shall be shown in word form. The date of issuance and the date of expiration of the visa shall be shown at the appropriate places in the visa by day, month and year in that order. The standard three letter abbreviation for the month shall be used in all cases. If a visitor visa is to be made valid for an indefinite period, the word "indefinitely" shall be inserted in the space provided for the expiration date of the visa.

(g) *Restriction to specified port of entry.* If a nonimmigrant visa is valid for admission only at one or more specified ports of entry, the names of those ports shall be entered immediately below the expiration date of the visa, preceded by the word "at."

(h) *Signature.* The signature or facsimile signature of the consular officer issuing the visa shall appear in the visa.

(i) *Delivery of visa and disposition of form OF-156.* In issuing a nonimmigrant visa, the consular officer shall deliver the visaed passport, or the prescribed Form OF-232 which bears the visa, to the alien or, if personal appearance has been waived, to the authorized representative. The executed Form OF-156, Nonimmigrant Visa Application, and any additional evidence furnished by the alien in accordance with § 41.103(b) shall be retained in the consular files.

(j) *Disposition of supporting documents.* Original supporting documents furnished by the alien shall be returned for presentation, if necessary, to immigration authorities at the port of entry and a notation to that effect shall be made on the Form OF-156. Duplicate copies may be retained in the consular files.

(k) *Olympic Games, Pan American Games or other regional games.* Notwithstanding the provisions of paragraph (d) of this section, in the case of an alien who:

(1) Is a participant in the Summer or Winter Olympic Games, the Pan American Games or other regional games under the auspices of the International Olympic Committee, held in the United States; and

(2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for re-entry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of section 101(a)(3) and 212(a)(26) of the Immigration and Nationality Act, a stamp consisting of:

(i) The imprint of the issuing post's rubber stamp seal; and

(ii) The signature of a consular officer affixed on the identity card shall constitute a multiple entry B-1/B-2 visa valid for the duration of the card, or, in the case of a representative of foreign press, radio, film or other foreign information media, a multiple entry I visa valid for the duration of the card.

§ 41.114 Transfer of visas.

(a) *Conditions for transfer.* Upon the request of the bearer a valid nonimmigrant visa shall be transferred from one travel document to a different travel document which is valid for the required period if the bearer is found eligible to receive such a visa, except in a case in which the travel document containing the original visa has been lost or stolen. A visa may be transferred only if the new passport indicates that the alien's nationality is the same as when the visa was issued.

(b) *Procedure for transfer.* Application for the transfer of a

nonimmigrant visa from one passport to another shall be made on an appropriate form. The consular officer may waive the personal appearance of the alien. The issuance of a transferred visa shall be evidenced by placing the visa stamp with all of the original data in the alien's passport. The validity of the transferred visa shall be the same as that of the original visa. The transferred visa shall be valid for the number of applications for admission remaining as of the date of the transfer. The word "TRANSFERRED" shall be inserted on the upper margin of the visa stamp.

(c) *Cancellation of visa in old passport.* Unless the passport in which the original visa was issued has been surrendered to the issuing authority, the original visa shall be canceled at the time of its transfer to the new travel document, except, when a visa is transferred for only some of several persons included in the original visa, that visa is not to be canceled but the names of the persons whose visas are transferred are to be stricken from the original visa.

(d) *Fee for transfer.* No fee shall be charged for the transfer of a valid nonimmigrant visa.

Subpart L—Refusals and Revocations

§ 41.121 Refusal of individual visas.

(a) *Grounds for refusal.* Nonimmigrant visa refusals must be based on legal grounds, that is, one or more provisions of INA 212(a) or (e), INA 214(b), or INA 221(g). Certain classes of nonimmigrant aliens are exempted from specific provisions of INA 212(a) under INA 102, INA 212(d)(1), INA 212(d)(2) and, upon a basis of reciprocity, under INA 212(d)(8). When a visa application has been properly completed and executed in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa.

(b) *Refusal procedure.* If a consular officer knows or has reason to believe that an alien is ineligible to receive a visa on grounds of ineligibility which cannot be overcome by the presentation of additional evidence, the officer shall refuse the visa and, if practicable, shall require a nonimmigrant visa application to be executed before the refusal is recorded. In the case of a visa refusal the consular officer shall inform the applicant of the provision of law or regulations upon which the refusal is based. If the alien fails to execute a visa application after being informed by the consular officer of a ground of ineligibility to receive a nonimmigrant visa, the visa shall be considered refused. The officer shall then insert the pertinent data on the visa application, noting the reasons for the refusal, and the application form shall be filed in the consular office. Upon refusing a nonimmigrant visa, the consular officer shall retain the original or a copy of each document upon which the refusal was based as well as each document indicating a possible ground of ineligibility and may return all other supporting documents supplied by the applicant.

(c) *Review of refusal at consular office.* If the ground(s) of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the ground(s) of ineligibility may be overcome by the presentation of additional evidence, and the applicant has indicated the intention to submit such evidence, a review of the refusal may be deferred for not more than 120 days. If the principal consular officer or alternate does not concur in the refusal, that officer shall either

(1) Refer the case to the Department for an advisory opinion, or

(2) Assume responsibility for the case by reversing the refusal.

(d) *Review of refusal by Department.* The Department may request a consular officer in a specific case or in specified classes of cases to submit a report if a visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, shall be binding upon consular officers.

§ 41.122 Revocation of visas.

(a) *Grounds for revocation by consular officers.* A consular officer is authorized to revoke a nonimmigrant visa issued to an alien if:

(1) The officer finds that the alien was not, or has ceased to be, entitled to the nonimmigrant classification under INA 101(a)(15) specified in the visa or that the alien was at the time the visa was issued, or has since become, ineligible under INA 212(a) to receive a visa;

(2) The visa has been physically removed from the passport in which it was issued prior to the alien's embarkation upon a continuous voyage to the United States; or

(3) For any of the reasons specified in paragraph (h) of this section if the visa has not been revoked by an immigration officer as authorized in that paragraph.

(b) *Notice of proposed revocation.* When consideration is being given to the revocation of a nonimmigrant visa under paragraph (a)(1) or (2) of this section, the consular officer considering that action shall, if practicable, notify the alien to whom the visa was issued of intention to revoke the visa. The alien shall also be given an opportunity to show why the visa should not be revoked and requested to present the travel document in which the visa was originally issued.

(c) *Procedure for physically cancelling visas.* A nonimmigrant visa which is revoked shall be canceled by writing or stamping the word "REVOKED" plainly across the face of the visa. The cancellation shall be dated and signed by the officer taking the action. The failure of the alien to present the visa for cancellation does not affect the validity of action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation shall be given to the master, aircraft captain, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been physically canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* When a visa is revoked under paragraph (a)(1) or (2) of this section, the consular officer shall promptly submit notice of the revocation, including a full report on the facts in the case, to the Department for transmission to INS. A report is not required if the visa is physically canceled prior to the alien's departure for the United States except in cases involving A, G, C-2, C-3, NATO, diplomatic or official visas.

(f) *Record of action.* Upon revocation of a nonimmigrant visa under paragraph (a)(1) or (2) of this section, the consular officer shall complete for the post files a Certificate of Revocation by Consular Officer which includes a statement of the reasons for the revocation. If the revocation is effected at other than the issuing office, a copy of the Certificate of Revocation shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular office shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation be reconsidered. If the officer finds that the evidence is sufficient to

overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefor shall be placed in the consular files and appropriate notification shall be made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of § 41.107(d) providing for the refund of fees when a visa has not been used as a result of action by the U.S. Government, a fee shall not be charged in connection with a reinstated visa.

(h) *Revocation of visa by immigration officer.* An immigration officer is authorized to revoke a valid visa by physically canceling it in accordance with the procedure prescribed in paragraph (c) of this section if:

(1) The alien obtains an immigrant visa or an adjustment of status to that of permanent resident;

(2) The alien is ordered excluded from the United States pursuant to INA 235(c) or 236;

(3) The alien is notified pursuant to INA 235(b) by an immigration officer at a port of entry that the alien appears to be inadmissible to the United States and the alien requests and is granted permission to withdraw the application for admission;

(4) A final order of deportation or a final order granting voluntary departure with an alternate order of deportation is entered against the alien pursuant to INS regulations;

(5) The alien has been permitted by INS to depart voluntarily from the United States pursuant to INS regulations;

(6) A waiver of ineligibility pursuant to INA 212(d)(3)(A) on the basis of which the visa was issued to the alien is revoked by INS;

(7) The visa is presented in connection with an application for admission to the United States by a person other than the alien to whom it was issued; or

(8) The visa has been physically removed from the passport in which it was issued.

