DEPARTMENT OF EDUCATION

34 CFR Part 660

International Research and Studies Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the International Research and Studies Program regulations to conform the regulations to changes made to the statute governing the program, section 606 of the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1986, Pub. L. 99–498. These regulations will clarify and increase the types of projects and activities the Secretary may fund under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3054, ROB–3), Washington, DC 20202. Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION:

A. Background

The International Research and Studies Program is authorized under section 606 of the Higher Education Act. The program is designed to enhance the international academic programs of American educational institutions through research and through the development of instructional materials concerning modern foreign languages and areas not commonly taught in such institutions.

B. Explanation of Changes

Before being amended, the statute authorizing the International Research and Studies Program cited three specific types of fundable research and studies. The Higher Educational Amendments of 1986 added a fourth, research and studies on the application of proficiency tests and standards across all areas of foreign language instruction and classroom use, and these activities have been added to § 660.1 and § 660.10. In addition, the Higher Education Amendments of 1986 authorized, as an allowable activity, the publication of specialized materials developed as a result of research conducted under this program, and § 660.10 has been amended accordingly.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232 (b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on the proposed regulations. However, the enactment of the Higher Education Amendments of 1986 requires the Secretary to revise certain program provisions. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These regulations are technical in nature, and amend existing regulations which have been determined previously not to have any significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

These final regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which govern those requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 660

Colleges and universities, Education, Grant Programs—education, International research.

(Catalog of Federal Domestic Assistance Number 84.017: International Research and Studies Program)

Dated: July 13, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 660 of Title 34 of the Code of Federal Regulations as follows:

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

1. The authority citation for Part 660 is revised to read as follows:

Authority: 20 U.S.C. 1125, unless otherwise noted.

2. In § 660.1, the word "and" is deleted at the end of paragraph (b), paragraph (c) is revised and redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 660.1 What is the International Research and Studies Program?

* * * * *

(c) Research on the application of proficiency tests and standards across all areas of foreign language instruction and classroom use; and

(d) The development and publication of specialized materials for use in providing instruction and evaluation or for use in training individuals to provide instruction and evaluation.

(Authority: 20 U.S.C. 1125)

3. In § 660.10, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 660.10 What activities does the Secretary assist?

* * * * *

(b) Research and studies—

(1) On more effective methods of instruction in modern foreign languages, area studies, or related fields;

(2) To evaluate competency in those foreign languages, area studies, or related fields; or

(3) On the application of proficiency tests and standards across all areas of foreign language instruction and classroom use.

(c) The development and publication of specialized materials—

* * * * *

[FR Doc. 87–17210 Filed 7–28–87; 8:45 am]

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federal register

Wednesday
July 29, 1987

Part VI

Department of Education

34 CFR Part 661

Business and International Education Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 661

Business and International Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Business and International Education Program final regulations in accordance with the provisions contained in the Higher Education Amendments of 1986, Pub. L. 99–498. These regulations will broaden the types of projects and activities the Secretary may fund under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3054, ROB–3), Washington, DC 20202. Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION:

A. Background

The Business and International Education Program is authorized under Title VI, part B of the Higher Education Act of 1965, as amended (HEA). The program is designed to promote linkages between institutions of higher education and American businesses engaged in international economic activity.

B. Explanation of Changes

Before being amended by the Higher Education Amendments of 1986, Pub. L. 99–498, section 612(b) of the HEA listed nine specific fundable activities. The Higher Education Amendments of 1986 added a tenth activity to the list, internships overseas for foreign language students, and that activity has been added to the list of activities in § 661.10(j).

C. Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. However, because these new regulations reflect only statutory changes, the Secretary has determined that publication of this document as a proposed rule for public comment is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The final regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which govern those requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These regulations are technical in nature, and amend existing regulations which have been determined previously not to have any significant impact on a substantial number of small entities.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 661

Colleges and universities, Education, Educational study programs, Grant programs, International Education.

