

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS OLDENDORF (DD 972) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 13, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS OLDENDORF (DD 972) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is

impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of section 706.2 is amended by revising the existing entry for USS OLDENDORF (DD 972) to read as follows:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS Oldendorf	DD 972	N/A	X	X	45

Dated: May 13, 1993.

William L. Schachte,

Rear Admiral, Acting Judge Advocate General of the Navy.

[FR Doc. 93-16292 Filed 7-8-93; 8:45 am]

BILLING CODE 3810-AE-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD 01-93-020]

Safety Zone: Thames River Fireworks Extravaganza, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in New London Harbor at Anchorage A, New London, CT on July 10, 1993. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from 9:15 p.m. through 10 p.m. on July 10, 1993 unless terminated sooner by the Captain of the Port. The rain date for this event is July 11, 1993 at the same times.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D. D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468-4464.

SUPPLEMENTARY INFORMATION:**Drafting Information**

The drafters of this notice are LCDR D. D. Skewes, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register Publication. The Coast Guard did not receive from the sponsor the final details concerning the event's exact location and position, which are essential information for the purposes of

establishing a safety zone, until May 28, 1993. Publishing a NPRM and delaying its effective date would be contrary to the public interest since the fireworks display is for the benefit of the public and immediate action is needed to respond to any potential hazards.

Background and Purpose

On March 26, 1993, the sponsor, Marine Commerce and Development Committee, New London, CT requested that a 45 minute fireworks display launched from three floating platforms, be permitted in the port of New London in the vicinity of New London Harbor, New London, CT. This zone is required to protect the maritime community from the dangers associated with this fireworks display. The zone covers all waters of New London Harbor within a 1000 foot radius of each of the fireworks barges YPS3 and BAY3, and a 1200 foot radius of the barge AM1, which will be anchored in Anchorage A.

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policy and Procedures (44 FR 11040; February 26, 1979). Although the shipping channel

will be closed, the event will last only 45 minutes and disruptions to commercial traffic should be few. Anchorage A is rarely used and alternate anchorages are available. Vessels requiring information concerning the alternate anchorages may contact Coast Guard Station New London on Channel 16 VHF-FM. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 16212, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they are in action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01-020 is added to read as follows:

§ 165.T01-020 Safety Zone: Thames River Fireworks Extravaganza, New London, CT.

(a) *Location.* The following area is a safety zone: All waters of New London Harbor within a 1000 foot radius of the barge YPS3 located in approximate position 41° 21' 02"N, 072° 05' 23"W; and the barge BAY3 in approximate position 41° 20' 53"N, 072° 05' 23"W, and a 1200 foot radius of the barge AM1 in approximate position 41° 20' 53"N, 072° 05' 23", the fireworks launching platforms, which will be located in Anchorage A.

(b) *Effective date.* This section is effective from 9:15 p.m. through 10 p.m. on July 10, 1993 unless terminated sooner by the Captain of the Port. The rain date for this project is July 11, 1993 at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: June 21, 1993.

Philip J. Heyl,

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

[FR Doc. 93-16318 Filed 7-8-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Parts 12, 74, 75, 76, 77, 81, 86, 99, 200, 201, 206, 208, 212, 218, 221, 222, 230, 231, 236, 237, 238, 263, 280, 282, 300, 301, 303, 305, 307, 309, 315, 316, 318, 319, 324, 327, 356, 361, 363, 376, 380, 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, 431, 432, 433, 434, 435, 436, 437, 438, 441, 460, 461, 462, 463, 464, 471, 472, 473, 474, 475, 476, 477, 489, 490, 491, 555, 562, 581, 600, 612, 617, 624, 625, 626, 627, 628, 630, 636, 637, 639, 648, 653, 654, 664, 668, 671, 674, 675, 676, 682, 690, 755, 757, 758, 762, 769, and 770

Announcement of Effective Dates

AGENCY: Department of Education.

ACTION: Notice of effective dates.