3. Part 42 is revised to read as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Subpart A—Visa and Passport Not Required for Certain Immigrants

Sec.
42.1 Aliens not required to obtain immigrant visas.
42.2 Aliens not required to present passports.

Subpart B—Classification and Foreign State Chargeability

42.11 Classification symbols.
42.12 Rules of chargeability.

Subpart C—Immigrants not Subject to the Numerical Limitations of INA 201

42.21 Immediate relatives.
42.22 Returning resident aliens.
42.23 Certain former U.S. citizens.
42.24 Ministers of religion.
42.25 Certain U.S. Government employees.
42.26 Panama Canal employees.
42.27 Spouse and children of certain foreign medical graduates.

Subpart D—Immigrants Subject to Numerical Limitation

42.31 Relative preference immigrants.
42.32 [Reserved]
42.33 Third preference immigrants.
42.34 Sixth preference immigrants.
42.35 Nonpreference immigrants.
42.36 Administering labor certification provisions of INA 212(a)(14).

Subpart E—Petitions

42.41 Effect of approved petition.
42.42 Petition for immediate relative or preference status.
42.43 Suspension or termination of action in petition cases.

Subpart F—Numerical Controls and Priority Dates

42.51 Department control of numerical limitations.
42.52 Post records of visa applications.
42.53 Priority date of individual applicants.
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Subpart G—Application for Immigrant Visas

42.61 Place of application.
42.62 Personal appearance and interview of applicant.
42.63 Application forms and other documentation.
42.64 Passport requirements.
42.65 Supporting documents.
42.66 Medical examination.
42.67 Execution of application, registration, and fingerprinting.
42.68 Informal evaluation of family members if principal applicant precedes them.

Subpart H—Issuance of Immigrant Visas

42.71 Authority to issue visas; visa fees.
42.72 Validity of visas.
42.73 Procedure in issuing visas.
42.74 Issuance of new or replacement visas.

Subpart I—Refusal, Revocation, and Termination of Registration

42.81 Procedure in refusing individual visas.
42.82 Revocation of visas.
42.83 Termination of registration.

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), Pub. L. 95–105, 91 Stat. 847.

Subpart A—Visa and Passport Not Required for Certain Immigrants

§ 42.1 Aliens not required to obtain immigrant visas.

An immigrant within any of the following categories is not required to obtain an immigrant visa:

(a) *Aliens lawfully admitted for permanent residence.* An alien who has previously been lawfully admitted for permanent residence and who is not required under the regulations of INS to present a valid immigrant visa upon returning to the United States.

(b) *Alien members of U.S. Armed Forces.* An alien member of the U.S. Armed Forces bearing military identification, who has previously been lawfully admitted for permanent residence and is coming to the United States under official orders or permit of those Armed Forces.

(c) *Aliens entering from Guam, Puerto Rico, or the Virgin Islands.* An alien who has previously been lawfully admitted for permanent residence who seeks to enter the continental United States or any other place under the jurisdiction of the United States directly from Guam, Puerto Rico, or the Virgin Islands of the United States.

(d) *Child born after issuance of visa to accompanying parent.* An alien child born after the issuance of an immigrant visa to an accompanying parent, who will arrive in the United States with the parent, and apply for admission during the period of validity of the visa issued to the parent.

(e) *Child born of a national or lawful permanent resident mother during her temporary visit abroad.* An alien child born during the temporary visit abroad of a mother who is a national or lawful permanent resident of the United States if applying for admission within 2 years of birth and accompanied by either parent applying and eligible for readmission as a permanent resident upon that parent's first return to the United States after the child's birth.

(f) *American Indians born in Canada.* An American Indian born in Canada and having at least 50 per centum of blood of the American Indian race.

§ 42.2 Aliens not required to present passports.

An immigrant within any of the following categories is not required to present a passport in applying for an immigrant visa:

(a) *Certain relatives of U.S. citizens.* An alien who is the spouse, unmarried son or daughter, or parent, of a U.S. citizen, unless the alien is applying for a visa in the country of which the

applicant is a national and the possession of a passport is required for departure.

(b) *Returning aliens previously lawfully admitted for permanent residence.* An alien previously lawfully admitted for permanent residence who is returning from a temporary visit abroad, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(c) *Certain relatives of aliens lawfully admitted for permanent residence.* An alien who is the spouse, unmarried son or daughter, or parent of an alien lawfully admitted for permanent residence, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(d) *Aliens qualified to receive third preference visas.* An alien who is eligible to receive a third preference visa, and accompanying spouse and child, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(e) *Stateless persons.* An alien who is a stateless person, and accompanying spouse and unmarried son or daughter.

(f) *Nationals of Communist-controlled countries.* An alien who is a national of a Communist-controlled country and who is unable to obtain a passport from the government of that country, and accompanying spouse and unmarried son or daughter.

(g) *Alien members of U.S. Armed Forces.* An alien who is a member of the U.S. Armed Forces.

(h) *Beneficiaries of individual waivers.* (1) An alien who would be within one of the categories described in paragraphs (a) through (d) of this section except that the alien is applying for a visa in a country of which the applicant is a national and possession of a passport is required for departure, in whose case the passport requirement has been waived by the Secretary of State, as evidence by a specific instruction from the Department.

(2) An alien unable to obtain a passport and not within any of the foregoing categories, in whose case the passport requirement imposed by § 42.64(b) or by INS regulations has been waived by the Attorney General and the Secretary of State as evidenced by a specific instruction from the Department.

Subpart B—Classification and Foreign State Chargeability

§ 42.11 Classification symbols.

A visa issued to an immigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien.

(a) *Special immigrants.* The following symbols shall be used in cases of aliens who are special immigrants:

Class	Section of law	Visa symbol
Returning resident	101(a)(27)(A)	SB-1
Person who lost U.S. citizenship by marriage	101(a)(27)(B) and 324(a).	SC-1
Person who lost U.S. citizenship by service in foreign armed forces	101(a)(27)(B) and 327.	SC-2
Minister of religion	101(a)(27)(C)	SD-1
Spouse of alien classified SD-1	101(a)(27)(C)	SD-2
Child of alien classified SD-1	101(a)(27)(C)	SD-3
Certain employees or former employees of U.S. Government abroad	101(a)(27)(D)	SE-1
Accompanying spouse of alien classified SE-1	101(a)(27)(D)	SE-2
Accompanying child of alien classified SE-1	101(a)(27)(D)	SE-3
Certain former employees of the Panama Canal	101(a)(27)(E)	SF-1
Company or Canal Zone Government		
Accompanying spouse or child of alien classified	101(a)(27)(E)	SF-2
Certain former employees of the U.S. Government in the Panama Canal Zone	101(a)(27)(F)	SG-1
Accompanying spouse or child of alien classified SG-1	101(a)(27)(F)	SG-2
Certain former employees of the Panama Canal Company or Canal Zone Government on April 1, 1979	101(a)(27)(G)	SH-1
Accompanying spouse or child of alien classified SH-1	101(a)(27)(G)	SH-2
Certain foreign medical graduates	101(a)(27)(H)	SJ-1
Accompanying spouse or children of alien classified SJ-1	101(a)(27)(H)	SJ-2
Retired officer or employee classified G-4 under section 101(a)(15)(G)(iv)	101(a)(27)(I)(iii); 100 Stat. 3434.	SK-I
Spouse of retired officer or employee classified SK-1	101(a)(27)(I)(iv); 100 Stat. 3434.	SK-2
Unmarried son or daughter of a present or former officer or employee classified G-4 under section 101(a)(15)(G)(iv)	101(a)(27)(I) 100 Stat. 3434.	SK-3
A spouse classified G-4 or N-9 who is the survivor of a deceased officer or employee classified G-4 under section 101(a)(15)(G)(iv)	101 (a)(27)(I)(ii); 100 Stat. 3434.	SK-4