(Catalog of Federal Domestic Assistance Number 84.153: Business and International Education Program)

Dated: July 1, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 661 of Title 34 of the Code of Federal Regulations as follows:

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

1. The authority citation for Part 661 is revised to read as follows:

Authority: 20 U.S.C. 1130–1130b, unless otherwise noted.

2. In § 661.10, the word "and" after paragraph (h) and the period after paragraph (i) are removed, "; and" is added after paragraph (i), and a new paragraph (j) is added to read as follows:

§ 661.10 What activities does the Secretary assist under this program?

* * * * *

(j) The establishment of internships overseas to enable foreign language students to develop their foreign language skills and their knowledge of foreign cultures and societies.

(Authority: 20 U.S.C. 1130–1130b)

[FR Doc. 87–17211 Filed 7–28–87; 8:45 am]

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federal register

Wednesday
July 29, 1987

Part VII

Environmental Protection Agency

40 CFR Part 418

Fertilizer Manufacturing Point Source Category; Effluent Limitations Guidelines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 418

[FRL 3228-4]

Fertilizer Manufacturing Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the applicability of the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), and the best conventional pollutant control technology (BCT) effluent limitations guidelines for the phosphate subcategory of the fertilizer manufacturing point source category. It excludes wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants located in the State of Louisiana from those effluent limitations guidelines. National Pollutant Discharge Elimination System (NPDES) permits for those processes will be developed on a case-by-case basis and will be based on technology-based requirements as determined by the best professional judgment (BPJ) of EPA and on applicable state water quality standards. The currently effective new source performance standards (NSPS) for the phosphate subcategory are not affected by this final rule.

DATES: This final rule is effective on July 31, 1987. This final rule shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on July 29, 1987. Under section 509(b)(1) of the Clean Water Act, as amended, judicial review of this final rule can be made only by filing a petition for review in the United States Court of Appeals within 120 days after the rule is considered issued for purposes of judicial review.

ADDRESSES: The administrative record for this final rule is available for review in EPA's Public Reference Unit, Room 2404 (EPA Library), 401 M Street, SW., Washington, DC and at the EPA Region VI Office, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Southworth, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382-7150.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the legal authority, background, and other aspects of the final rule. The abbreviations, acronyms, and other terms used in the preamble are defined in Appendix A.

Organization of this Preamble

I. Legal Authority
II. Scope of this Rulemaking
III. Background
IV. Alternative No Discharge Technologies Considered for the Final Rule
V. Final Amendment to the Regulation
VI. Public Participation and Response to Major Comments
VII. Availability of Technical Information
VIII. Effective Date
IX. Office of Management and Budget Review
X. List of Subjects
Appendix A—Abbreviations, Acronyms, and Other Terms Used in this Preamble

I. Legal Authority

This final rule is promulgated under authority of sections 301, 304, 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.*), and section 306(c) of the Water Quality Act of 1987, Pub. L. 100-4.

II. Scope of this Rulemaking

This final rule amends the applicability of the BPT, BAT, and BCT effluent limitations guidelines for the phosphate subcategory in the fertilizer manufacturing point source category. The rule excludes wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants located in Louisiana from those effluent limitations guidelines. Technology-based limitations in the National Pollutant Discharge Elimination System (NPDES) permits for the wet-process phosphoric acid processes at the Louisiana plants will be developed on a case-by-case basis and will be based on the best professional judgement (BPJ) of EPA. New source performance standards for the phosphate subcategory are not affected by this final rule.

III. Background

A. EPA Regulation

On April 8, 1974, EPA promulgated effluent limitations guidelines, pretreatment standards, and new source performance standards for wet-process phosphoric acid manufacturing processes (39 FR 12836). Those effluent limitations guidelines and standards were amended on May 19, 1976 (41 FR 20582) and on August 29, 1979 (44 FR 50742). Processes subject to the effluent limitations guidelines and standards are in the phosphate subcategory of the fertilizer manufacturing point source category.

Included in the effluent limitations guidelines for the phosphate subcategory are limitations based on the application of the best practicable control technology currently available (BPT) and limitations based on the application of the best available technology economically achievable (BAT) for wet-process phosphoric acid processes (40 CFR 418.12 and 418.13). EPA promulgated effluent limitations guidelines for wet-process phosphoric acid processes based on the application of the best conventional pollutant control technology (BCT) on August 29, 1979 (44 FR 50742, 40 CFR 418.17). The BCT effluent limitations guidelines were amended on June 2, 1980 (45 FR 37199).

The BPT effluent limitations guidelines require no discharge of process wastewater pollutants except that process wastewater may be discharged after treatment from a runoff facility designed, constructed, and operated to maintain a surge capacity equal to the volume of runoff from the 10-year, 24-hour storm event. The BAT and BCT effluent limitations guidelines also require no discharge of process wastewater pollutants except that process wastewater may be discharged after treatment from a runoff facility designed, constructed, and operated to maintain a surge capacity equal to the volume of runoff from the 25-year, 24-hour storm event. For all three guidelines, wastewater must be treated and discharged whenever the water level in the runoff facility equals or exceeds the midpoint level of the facility's surge capacity. The discharge from a runoff facility must meet the limitations for total phosphorus, fluoride, and total suspended solids in the guidelines.

B. Wet-Process Phosphoric Acid Processes

In the wet-process phosphoric acid process, phosphate rock is mixed with sulfuric acid to produce phosphoric acid, which is then processed into phosphate fertilizer. Approximately five tons of gypsum, a by-product of the wet-process phosphoric acid process are generated for each ton of phosphoric acid produced. Generally, the gypsum is disposed of as a waste.

At most plants, gypsum is disposed of on the land. It is pumped to a stack as a slurry. The transport water in the slurry

drains off the stack to a runoff facility and is usually recycled to the manufacturing process along with any storm water runoff from the stack. The gypsum remains on the stack permanently. A water balance for this disposal method is maintained by reuse of the transport water in the manufacturing process and by solar evaporation of water in the slurry pond on top of the gypsum stack and in the runoff facility. Because the transport water in the gypsum slurry is recycled to the manufacturing process, wet-process phosphoric acid processes do not discharge process wastewater as long as precipitation is not greater than evaporation. When the precipitation exceeds evaporation, the water that cannot be recycled to the manufacturing process is discharged after treatment.

There are four plants with wet-process phosphoric acid processes in Louisiana: Agrico Chemical Co. at Donaldsonville; Arcadian Corp. (formerly Allied Corp.) at Geismar; Beker Industries Corp. at Taft; and Freeport Chemical Corp. at Uncle Sam. All four plants are located on the Mississippi River between New Orleans and Baton Rouge. Wet-process phosphoric acid production operations at these plants began between 1966 and 1974. The plants use the wet-process phosphoric acid manufacturing process for which the effluent limitations guidelines were promulgated. The annual production rate of phosphoric acid for the four plants ranges from 160,000 tons for the smallest plant to 750,000 tons for the largest plant. These rates are within the range of production rates typical of plants in the rest of the industry.

C. Review of Regulation

As previously mentioned, the BPT, BAT, and BCT effluent limitations guidelines for the phosphoric subcategory require no discharge of process wastewater pollutants, except under certain conditions, for wet-process phosphoric acid processes. The technology basis for the guidelines is recycle of the wastewater, stacking of gypsum on the land, and two stage lime treatment of any discharge from a runoff facility.

In response to petitions from industry, EPA proposed on July 25, 1984 (49 FR 29977), to withdraw the effluent limitations guidelines for the wet-process phosphoric acid processes at the Louisiana plants. EPA based the proposed withdrawal on the premise that the original technology basis (i.e., land disposal of gypsum) for the effluent limitations guidelines was not available and economically achievable for all four Louisiana plants. In addition, the Agency was unable to identify any other available and economically achievable no discharge technology that could be used as the technology basis for the effluent limitations guidelines for the wet-process phosphoric acid processes at the four Louisiana plants at the present time.