(b) *Immediate relatives.* The following symbols shall be used in cases of aliens who qualify as immediate relatives:

Class	Section of law	Visa symbol
Spouse of U.S. citizen.	201(b)	IR-1
Spouse of U.S. citizen (conditional status).	201(b); 216(a), 100 Stat. 3537.	CR-1
Child of U.S. citizen.	201(b)	IR-2
Child of U.S. citizen (conditional status).	201(b); 216(a), 100 Stat. 3537.	CR-2
Child of U.S. citizen (conditional status).	201(b); 216(a),	CR-2
Orphan adopted abroad by U.S. citizen.	201(b)	IR-3
Orphan to be adopted by U.S. citizen.	201(b)	IR-4
Parent of U.S. citizen.	201(b)	IR-5

(c) *Numerically-restricted immigrants.* The following symbols shall be used in cases of immigrants who are subject to the numerical limitations specified in INA 201(a):

Class	Section of law	Visa symbol
First preference: Unmarried son or daughter of U.S. citizen.	203(a) (1)	P1-1
First preference: Child of alien classified P1-1.	203(a) (8)	P1-2
Second preference: Spouse of alien resident.	203(a) (2)	P2-1
Second preference: Spouse of alien resident (conditional status).	203(a) (2); 216(a), 100 Stat. 3537.	C2-1
Second preference: Unmarried son or daughter of alien resident.	203(a) (2)	P2-2
Second preference: Unmarried son or daughter of alien resident (conditional status).	203(a) (2); 216(a), 100 Stat. 3537.	C2-2
Second preference: Child of alien classified P2-1 or P2-2.	203(a) (8)	P2-3
Second preference: Child of alien classified C2-1 or C2-2 (conditional status).	203(a) (8); 216(a), 100 Stat. 3537.	C2-3
Third preference: Professional or highly skilled immigrant.	203(a) (3)	P3-1
Third preference: Spouse of alien classified P3-1.	203(a) (8)	P3-2
Third preference: Child of alien classified P3-1.	203(a) (8)	P3-3
Fourth preference: Married son or daughter of U.S. citizen.	203(a) (4)	P4-1
Fourth preference: Married son or daughter of U.S. citizen (conditional status).	203(a)(4); 216(a), 100 Stat. 3537.	C4-1
Fourth preference: Spouse of alien classified P4-1.	203(a) (8)	P4-2
Fourth preference: Child of alien classified P4-1.	203(a) (8)	P4-3
Fourth preference: Child of alien classified C4-1 (conditional status).	203(a) (8); 216(a).	C4-3
Fifth preference: Brother or sister of U.S. citizen twenty-one years of age or older.	203(a) (5)	P5-1
Fifth preference: Spouse of alien classified P5-1.	203(a) (8)	P5-2
Fifth preference: Child of alien classified P5-1.	203(a) (8)	P5-3
Sixth preference: Needed skilled or unskilled worker.	203(a) (6)	P6-1
Sixth preference: Spouse of alien classified P6-1.	203)a)(8)	P6-2
Sixth preference: Child of alien classified P6-1:	203(a) (8)	P6-3
Nonpreference immigrant.	203(a) (7)	NP-1

§ 42.12 Rules of chargeability.

(a) *Applicability.* An immigrant shall be charged to the numerical limitation for the foreign state or dependent area of birth, unless—(1) Classifiable as an immediate relative under INA 201(b), or (2) Classifiable as a special immigrant under INA 101(a)(27), or (3) The case falls within one of the exceptions to the general rule of chargeability provided by INA 202(b) and paragraphs (b) through (e) of this section to prevent the separation of families.

(b) *Exception for child.* If necessary to prevent the separation of a child from the alien parent or parents, an immigrant child, including a child born in a dependent area, may be charged to the same foreign state to which a parent is chargeable if the child is accompanying or following to join the parent, in accordance with INA 202(b)(1).

(c) *Exception for spouse.* If necessary to prevent the separation of husband and wife, an immigrant spouse,

including a spouse born in a dependent area, may be charged to a foreign state to which a spouse is chargeable if accompanying or following to join the spouse, in accordance with INA 202(b)(2).

(d) *Exception for alien born in the United States.* An immigrant who was born in the United States shall be charged to the foreign state of which the immigrant is a citizen or subject. If not a citizen or subject of any country, the alien shall be charged to the foreign state of last residence as determined by the consular officer, in accordance with INA 202(b)(3).

(e) *Exception for alien born in foreign state in which neither parent was born or had residence at time of alien's birth.* An alien who was born in a foreign state, as defined in § 40.1, in which neither parent was born, and in which neither parent had a residence at the time of the applicant's birth, may be charged to the foreign state of either parent as provided in INA 202(b)(4). The parents of such an alien are not considered as having acquired a residence within the meaning of INA 202(b)(4), if, at the time of the alien's birth within the foreign state, the parents were visiting temporarily or were stationed there in connection with the business or profession and under orders or instructions of an employer, principal, or superior authority foreign to such foreign state.

Subpart C—Immigrants not Subject to the Numerical Limitations of INA 201

§ 42.21 Immediate relatives.

An alien who is a spouse or child of a United States citizen, or a parent of a U.S. citizen at least 21 years of age, shall be classified as an immediate relative under INA 201(b) if the consular officer has received from INS an approved Petition to Classify Status of Alien Relative for Issuance of an Immigrant Visa, filed on the alien's behalf by the U.S. citizen and approved in accordance with INA 204 and the officer is satisfied that the alien has the relationship claimed in the petition. An immediate relative shall be documented as such unless the U.S. citizen refuses to file the required petition, or unless the immediate relative is also a special immigrant under INA 101(a)(27) not subject to any numerical limitation.

§ 42.22 Returning resident aliens.

(a) *Requirements for returning resident status.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(A) if the consular officer is satisfied from the evidence presented that:

(1) The alien has the status of an alien lawfully admitted for permanent residence at the time of departure from the United States;

(2) The alien departed from the United States with the intention of returning and has not abandoned this intention; and

(3) The alien is returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond the alien's control and for which the alien was not responsible.

(b) *Documentation needed.* Unless the consular officer has reason to question the legality of the alien's previous admission for permanent residence or the alien's eligibility to receive an immigrant visa, only those records and documents required under INA 222(b) which relate to the period of residence in the United States and the period of the temporary visit abroad shall be required. If any required record or document is unobtainable, the provisions of § 42.65(d) shall apply.

(c) *Relief provisions for certain returning resident aliens under INA 212(c).* The exercise by the Attorney General of discretionary authority under INA 212(c) to grant relief from certain grounds of ineligibility other than those described in INA 212(a)(26), (27), (28), and (29) to certain returning resident aliens shall remove the alien's ineligibility to receive a visa only under the provisions specified in the Attorney General's order.

(d) *Returning resident alien originally admitted under the Act of December 28, 1945.* An alien admitted into the United States under section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa after a temporary absence abroad solely because of a mental or physical defect or defects that existed at the time of the original admission.

§ 42.23 Certain former U.S. citizens.

(a) *Women expatriates.* An alien woman, regardless of marital status, shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that she was formerly a U.S citizen and that she meets the requirements of INA 324(a).

(b) *Military expatriates.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that the alien was formerly a U.S. citizen and that the alien lost citizenship under the circumstances set forth in INA 327.

§ 42.24 Ministers of religion.

(a) *Classification.* (1) An alien minister of religion shall be classifiable as a special immigrant under INA 101(a)(27)(C) if the consular officer concludes from the evidence presented that the alien qualifies under that section.

(2) The spouse or child of a minister of religion classifiable as a special immigrant under this section is also classifiable as a special immigrant under INA 101(a)(27)(C) if accompanying or following to join the principal alien.

(b) *"Minister" defined.* The term "minister," as used in INA 101(a)(27)(C), means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. The term does not include a lay preacher not authorized to perform such duties, and does not include a nun, lay brother, or cantor.

§ 42.25 Certain U.S. Government employees.

An alien is classifiable as a special immigrant under INA 101(a)(27)(D) if the consular officer is satisfied that the alien meets the requirements of that section. An alien may qualify on the basis of employment abroad with one or more agencies of the U.S. Government.