On March 12, 1986, the Agency published a Notice of Availability and Request for Comments and a Notice of Public Hearing in the **Federal Register** (51 FR 8520). This notice announced the availability of new data for the review of the BPT, BAT, and BCT effluent limitations guidelines for the four plants and requested comments on those data. The notice also announced a public hearing on the proposed amendment and on draft NPDES permits for the wet-process phosphoric acid processes at the four plants in Louisiana.

EPA has reviewed and considered the numerous and varied public comments on the proposal and held public hearings on the proposal in April 1986. Some commenters agreed with the proposal to withdraw the effluent limitations guidelines while others argued that the effluent limitations guidelines are achievable and should not be withdrawn. Subsequent to the proposal, the Agency received additional information from the Louisiana plants on the period of time the plants could stack gypsum on available land and on the costs of treating the discharge from a runoff facility.

In February 1987, Congress enacted Pub. L. 100–4—The Water Quality Act of 1987 (the "WQA"). Section 306(c) of the WQA requires EPA to issue NPDES permits for the wet-process phosphoric acid processes at the Louisiana plants by August 4, 1987. The statute does not specify the effluent limitations that are to be included in the permits, but provides that the permits be issued pursuant to section 402(a)(1)(B) of the Act. Section 402(a)(1)(B) provides for the issuance of permits, prior to the promulgation of applicable regulations, that include "such conditions as the Administrator determines are necessary to carry out the provisions of this Act." Traditionally, in cases where no nationally applicable regulations exist, EPA has relied on the language in what is now section 402(a)(1)(B) to issue permits with effluent limitations based on the permit authority's best professional judgment ("BPJ") of what is required to meet the Act's technology-based requirements.

Section 306(c) of the WQA further specifies that it: (1) Does not require the Administrator to permit the discharge of gypsum; (2) does not affect the procedures and standards applicable to issuing permits; (3) and does not affect the authority of the state to deny or condition certification of the permits.

EPA is thus confronted with a statutory duty to issue NPDES permits for the wet-process phosphoric acid processes at the Louisiana plants by August 4, 1987. EPA is convinced that it is appropriate to issue those permits on a case-by-case basis, rather than base the permits on nationally-applicable effluent limitations guidelines. The WQA's mandate to issue permits under section 402(a)(1)(B) of the Act indicates Congress' intent that EPA establish permit limitations for the wet-process phosphoric acid processes at the four Louisiana plants on a BPJ basis. Moreover, EPA has some doubt that the current effluent limitations guidelines are economically achievable for the Louisiana plants. For example, some plants state that they can not continue to meet the no discharge requirement in the guidelines because they do not have enough land to stack gypsum for an extended period. The Agency could not identify any other technology that could be used as the basis for the no discharge requirement in the guidelines at this time. In addition, current information suggests that some of the plants may not be able economically to achieve the requirement in the guidelines to treat the discharge from a runoff facility.

EPA also prefers to regulate the wet-process phosphoric acid processes at the Louisiana plants on a BPJ basis, rather than by a national regulation, because the plants are located close to each other and are subject to regulation by the same permitting authority (EPA Region VI). Although the Agency did consider establishing a separate subcategory for the Louisiana plants, there are enough differences among the plants (particularly in the amount of land available to stack gypsum) that effluent limitations guidelines for all of the plants based on a single best available technology economically achievable are not appropriate. Finally, given the short time-frame that EPA has to issue the permits, the Agency believes it is better to devote resources to the development of case-by-case technology-based limitations based on BPJ rather than use those resources to develop new effluent limitations guidelines for the wet-process phosphoric acid processes at the Louisiana plants.

Therefore, EPA considers it preferable to develop the technology-based limitations for the wet-process phosphoric acid processes at the

Louisiana plants on a case-by-case basis. In each case, the limitations in the permits will be based on a determination of the best available technology economically achievable for a plant. The permits will also include more stringent conditions if necessary to comply with state water quality standards. Those permits, which will be issued by EPA Region VI, will be subject to an administrative review separate from the administrative review for this final amendment. EPA emphasizes that withdrawal of the guidelines does not necessarily mean the Louisiana plants will be allowed to discharge gypsum to the Mississippi River.

IV. Alternative No Discharge Technologies Considered for the Final Regulation

For reasons discussed above, EPA has decided to withdraw the effluent limitations guidelines for the wet-process phosphoric acid processes at the Louisiana plants and not to issue new guidelines for these processes. However, during the review of the current effluent limitations guidelines for the phosphate subcategory, the Agency considered other technologies that might be used as the technology basis for the no discharge requirement in the guidelines for the wet-process phosphoric acid processes at the four Louisiana plants. They are:

1. Barge gypsum either up or down the Mississippi River to an alternative site for land disposal.
2. Transport gypsum via a pipeline to an alternative site for land disposal.
3. Truck gypsum to an alternative site for land disposal.
4. Reuse the gypsum.
5. Stabilize the gypsum stacks using either fly ash, cement, or lime.
6. Dispose of the gypsum slurry by underground injection.
7. Stack gypsum in the wetlands adjacent to the plants.
8. Barge gypsum to the Gulf of Mexico for ocean disposal.

The Agency concluded that none of these alternatives are both technically and economically feasible as the technology basis for the no discharge requirement for the four Louisiana plants at this time. Alternatives 1 through 3 are not economically feasible. The other alternatives are not feasible for the reasons discussed below.

Several options were investigated for the reuse of gypsum (Alternative 4). They include: (a) To construct roads, (b) to condition soil, (c) to construct levees, and (d) to produce the sulfuric acid used in the phosphoric acid production process. Options a and b appear to be feasible with some constraints. However, even if gypsum could be used for those purposes, the demand for gypsum is not high enough to use all of the gypsum produced by the Louisiana plants.

Based on the results of a preliminary investigation, the U.S. Army Corps of Engineers (COE) advised EPA that gypsum probably will be unsuitable for levee construction. The COE found that a gypsum synthetic aggregrate was inferior to the material currently used in rock dikes (i.e., shell) because of the rapid deterioration of the aggregrate in water. They also found that gypsum most likely would not be cost-effective as a construction material for sand core levees because of the distance that gypsum would have to be hauled to the construction site.

Reuse of gypsum to produce sulfuric acid has been demonstrated in other countries. If the Louisiana plants decided to install the equipment to produce sulfuric acid, that installation most likely could not be completed within the next five years. Even if the equipment was installed, the plants would still have to dispose of a large amount of material that remains after the sulfuric acid is produced.

Alternatives 5 and 6 are not technically feasible. Stabilization of the gypsum stacks requires large quantities of material and increases the weight of the gypsum stack thus increasing the likelihood of more gypsum stack failures. Gypsum slurry injected underground most likely would plug the underground injection zone and result in negative environment impacts.

Alternative 7 would be to stack gypsum in the wetlands adjacent to the Louisiana plants. The stacking of gypsum in an environmentally sensitive area would require a permit under either section 402 or section 404 of the Clean Water Act. EPA cannot determine now whether such a permit would be issued or what requirements the permit would contain if it was issued.

Alternative 8 (ocean disposal of the gypsum) would require a permit under the Marine Protection, Research, and Sanctions Act (MPRSA), 33 U.S.C. 1401, et seq. No permit has ever been issued to dump materials such as gypsum into the ocean. In addition, there is no approved site for ocean disposal of these types of materials. Furthermore, section 104(i) of the MPRSA includes special requirements for issuance of a permit for materials with low levels of radioactivity, which may include the gypsum generated in the wet-process phosphoric acid processes at the Louisiana plants. Section 104(i) requires that an applicant for such a permit must submit a detailed Radioactive Material Disposal Impact Assessment. That section also states that EPA may not issue a permit for ocean dumping of such material unless and until Congress passes a joint resolution that authorizes EPA to issue the permit. At this time, EPA's regulations do not contain requirements for site designation, packaging, and site-monitoring for ocean disposal of low level radioactive waste. However, the Agency is in the process of revising the ocean dumping regulation, which should be proposed by the end of 1987. For these reasons, EPA has concluded that ocean disposal is most likely not an available alternative for the technology basis for the no discharge requirement for the Louisiana plants. The Agency notes, however, that if a permit were issued and if an approved site were available within 100 miles of the mouth of the Mississippi River, the estimated cost for this alternative expressed in terms of dollars per ton of phosphoric acid produced would be sufficiently close to the estimated profit per ton of phosphoric acid produced to suggest that this alternative may be economically achievable on a case-by-case basis.