§ 42.26 Panama Canal employees.

An alien who is subject to the numerical limitations specified in section 3201(c) of the Panama Canal Act of 1979, Pub. L. 96–70, is classifiable as a special immigrant under INA 101(a)(27)(E), (F) or (G) if the consular officer is satisfied from the evidence presented that the alien qualifies under any of those three paragraphs and that the alien:

(a) Was an employee of the Panama Canal Company or Canal Zone Government on October 1, 1979, and a resident in the Canal Zone on April 1, 1979, and performed faithful service for at least 1 year; or

(b) Is a Panamanian national who was—(1) Honorably retired from U.S. Government employment in the Canal Zone before October, 1, 1979, following a total of 15 years or more of faithful service, or (2) Employed by the U.S. Government in the Canal Zone with a total of 15 years or more of faithful service on October 1, 1979, and is honorably retired from such service; or

(c) Was an employee of the Panama Canal Company or Canal Zone

Government on April 1, 1979, who has performed faithful service for 5 years or more and whose personal safety or the personal safety of whose spouse or children, as a direct result of the Panama Canal Treaty of 1977, is reasonably placed in danger because of the special nature of such employment; or

(d) Is the spouse or child of any alien the consular officer concludes is qualified as a special immigrant under this section and is accompanying the alien to the United States.

§ 42.27 Spouse and children of certain foreign medical graduates.

The accompanying spouse and children of a graduate of a foreign medical school, or of a person qualified to practice medicine in a foreign state, who has adjusted status as a special immigrant under the provisions of INA 101(a)(27)(H), are classifiable as special immigrants under that section if the consular officer is satisfied from evidence presented, or INS has confirmed, that the principal alien has been granted an adjustment of status to that of an alien lawfully admitted for permanent residence.

Subpart D—Immigrants Subject to Numerical Limitation

§ 42.31 Relative preference immigrants.

(a) *Entitlement to status.* An alien shall be classifiable as a preference immigrant under INA 203(a) (1), (2), (4) or (5) if the consular officer has received from INS a Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien has the relationship to the petitioner indicated in the petition. In the case of a petition according an alien status under INA 203(a) (1) or (4) or status as an unmarried son or daughter under INA 203(a)(2), the petitioner must be a "parent" as defined in INA 101(b)(2) and § 40.1. In the case of a petition filed on or after January 1, 1977, to accord an alien status under INA 203(a)(5), the petitioner must be at least twenty-one years of age.

(b) *Entitlement to derivative status.* Pursuant to INA 203(a)(8), and whether or not named in the petition, the child of a first, second, fourth, or fifth preference immigrant or the spouse of a fourth or fifth preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under INA 203(a) (1) through (7), is entitled to derivative status corresponding to the classification of the beneficiary of the petition.

§ 42.32 [Reserved]

§ 42.33 Third preference immigrants.

(a) *Entitlement to status.* An alien shall be classifiable as a third preference immigrant under INA 203(a)(3) if the consular officer has received from INS a Petition to Classify Preference Status of Alien on Basis of Profession or Occupation approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in INA 203(a)(3).

(b) *Entitlement to derivative status.* The spouse or child of the beneficiary of an approved petition according status under INA 203(a)(3) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, be entitled to the same status as the beneficiary of the petition.

§ 42.34 Sixth preference immigrants.

(a) *Entitlement to status.* An alien shall be classifiable as a sixth preference immigrant under INA 203(a)(6) if the consular officer has received from INS a Petition to Classify Preference Status of Alien on Basis of Profession or Occupation approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in INA 203(a)(6).

(b) *Entitlement to derivative status.* The spouse or child of the beneficiary of an approved petition according status under INA 203(a)(6) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, be entitled to the same status as the beneficiary of the petition.

§ 42.35 Nonpreference immigrants.

An alien subject to numerical limitations specified in INA 1201(a) who is not entitled to, or chooses not to apply for, a preference status shall be classified as a nonpreference immigrant under INA 203(a)(7) only if the alien—

(a) Obtains a labor certification pursuant to INA 212(a)(14), or

(b) Establishes to the satisfaction of a consular or immigration officer that the requirement for a labor certification is inapplicable to the alien, as provided in 22 CFR 40.7(a)(14)(iii).

§ 42.36 Administering labor certification provisions of INA 212(a)(14).

If an alien who desires to immigrate to the U.S. seeks information from a consular office concerning the requirements for immigration, the consular officer shall determine whether the alien will require a labor certification in order to qualify for immigration to the United States. The consular officer may require the alien to complete and submit Form OF-222 (Preliminary Questionnaire to Determine Immigrant Status) for this purpose.

Subpart E-Petitions

§ 42.41 Effect of approved petition.

Consular officers are authorized to grant to an alien the immediate relative or preference status accorded in a petition approved in the alien's behalf upon receipt from INS of the approved petition or official notification of its approval. The status shall be granted for the period authorized by law or regulation. The approval of a petition by INS does not relieve the alien of the burden of establishing to the satisfaction of the consular officer that the alien is eligible in all respects to receive a visa.

§ 42.42 Petition for immediate relative or preference status.

The consular officer may not issue a visa to an alien as an immediate relative or preference alien unless the officer has received from INS a petition filed and approved in accordance with INA 204 or official notification of such filing and approval.

§ 42.43 Suspension or termination of action in petition cases.

(a) *Suspension of action.* (1) The consular officer shall suspend action in a petition case and return the petition, with a report of the facts, for reconsideration by INS if the petitioner requests suspension of action, or if the officer knows or has reason to believe that approval of the petition was obtained by fraud, misrepresentation, or other unlawful means, or that the beneficiary is not entitled, for some other reason, to the status approved.

(2) If a third or sixth preference petition is automatically revoked because of the expiration of the beneficiary's labor certification, the consular officer shall suspend action in the case and retain the petition while affording the beneficiary whose labor certification has expired an opportunity to seek revalidation of the labor certification or obtain a new one.

(b) *Termination of action.* (1) The consular officer shall terminate action in a petition case upon receipt from INS of notice of revocation of the petition in accordance with INS regulations.

(2) The consular officer shall terminate action in a petition case

subject to the provisions of INA 203(e) in accordance with the provisions of § 42.83.

Subpart F—Numerical Controls and Priority Dates

§ 42.51 Department control of numerical limitations.

(a) *Centralized control.* Centralized control of the numerical limitations on immigration specified in INA 201, 202, and 203 is established in the Department. The Department shall limit the number of immigrant visas that may be issued and the number of adjustments of status that may be granted to aliens subject to these numerical limitations to a number:

(1) Not to exceed a total of 72,000 in any of the first three quarters of any fiscal year; and

(2) Not to exceed, in any month of a fiscal year, a total of 27,000 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of numbers.* Within the foregoing limitations, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and adjustments of status based on the chronological order of the priority dates of visa applicants reported by consular officers pursuant to § 42.55(b) and of applicants for adjustment of status as reported by officers of INS.

(c) *Recaptured visa numbers.* An immigrant visa number shall be returned to the Department for reallocation within the fiscal year in which the visa was issued when:

(1) An immigrant having an immigrant visa is excluded from the United States and deported;

(2) An immigrant does not apply for admission to the United States before the expiration of the validity of the visa;

(3) An alien having a preference immigrant visa is found not to be a preference immigrant; or

(4) An immigrant visa is revoked pursuant to § 42.82.

(d) *Special immigrants—Panama.* Centralized control of the numerical limitations on immigration specified in section 3201(c) of the Panama Canal Act of 1979 is established in the Department. The Department shall limit the number of special immigrant visas that may be issued and the number of adjustments of status that may be granted to aliens qualifying for visas under INA 101(a)(27) (E), (F), and (G) to a number not to exceed a total of 5,000 in any fiscal year beginning on October 1, 1979. If an immigrant having an immigrant visa issued under INA 101(a)(27) (E), (F) or (G) is excluded from the United States and deported or does not apply for admission to the United States before the expiration of the validity of the visa, or if such a visa is revoked pursuant to § 42.82, the number shall be returned to the Department for reallocation.

§ 42.52 Post records of visa applications.