V. Final Amendment to the Regulation

A. BPT, BAT, and BCT Effluent Limitations Guidelines

For the reasons set forth above, EPA is withdrawing the applicability of the BPT, BAT, and BCT effluent limitations guidelines for the phosphate category to wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants in Louisiana. NPDES permits will be written for those processes on a case-by-case basis and will be based on technology-based requirements as determined by the best professional judgment of EPA and on applicable state water quality standards. EPA's Region VI issued the draft NPDES permits for those processes and will develop final NPDES permits after considering comments on the draft permits from the public and from the State and local governments.

B. New Source Performance Standards

The existing new source performance standards (NSPS) for the phosphate subcategory are not affected by this final rule. New wet-process phosphoric

acid processes at plants in Louisiana must comply with the NSPS promulgated in 1974.

VI. Public Participation and Response to Major Comments

Industry and the public participated in the development of this final amendment to the phosphate subcategory effluent limitations guidelines. Following publication of the proposed guideline amendment in the Federal Register on July 25, 1984, the Agency provided the technology support documents for the proposal in the administrative record for the proposed amendment. A copy of the record was made available to the public at EPA's Headquarters in Washington, DC and at EPA's Region VI office in Dallas, Texas. The Agency also notified the public in a Federal Register notice dated March 12, 1986, about a public hearing on the proposed guideline amendment that was held on April 10, 1986, in Baton Rouge, Louisiana. In response to requests from the public, EPA held a second public hearing on the proposed amendment on April 11, 1986, in New Orleans, Louisiana.

The Agency received 56 letters with comments on the proposed guideline amendment during the comment period for the proposal. Approximately half of the letters supported the proposed guideline amendment and approximately one-third opposed the proposal amendment. The remainder of the letters either requested a second public hearing on the proposal or provided information.

The Agency received approximately 60 comments on the proposed guideline amendment during and after the public hearings in 1986. Most of those comments opposed the proposed amendment.

The comments that supported the proposed guideline amendment include: (1) The proposal prevents groundwater contamination because the plants no longer would have to stack gypsum on the land, (2) the proposal prevents waste of wetland and farmland because gypsum would not have to be stacked on the land, and (3) the proposal prevents the plants from closing because they have no more land for the disposal of gypsum. These comments imply that if the regulation is amended the four Louisiana plants could discharge the gypsum instead of stacking it on land. The Agency's proposed guideline amendment did not authorize the discharge of gypsum. It would have excluded the wet-process phosphoric acid processes from the current requirements in the effluent limitation guidelines, which would have allowed EPA to develop a BPJ permit for each plant.

The major issues raised by the commenters who opposed the proposed guideline amendment are: (1) Reuse should be used as the technology basis for no discharge of process wastewaters, (2) the Agency does not have legal authority to change the regulation and (3) exempting the Louisiana plants from the regulation gives them a competitive advantage. The Agency's responses to those comments are presented below.

Comments were also received at the public hearings concerning the water quality impacts of the draft NPDES permits. EPA Region VI will respond to those comments as part of the process to develop the final permits for the Louisiana plants.

A. Reuse

As previously mentioned, reuse of gypsum was considered as an alternative to achieve no discharge of process wastewater pollutants. However, the reuse options are either not feasible at this time or can not be used to dispose of the quantities of gypsum generated by the Louisiana plants. For these reasons, EPA concluded that reuse can not be used as the technology basis for a generally-applicable no discharge requirement at this time. Reuse may be considered in the future when reissuing BPJ NPDES permits for the wet-process phosphoric acid processes at the Louisiana plants.