(a) *Waiting list.* Records of individual visa applicants entitled to an immigrant classification and their priority dates shall be maintained at posts at which immigrant visas are issued. These records shall indicate the chronological and preferential order in which consideration may be given to immigrant visa applications within the several immigrant classifications subject to the numerical limitations specified in INA 201, 202, and 203. Similar records shall be kept for the classes specified in INA 201(b) and 101(a)(27) which are not subject to numerical limitations. The records which pertain to applicants subject to numerical limitations constitute "waiting lists" within the meaning of INA 203.

(b) *Entitlement to immigrant classification.* An alien shall be entitled to immigrant classification if the alien:

(1) Is the beneficiary of an approved petition according immediate relative or preference status,

(2) Has obtained an individual labor certification, or

(3) Has satisfied the consular officer or an INS officer in appropriate cases that the alien:

(i) Is entitled to special immigrant status under INA 101(a)(27),

(ii) Is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations, or

(iii) Is within one of the classes described in § 40.7(a)(14)(iii) and therefore not within the purview of INA 212(a)(14).

(c) *Record made when entitlement to immigrant classification is established.* (1) A record that an alien is entitled to an immigrant visa classification shall be made on Form OF-224, Immigrant Visa Control Card, or through the automated system in use at selected posts, whenever the consular officer is satisfied—or receives evidence—that the alien is within the criteria set forth in paragraph (b) of this section.

(2) A separate record shall be made of family members entitled to derivative immigrant status whenever the consular officer determines that a spouse or child is chargeable to a different foreign state or other numerical limitation than the principal alien. The provisions of INA 202(b) are to be applied as appropriate when either the spouse or parent is reached on the waiting list.

(3) A separate record shall be made of a spouse or child entitled to derivative immigrant status whenever the consular officer determines that the principal alien intends to precede the family.

§ 42.53 Priority date of individual applicants.

(a) *Preference applicant.* The priority date of a first, second, fourth or fifth preference visa applicant shall be the filing date of the approved petition that accorded preference. In the case of a third or sixth preference petition the filing date of the petition within the meaning of INA 203(c) shall be determined by the INS in accordance with INS regulations.

(b) *Nonpreference applicant and certain special immigrants.* The priority date of other applicants shall be:

(1) The date that an individual labor certification under INA 212(a)(14) has been granted for the applicant, or

(2) The date of submission to the consular officer, or to INS in appropriate cases, of evidence to establish:

(i) That the applicant is within one of the professional or occupational groups listed by the Department of Labor in Schedule A,

(ii) That circumstances specified in § 40.7(a)(14)(iii) are applicable to the applicant and therefore the applicant is not within the purview of INA 212(a)(14), or

(iii) That the applicant is entitled to classification as a special immigrant under INA 101(27) (E), (F), or (G).

(c) *Former Western Hemisphere applicant with priority date prior to January 1, 1977.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, an alien who prior to January 1, 1977, was subject to the numerical limitation specified in section 21(e) of the Act of October 3, 1965, and who was registered as a Western Hemisphere immigrant with a priority date prior to January 1, 1977, shall retain that priority date as a nonpreference immigrant under INA 203(a)(7) or as a preference immigrant upon approval of a petition according status under INA 203(a)(1)–(6).

(d) *Derivative priority date for spouse or child of principal alien.* Nothwithstanding the provisions of paragraphs (a) and (b) of this section, a spouse or child of an INA 203(a) principal alien acquired prior to the principal alien's admission into the United States shall be entitled to the priority date of the principal alien, whether or not named in the immigrant visa application of the principal alien. A

child born of a marriage which existed at the time of an INA 203(a) principal alien's admission to the United States is considered to have been acquired prior to the principal alien's admission.

§ 42.54 Order of consideration.

Consular officers shall request applicants to take the steps necessary to meet the requirements of INA 222(b) in order to apply formally for a visa as follows:

(a) In the chronological order of the priority dates of all applicants within each of the immigrant classifications specified in INA 203(a);

(b) In the order specified in INA 203(b) with regard to all applicants chargeable to the same foreign state or dependent area as specified in INA 202(a) and 202(c); and

(c) In the chronological order of the priority dates of all applicants within the special immigrant classifications specified in INA 101(a)(27) (E), (F), or (G).

§ 42.55 Reports on numbers and priority dates of applications on record.

(a) *Report of immigrant visa applicants subject to numerical limitations.* Consular officers shall report periodically, as the Department may direct, the number and priority dates of all applicants subject to the numerical limitations prescribed in INA 201, 202 and 203 and in section 3201(c) of the Panama Canal Act of 1979 and whose immigrant visa applications have been recorded in accordance with § 42.52(c).

(b) *Documentarily qualified applicants.* Consular officers shall also report periodically, as the Department may direct, the number and priority dates of all applicants described in paragraph (a) of this section who have informed the consular office that they have obtained the documents required under INA 222(b), for whom the necessary clearance procedures have been completed.

Subpart G—Application for Immigrant Visas

§ 42.61 Place of application.

(a) *Alien to apply in consular district of residence.* Under ordinary circumstances, an alien seeking an immigrant visa shall have the case processed in the consular district in which the alien resides. The consular officer shall accept the case of an alien having no residence in the consular district, however, if the alien is physically present and expects to remain therein for the period required for processing the case. An immigrant visa case may, in the discretion of the consular officer, or shall, at the direction of the Department, be accepted from an alien who is neither a resident of, nor physically present in, the consular district. An alien residing temporarily in the United States is considered to be a resident of the consular district of last residence abroad.

(b) *Transfer of immigrant visa cases.* (1) All documents, papers, and other evidence relating to an applicant whose case is pending or has been refused at one post may be transferred to another post at the applicant's request and risk when there is reasonable justification for the transfer and the transferring post has no reason to believe that the alien will be unable to appear at the receiving post.

(2) Any approved petition granting immediate relative or preference status should be included among the documents when a case is transferred from one post to another.

(3) In no case may a visa number be transferred from one post to another. A visa number which cannot be used as a result of the transfer must be returned to the Department immediately.

§ 42.62 Personal appearance and interview of applicant.

(a) *Personal appearance of applicant before consular officer.* Every alien applying for an immigrant visa, including an alien whose application is executed by another person pursuant to § 42.63(a)(3), shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* Every alien executing an immigrant visa application must be interviewed by a consular officer who shall determine on the basis of the applicant's representations and the visa application and other relevant ducumentation—

(1) The proper immigrant classification, if any, of the visa applicant, and

(2) The applicant's eligibility to receive a visa.

The officer has the authority to require that the alien answer any question deemed material to these determinations.

§ 42.63 Application forms and other documentation.

(a) *Application forms.*—(1) *Preliminary questionnaire.* The consular officer may require an alien to complete Form OF-222, Preliminary Questionnaire to Determine Immigrant Status, for the purpose of assisting in the determination of the alien's classification and charageability to numerical limitations.

(2) *Application on Form OF-230 required.* Every alien applying for an immigrant visa must make application on Form OF-230, Application for Immigrant Visa and Alien Registration. This requirement may not be waived.

(3) *Application of alien under 14 or physically incapable.* The application on Form OF-230 for an alien under 14 years of age or one physically incapable of completing an application may be excuted by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custory of, or a legitimate interest in, the alien.

(b) *Preparation of forms.* The consular officer shall ensure that Form OF-230 and all other forms an alien is required to submit are fully and properly completed in accordance with the applicable regulations and instructions.

(c) *Additional information as part of application.* The officer may require the submission of additional information or question the alien on any relevant matter whenever the officer believes that the information provided in Form OF-230 is inadequate to determine the alien's eligibility to receive an immigrant visa. Additional statements made by the alien become a part of the visa application. All documents required under the authority of § 42.62 are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

§42.64 Passport requirements.

(a) *Passport defined.* "Passport," as defined in INA 101(a)(30), is not limited to a national passport or to a single document. A passport may consist of two or more documents which, when considered together, fulfill the requirements of a passport, provided that documentary evidence of permission to enter a foreign country has been issued by a competent authority and clearly meets the requirements of INA 101(a)(30).

(b) *Passport validity requirements.* Except as provided in §42.2, every applicant for an immigrant visa shall present a passport, as defined in INA 101(a)(30), that is valid for at least 60 days beyond the period of validity of the visa. The 60-day additional validity requirement does not apply to an applicant who would be excepted as provided in 22 CFR 42.2 were it not for the fact that the applicant is applying in the country of which the applicant is a national and the possession of a passport is required for departure. Such

an applicant may be issued a visa valid for 4 months or for such shorter period as will assure its expiration in unison with the passport.

(c) *A single passport including more than one person.* The passport requirement of this section may be met by the presentation of a passport including more than one person, if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each person 16 years of age or over is attached to the passport by the issuing authority.

§42.65 Supporting documents.

(a) *Authority to require documents.* The consular officer is authorized to require documents considered necessary to establish the alien's eligibility to receive an immigrant visa. All such documents submitted and other evidence presented by the alien, including briefs submitted by attorneys or other representatives, shall be considered by the officer.

(b) *Basic documents required.* An alien applying for an immigrant visa shall be required to furnish, if obtainable: A copy of a police certificate or certificates; a certified copy of any existing prison record, military record, and record of birth; and a certified copy of all other records or documents which the consular officer considers necessary.

(c) *Definitions.* (1) "Police certificate" means a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alien. The words "appropriate police authorities," as used in INA 222(b), mean the police authorities of any country, area or locality wherein the alien has had a residence for 6 months or more or any other police authority which maintains central police records. A consular officer may also require a police certificate covering any residence of less than 6 months if the officer has reason to believe that a police record exists in the country, area, or locality concerned.

(2) "Prison record" means an official document containing a report of the applicant's record of confinement and conduct in a penal or correctional institution.

(3) "Military record" means an official document containing a complete record of the applicant's service and conduct while in military service, including any convictions of crime before military tribunals as distinguished from other criminal courts. A certificate of discharge from the military forces or an enrollment book belonging to the applicant shall not be acceptable in lieu of the official military record, unless it shows the alien's complete record while in military service. The applicant may, however, be required to present for inspection such a discharge certificate or enrollment book if deemed necessary by the consular officer to establish the applicant's eligibility to receive a visa.

(4) A "certified copy of an alien's record of birth" means a certificate issued by the official custodian of birth records in the country of birth showing the date and place of birth and the parentage of the alien, based upon the original registration of birth.

(5) "Other records or documents" include any records or documents establishing the applicant's relationship to a spouse or children, if any, and any records or documents pertinent to a determination of the applicant's identity, classification, or any other matter relating to the applicant's visa eligibility.

(d) *Unobtainable documents.* (1) If the consular officer is satisfied, or the catalogue of available documents prepared by the Department indicates, that any document or record required under this section is unobtainable, the officer may permit the immigrant to submit other satisfactory evidence in lieu of such document or record. A document or other record shall be considered unobtainable if it cannot be procured without causing to the applicant or a family member actual hardship as opposed to normal delay and inconvenience.

(2) If the consular officer determines that a supporting document, as described in paragraph (b) of this section, is in fact unobtainable, although the catalogue of available documents shows it is available, the officer shall affix to the visa application a signed statement describing in detail the reasons for considering the record or document unobtainable and for accepting the particular secondary evidence attached to the visa.

(e) *Authenticity of records and documents.* If the consular officer has reason to believe that a required record or document submitted by an applicant is not authentic or has been altered or tampered with in any material manner, the officer shall take such action as may be necessary to determine its authenticity or to ascertain the facts to which the record or document purports to relate.

(f) *Photographs.* Every alien shall furnish color photographs of the number and specifications prescribed by the Department, except that, in countries where facilities for producing color photographs are unavailable as determined by the consular officer, black and white photographs may be substituted.

§ 42.66 Medical examination.

(a) *Medical examination required of all applicants.* Before the issuance of an immigrant visa, the consular officer shall require every alien, regardless of age, to undergo a medical examination in order to determine eligibility to receive a visa.

(b) *Examination by physician from approved panel.* The required examination shall be conducted in accordance with requirements and procedures established by the United States Public Health Service and by a physician selected by the alien from a panel of physicians approved by the consular officer.

(c) *Facilities required for panel physician.* A consular officer shall not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless the physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

§ 42.67 Execution of application, registration, and fingerprinting.

(a) *Execution of visa application*—(1) *Application fee.* A fee is prescribed for each application for an immigrant visa. It shall be collected prior to the execution of the application and a receipt shall be issued.

(2) *Oath and signature.* The applicant shall be required to read the Form OF-230, Application for Immigrant Visa and Alien Registration, when it is completed or it shall be read to the alien in the alien's language or the alien otherwise informed of its full contents. Aliens shall be asked whether they are willing to subscribe thereto. If the alien is not willing to subscribe to the application unless changes are made in the information stated therein, the required changes shall be made. The application shall then be then sworn to or affirmed and signed by or on behalf of the applicant before a consular officer, or a designated officer of the American Institute in Taiwan, who shall then sign the application over the officer's title.

(b) *Registration.* Form OF-230, when duly executed, shall constitute the alien's registration record for the purposes of INA 221(b).

(c) *Fingerprinting.* An alien may be required at any time prior to the execution of Form OF-230 to have a set of fingerprints taken on Form AR-4 if such procedure is necessary for purposes of identification or investigation.

§ 42.68 Informal evaluation of family members if principal applicant precedes them.

(a) *Preliminary determination of visa eligibility.* If a principal applicant proposes to precede the family to the United States, the consular officer may arrange for an informal examination of the other members of the principal applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive a visa.

(b) *When family member ineligible.* In the event the consular officer finds that any member of such family would be ineligible to receive an immigrant visa, the principal applicant shall be informed and required to acknowledge receipt of this information in writing.

(c) *No guarantee of future eligibility.* A determination in connection with an informal examination that an alien appears to be eligible for a visa carries no assurance that the alien will be issued an immigrant visa in the future. The principal applicant shall be so informed and required to acknowledge receipt of this information in writing. The question of visa eligibility can be determined definitively only at the time the family member applies for a visa.

Subpart H—Issuance of Immigrant Visas

§ 42.71 Authority to issue visas; visa fees.

(a) *Authority to issue visas.* Consular officers are authorized to issue immigrant visas at designated consular offices abroad pursuant to INA 101(a)(16), 221(a), and 224. (Consular offices authorized to issue immigrant visas are listed periodically in Visa Office Bulletins published by the Department of State.) A consular officer assigned to duty in the territory of a country against which the sanctions provided in INA 243(g) have been invoked shall not issue an immigrant visa to an alien who is a national, citizen, subject, or resident of that country, unless the officer has been informed that the sanction has been waived by INS in the case of an individual alien or a specified class of aliens.

(b) *Immigrant visa fees.* Fees are prescribed by the Secretary of State for the execution of an application for, and the issuance of, an immigrant visa. The application fee shall be collected prior to the visa interview and execution of the application. The issuance fee shall be collected after completion of the visa interview and prior to issuance of the visa. A fee receipt shall be issued for each fee. A fee collected for the application for or issuance of an immigrant visa is refundable only if the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible.

§ 42.72 Validity of visas.

(a) *Period of validity.* With the exception indicated herein, the period of validity of an immigrant visa shall not exceed 4 months, beginning with the date of issuance. Any visa issued to a child lawfully adopted by a U.S. citizen and spouse while such citizen is serving abroad in the U.S. Armed Forces, is employed abroad by the U.S. Government, or is temporarily abroad on business, however, shall be valid until such time, for a period not to exceed 3 years, as the adoptive citizen parent returns to the United States in the course of that parent's military service, U.S. Government employment, or business.

(b) *Extension of period of validity.* If the visa was originally issued for a period of validity less than the maximum authorized by paragraph (a) of this section, the consular officer may extend the validity of the visa up to but not exceeding the maximum period permitted. If an immigrant applies for an extension at a consular office other than the issuing office, the consular officer shall, unless the officer is satisfied beyond doubt that the alien is eligible for the extension, communicate with the issuing office to determine if there is any objection to an extension. In extending the period of validity, the officer shall make an appropriate notation on the visa of the new expiration date, sign the document with title indicated, and impress the seal of the office thereon.