B. Legal Authority

Some commenters argued that EPA does not have the legal authority to exclude the wet-process phosphoric acid processes at the Louisiana plants from the regulation and issue the plants permits based on BPJ. EPA does not believe that the Clean Water Act requires the wet-process phosphoric acid processes at the Louisiana plants to be regulated according to nationally-promulgated effluent limitations guidelines. The Agency has the discretion to choose the appropriate regulatory approach for the four Louisiana plants. Moreover, in section 306(c) of the WQA, Congress specified that those plants be regulated by case-by-case permits. As required by the Clean Water Act, those permits will contain effluent limitations based on appropriate technology-based requirements and on applicable state water quality standards. This final rule does not exempt the wet-process phosphoric acid processes at the Louisiana plants from any substantive or procedural statutory requirements imposed by the Clean Water Act.

C. Competitive Advantage

Some commenters indicated that the four Louisiana plants would gain a competitive advantage if they were excluded from the regulation. The withdrawal of the effluent limitations guidelines does not confer either a competitive advantage or competitive disadvantage. Even though the four plants would not have to comply with the regulation, they would have to comply with the technology-based BPJ permits for those plants. Thus, the competitive advantage question cannot be answered until the requirements in the individual permits are known.

VII. Availability of Technical Information

The major documents for this final amendment to the phosphate subcategory effluent limitations guidelines are: (1) *Technical Support Document—No Discharge Alternatives for Wet-Process Phosphoric Acid Processes at Louisiana Plants* (U.S. EPA, Washington, DC, July 1987), (2) *Economic Impact Analysis for Amendment to the Phosphate Fertilizer Effluent Guidelines,* (U.S. EPA, Washington, DC, July 1987), and (3) *Response to Public Comments on the Proposed Amendment to the Phosphate Subcategory Effluent Limitations Guidelines,* (U.S. EPA, Washington, DC, July 1987).

Copies of these documents are available for public review at the EPA Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street, SW., Washington, DC and at the EPA Region VI Office, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202–2733. The Administrative Record for this final rule is available for review at the Headquarters Public Information Reference Unit and at the EPA Region VI office. The EPA public information regulation (40 CFR Part 2) allows the Agency to charge a reasonable fee for copying.

VIII. Effective Date

As noted above, this final rule is effective on July 31, 1987. This allows EPA Region VI to issue BPJ permits for the Louisiana plants within the time frame specified in section 306(c) of the WQA.

Under the Administrative Procedure Act (the "APA"), publication of a substantive rule must be made not less than 30 days before the effective date. However, the APA exempts from that requirement "a substantive rule which grants or recognizes an exemption or relieves a restriction" 5 U.S.C. 553(d)(1). Today's final rule falls within this exemption.

IX. Office of Management and Budget Review

This final rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Written comments made by OMB are in the Administrative Record for the final rule.

List of Subjects in 40 CFR Part 418

Fertilizer manufacturing, Phosphoric acid manufacturing, Water pollution control, Wastewater treatment and disposal.

Dated: July 24, 1987.

Lee M. Thomas,

Administrator.

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Preamble

Act—The Clean Water Act, as amended.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under section 304(b)(2) of the Act.

BCT—The best conventional pollutant control technology, under section 304(b)(4) of the Act.

BPJ—Best professional judgment.

BPT—The best practical control technology currently available under section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*) as amended by the Clean Water Act of 1977 (Pub. L. 95–217), as further amended.

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.

WQA—The Water Quality Act of 1987, Pub. L. 100–4.

For the reasons set forth in the preamble, 40 CFR Part 418 is amended as follows:

PART 418—FERTILIZER MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 418 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 418.10 is revised to read as follows:

§ 418.10 Applicability; description of the phosphate subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of sulfuric acid by sulfur burning, wet-process phosphoric acid, normal superphosphate, triple superphosphate, and ammonium phosphate, except that the provisions of §§ 418.12, 418.13, and 418.17 shall not apply to wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants located in the State of Louisiana.

[FR Doc. 87–17315 Filed 7–28–87; 8:45 am]

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