(c) *No fee for extension of period of validity.* No fee shall be charged for extending the period of validity of an immigrant visa.

(d) *Age and marital status in relation to validity of certain immigrant visas.* In accordance with § 42.64(b), the validity of a visa may not extend beyond a date sixty days prior to the expiration of the passport. The period of validity of a visa issued to an immigrant as a child shall not extend beyond the day immediately proceding the date on which the alien becomes 21 years of age. The consular officer shall warn an alien, when appropriate, that the alien will be admissible as such an immigrant only if unmarried and under 21 years of age at the time of application for admission at a U.S. port of entry. The consular officer shall also warn an alien issued a visa as a first or second preference immigrant as an unmarried son or daughter of a citizen or lawful permanent resident of the United States that the alien will be admissible as such an immigrant only if unmarried at the time of application for admission at a U.S. port of entry.

§ 42.73 Procedure in issuing visas.

(a) *Insertion of data.* In issuing an immigrant visa, the issuing office shall insert the pertinent information in the designated blank spaces provided on Form OF-155A, Immigrant Visa and Alien Registration, in accordance with the instructions contained in this section.

(1) A symbol as specified in § 42.11 shall be used to indicate the classification of the immigrant.

(2) An immigrant visa issued to an alien subject to numerical limitations shall bear a number allocated by the Department. The foreign state or dependent area limitation to which the alien is chargeable shall be entered in the space provided.

(3) No entry need be made in the space provided for foreign state or other applicable area limitation on visas issued to immediate relatives under INA 201(b) or special immigrants under INA 101(a)(27), but such visas may be numbered if a post voluntarily uses a consecutive post numbering system.

(4) The date of issuance and the date of expiration of the visa shall be inserted in the proper places on the visa and show the day, month, and year in that order, with the name of the month spelled out, as in "24 December 1986."

(5) In the event the passport requirement has been waived under § 42.2, a notation shall be inserted in the space provided for the passport number, setting forth the authority (section and paragraph) under which the passport was waived.

(6) A signed photograph shall be attached in the space provided on Form OF-155A by the use of a legend machine, unless specific authorization has been granted by the Department to use the impression seal.

(b) *Documents comprising an immigrant visa.* An immigrant visa consists of Form OF-155A and Form OF-230, Application for Immigrant Visa and Alien Registration, properly executed, and a copy of each document required pursuant to § 42.63.

(c) *Arrangement of visa documentation.* Form OF-155A shall be placed immediately above Form OF-230 and the supporting documents attached thereto. Any document required to be attached to the visa, if furnished to the consular officer by the alien's sponsor or

other person with a request that the contents not be divulged to the visa applicant, shall be placed in an envelope and sealed with the impression seal of the consular office before being attached to the visa. If an immigrant visa is issued to an alien in possession of a United States reentry permit, valid or expired, the consular officer shall attach the permit to the immigrant visa for disposition by INS at the port of entry. (Documents having no bearing on the alien's qualifications or eligiblity to receive a visa may be returned to the alien or to the person who furnished them.)

(d) *Signature, seal, and issuance of visa.* The consular officer shall sign the visa (Form OF-155A) and impress the seal of the office on it so as to partially cover the photograph and the signature. The immigrant visa shall then be issued by delivery to the immigrant or the immigrant's authorized agent or representative.

§ 42.74 Issuance of new or replacement visas.

(a) *New immigrant visa for an alien not subject to numerical limitation.* An immediate relative under INA 201(b), or a special immigrant under INA 101(a)(27), who establishes that a visa has been lost or mutilated or has expired, or that the alien will be unable to use it during the period of its validity, may be issued a new visa at the same or any other consular office, if the consular officer then finds the alien qualified. The alien must pay anew the statutory application and issuance fees. Prior to issuing a new immigrant visa at a consular office other than the one that issued the original visa, the consular officer must also ascertain whether the original issuing office knows of any reason why a new visa should not be issued.

(b) *Replacement immigrant visa for an alien subject to numerical limitation.* An immigrant documented under INA 203(a) who was or will be unable to use the visa during the period of its validity because of reasons beyond the alien's control and for which the alien is not responsible may be issued a replacement immigrant visa under the original number during the same fiscal year in which the original visa was issued (provided the number has not been returned to the Department), if the consular officer then finds the alien qualified. The alien must pay anew the statutory application and issuance fees. Prior to issuing a replacement immigrant visa at a consular office other than the one that issued the original visa, the consular officer must also ascertain whether the original issuing office knows of any reason why a replacement visa should not be issued. In issuing a visa under this paragraph, the consular officer shall insert the word "REPLACE" on Form OF-155A, Immigrant Visa and Alien Registration, before the word "IMMIGRANT" in the title of the visa.

(c) *Duplicate visas issued within the validity period of the original visa.* If the validity of a visa previously issued has not yet terminated and the original visa has been lost or mutilated, a duplicate visa may be issued containing all of the information appearing on the original visa, including the original issuance and expiration dates. The applicant shall execute a new application and provide copies of the supporting documents submitted in support of the original application. The alien must pay anew the application and issuance fees. In issuing a visa under this paragraph, the consular officer shall insert the word "DUPLICATE" on Form OF-155A before the word "IMMIGRANT" in the title of the visa.

Subpart I—Refusal, Revocation, and Termination of Registration

§ 42.81 Procedure in refusing individual visas.

(a) *Issuance or refusal mandatory.* When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer shall either issue or refuse the visa. Every refusal shall be in conformance with the provisions of 22 CFR 40.6.

(b) *Refusal procedure.* A consular officer may not refuse an immigrant visa until Form OF-230, Application for Immigrant Visa and Alien Registration, has been executed by the applicant. When an immigrant visa is refused, an appropriate record shall be made in duplicate on a form prescribed by the Department. The form shall be signed and dated by the consular officer. The consular officer shall inform the applicant of the provision of law or implementing regulation on which the refusal is based and of any statutory provisions under which administrative relief is available. Each document related to the refusal shall then be attached to Form OF-230 for retention in the refusal files. Any documents not related to the refusal shall be returned to the applicant. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates an intention to submit such evidence, all documents may, with the consent of the alien, be retained in the consular files for a period not to exceed one year. If the refusal has not been overcome within one year, any documents not relating to the refusal shall be removed from the file and returned to the alien.

(c) *Review of refusal at consular office.* If the grounds of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer at a post, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates the intention to submit such evidence, a review of the refusal may be deferred. If the principal consular officer or alternate does not concur in the refusal, that officer shall either (1) refer the case to the Department for an advisory opinion, or (2) assume responsibility for final action on the case.

(d) *Review of refusal by Department.* The Department may request a consular officer in an individual case or in specified classes of cases to submit a report if an immigrant visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, are binding upon consular officers.

(e) *Reconsideration of refusal.* If a visa is refused, and the applicant within 1 year from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, the case shall be reconsidered. In such circumstance, an additional application fee shall not be required.

§ 42.82 Revocation of visas.

(a) *Grounds for revocation.* Consular officers are authorized to revoke an immigrant visa under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means;

(2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the

particular visa at the time it was issued; or

(3) The consular officer obtains information establishing that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case.

(b) *Notice of proposed revocation.* The bearer of an immigrant visa which is being considered for revocation shall, if practicable, be notified of the proposed action, given an opportunity to show cause why the visa should not be revoked, and requested to present the visa to the consular office indicated in the notification of proposed cancellation.

(c) *Procedure in revoking visas.* An immigrant visa which is revoked shall be canceled by writing the word "REVOKED" plainly across the face of the visa. The cancellation shall be dated and signed by the consular officer taking the action. The failure of an alien to present the visa for cancellation does not affect the validity of any action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation of a visa shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* The consular officer shall promptly submit notice of the revocation, including a full report of the facts in the case, to the Department for transmission to the INS. A report is not required if the visa has been physically canceled prior to the alien's departure for the United States.

(f) *Record of action.* Upon the revocation of an immigrant visa, the consular officer shall make appropriate notation for the post file of the action taken, including a statement of the reasons therefor, and if the revocation of the visa is effected at other than the issuing office, a report of the action taken shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular officer shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation of the visa be reconsidered. If the officer finds that the evidence is sufficient to overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefore shall be placed in the consular files and appropriate notification made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of § 42.71(b) providing for the refund of fees when the visa has not been used as a result of action by the U.S. Government, no fees shall be collected in connection with the application for or issuance of such a reinstated visa.

§ 42.83 Termination of registration.

(a) *Termination following failure of applicant to apply for visa.* In accordance with INA 203(e), an alien's registration for an immigrant visa shall be terminated if, within 1 year following the scheduling of an appointment for final interview, the applicant fails to apply for an immigrant visa.

(b) *Termination following visa refusal.* An alien's registration for an immigrant visa shall be terminated if, within 1 year following the refusal of the immigrant visa application under INA 221(g), the alien has failed to present to a consular officer evidence purporting to overcome the basis for refusal.

(c) *Notice of termination.* Upon the termination of registration under paragraph (a) or (b) of this section, the consular officer at the post where the alien is registered shall notify the alien of the termination. The consular officer shall also inform the alien of the right to have the registration reinstated if the alien, before the end of the second year after the missed appointment date if paragraph (a) applies, and before the end of the second year after the INA 221(g) refusal if paragraph (b) applies, establishes to the satisfaction of the consular officer that the failure to apply for an immigrant visa or to present evidence purporting to overcome the ineligibility under INA 221(g) was due to circumstances beyond the alien's control.

(d) *Reinstatement of registration.* If the consular officer is satisfied that an alien, as provided for in paragraph (c) of this section, has established that failure to apply as scheduled for an immigrant visa or to present evidence purporting to overcome ineligibility under INA 221(g) was due to circumstances beyond the alien's control, the consular officer shall reinstate the alien's registration for an immigrant visa. Any petition approved under INA 204(b) which had been automatically revoked as a result of the termination of registration shall be considered to be automatically reinstated if the registration is reinstated.

(e) *Interpretation of "circumstances beyond alien's control".* For the purpose of this section, the term "circumstances beyond the alien's control" includes, but is not limited to, an illness or other physical disability preventing the alien from traveling, a refusal by the authorities of the country of an alien's residence to grant the alien permission to depart as an immigrant, and foreign military service.

Date: October 29, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-25443 Filed 11-4-87; 8:45 am]

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Thursday
November 5, 1987

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; General Electric (GE) CF6-50 and -45 Series Turbofan Engines; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ANE-30; Amdt. 39-5746]

Airworthiness Directives; General Electric (GE) CF6-50 and -45 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires initial and repetitive inspections of certain high pressure turbine (HPT) impeller spacers installed in GE CF6-50 and -45 series turbofan engines and prevents reinstallation of certain impeller spacers after October 30, 1990. This AD is needed to prevent failure of the HPT Impeller spacer which could result in an uncontained engine failure.

DATES: *Effective* November 5, 1987.

Compliance Schedule—As prescribed in the body of the AD.

Comments for inclusion in the docket must be received on or before November 27, 1987.

Incorporation by Reference—Approved by the Director of the Federal Register as of November 5, 1987.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87-ANE-30, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87-ANE-30".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215. A copy of the SB is contained in Rules Docket Number 87-ANE-30, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: The FAA has determined that fatigue cracks attributed to high stress low cycle fatigue (LCF) can originate in the aft flange bolt hole or in the aft face of the aft flange bolt hole on certain GE CF6-50 and -45 impeller spacers. Since 1985, two engine failures have occurred, one of which was uncontained. The failure investigation indicated that the impeller spacer was the most probable cause of the failure and that the origin of the failure emanated from the aft flange bolt hole, although the primary fracture surface could not be identified. In January 1986, the GE CF6-50 and -45 series engines shop manual incorporated requirements for an eddy current inspection of the aft flange bolt hole on the impeller spacer at the next shop visit. Subsequent inspection data indicated that the eddy current inspection procedure was ineffective for inspecting the aft face of the spacer at the aft flange bolt hole. A new eddy current inspection procedure requiring a redesigned probe, which allows inspection of the face of the spacer, was introduced in February 1987. Subsequent inspections of 301 spacer impellers, utilizing the new eddy current inspection procedures, have identified 10 spacers with crack indications, 6 of which were confirmed cracked.

Since this condition is likely to exist or develop in other engines of the same type design, an AD is being issued which requires initial and repetitive inspections of impeller spacers Part Numbers (P/N's) 9045M59P07, P08, P10, P12; 9173M55P01, P02, P03; 9198M92P01 through P10, inclusive; 9190M82P02, P03, 9348M85P01; and 9234M25P01 through P04, inclusive, installed on the GE CF6-50 and -45 series turbofan engines and prevents reinstallation of the affected parts after October 30, 1990.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making the amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-30". The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulations, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation if filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

General Electric: Applies to General Electric (GE) CF6–50 and–45 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the high pressure turbine (HPT) impeller spacer which may cause an uncontained engine failure, accomplish the following:

(a) Eddy current inspect impeller spacers part numbers (P/N's) 9190M82P02, P03; 9234M25P01 through P04, inclusive; 9348M85P)1; 9045M59P07, P08, P10, P12; 9173M55P01, P02, P03; and 9198M92P01 through P10, inclusive, in accordance with GE Service Bulletin (SB) 72–906, dated August 21, 1987, as follows:

(1) For HPT impeller spacers with 9,000 cycles since new (CSN) or greater on the effective date of this AD, inspect at the next shop visit or within 300 cycles in service (CIS) from the effective date of this AD, whichever occurs first.

(2) For HPT impeller spacers with 8,000 CSN or greater but less than 9,000 CSN on the effective date on this AD, inspect at the next shop visit or within 600 CIS from the effective date of this AD, or prior to accumulating 9,300 CSN, whichever occurs first.

(3) For HPT impeller spacers with 7,000 CSN or greater but less than 8,000 CSN on the effective date of this AD, inspect at the next shop visit or within 900 CIS from the effective date of this AD or prior to accumulating 8,600 CSN, whichever occurs first.

(4) For HPT impeller spacers with 6,000 CSN or greater but less than 7,000 CSN on the effective date of this AD, inspect at the next shop visit or within 1,200 CIS from the effective date of this AD or prior to accumulating 7,900 CSN, whichever occurs first.

(5) For HPT impeller spacers with 2,500 CSN or greater but less than 6,000 CSN on the effective date of this AD, inspect at the next shop visit or within 2,000 CIS from the effective date of this AD or prior to accumulating 7,200 CSN, whichever occurs first.

(6) For HPT impeller spacers with less than 2,500 CSN on the effective date of this AD, inspect at the next shop visit or prior to accumulating 4,500 CSN, whichever occurs first.

Note: Eddy current inspections of HPT impeller spacers completed prior to the effective date of this AD in accordance with GE SB 72–906, dated August 21, 1987 or with GE CF6–50/–45 Engine Shop Manual, Chapter 72–53–06, temporary revision 72–0593 are an alternate means of compliance with paragraph (a).

(b) Remove from service, HPT impeller spacers found cracked in accordance with the inspection requirements of paragraph (a) above and replace with a serviceable part.

(c) Reinspect impeller spacers, previously inspected in accordance with paragraph (a) above, at intervals not to exceed 2,500 cycles since last inspection in accordance with GE SB 72–906, dated August 21, 1987. Remove from service, impeller spacers found cracked and replace with a serviceable part.

(d) Remove, after October 30, 1990, impeller spacers listed by P/N's in this AD at the next shop visit or within 2,500 cycles since last inspection, whichever occurs first.

Note: Shop visit is defined as any time the high pressure turbine module is disassembled to a state where the impeller spacer is exposed.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of subtantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region may adjust the compliance times specified in this AD.

General Electric SB 72–906, dated August 21, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to General Electric, 1 Neumann Way, Cincinnati, Ohio 45215. This document also may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87–ANE–30, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on November 5, 1987.

Issued in Burlington, Massachusetts, on September 29, 1987.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 87–25842 Filed 11–4–87; 11:46 am]

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H.R. 317/Pub. L. 100-149

To amend the Wild and Scenic Rivers Act by designating a segment of the Merced River in California as a component of the National Wild and Scenic Rivers System. (Nov. 2, 1987; 101 Stat. 879; 2 pages) Price: $1.00