SUMMARY: Section 431(d) of the General Education Provisions Act requires that most Department of Education regulatory documents be published in the Federal Register for forty-five (45) calendar days, or longer if Congress takes certain adjournments, before they take effect. Since future congressional adjournments cannot be predicted with certainty when a document is published, the Department cannot announce a specific effective date at the time of publication. This notice announces the effective dates for certain regulatory documents subject to the delayed effective date requirement of section 431(d).

DATES: For effective dates, see "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, 400 Maryland Avenue, SW., room 5125, FOB-6, Washington, DC 20202-2241. Telephone: (202) 401-2884. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The effective date provision for each of the regulatory documents included in this notice stated that the effective date would be announced in a notice published in the Federal Register. Accordingly, this notice announces the following effective dates:

1. 34 CFR part 208, final regulations for the Eisenhower Mathematics and Science Education—State Grant Program, published May 21, 1992 (57 FR 21708).

DATES: Effective date: July 29, 1992.

2. 34 CFR parts 425, 426, 431, 432, 433, 434, 435, 436, 437, 438, 441, 460, 461, 462, 463, 464, 471, 472, 473, 474, 475, 476, 477, 489, 490, and 491, final regulations for the Adult Education and Literacy Programs, published June 5, 1992 (57 FR 24084).

DATES: Effective date: July 29, 1992.

3. 34 CFR part 201, final regulations for the Chapter 1—Migrant Education Program, published June 11, 1992 (57 FR 24751).

DATES: Effective date: July 29, 1992.

Note: Section 201.52(b)(1), (c), and (d) requiring Office of Management and Budget (OMB) approval was approved and took effect on the same date.

4. 34 CFR part 671, final regulations for the Foreign Periodicals Program, published June 12, 1992 (57 FR 24953).

DATES: Effective date: July 29, 1992.

5. 34 CFR part 212, final regulations for Even Start, published June 19, 1992 (57 FR 27556).

DATES: Effective date: August 3, 1992.

6. 34 CFR parts 361, 363, 376, and 380, final regulations for The State Vocational Rehabilitation Services Program; the State Supported Employment Services Program; Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth; and Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects, published June 24, 1992 (57 FR 28432).

DATES: Effective date: August 8, 1992.

7. 34 CFR part 690, final regulations for the Pell Grant Program, published June 25, 1992 (57 FR 28568).

DATES: Effective date: August 9, 1992.

8. 34 CFR parts 307, 309, 315, 324, and 327, final regulations for certain Office of Special Education and Rehabilitative Services discretionary grant programs, published June 29, 1992 (57 FR 28964).

DATES: Effective date: September 18, 1992.

9. 34 CFR part 664, final regulations for Higher Education Programs in Modern Foreign Language Training and Area Studies—Group Projects Abroad Program, published June 29, 1992 (57 FR 28976).

DATES: Effective date: September 18, 1992.

Note: Sections 74.75, 75.261, 75.720, and 76.720 requiring OMB approval were approved and took effect on the same date.

10. 34 CFR parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, 654, and 762, final regulations for the Education

Department General Administrative Regulations, published July 8, 1992 (57 FR 30328).

DATES: Effective date: September 18, 1992.

11. 34 CFR parts 674, 675, and 676, final regulations for the Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program, published July 21, 1992 (57 FR 32342).

DATES: Effective date: September 18, 1992.

12. 34 CFR parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428, final regulations for State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education, published August 14, 1992 (57 FR 36720).

DATES: Effective date: September 28, 1992.

13. 34 CFR parts 300 and 303, final regulations for Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers with Handicaps, published August 19, 1992 (57 FR 37652).

DATES: Effective date: October 3, 1992.

14. 34 CFR part 200, final regulations for the Chapter 1 Program in Local Educational Agencies, published August 27, 1992 (57 FR 39066).

DATES: Effective date: November 8, 1992.

15. 34 CFR part 668, final regulations for the Student Assistance General Provisions, published on August 27, 1992 (57 FR 39088).

DATES: Effective date: November 8, 1992.

16. 34 CFR parts 300 and 301, final regulations for Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities, published September 29, 1992 (57 FR 44794).

DATES: Effective date: November 13, 1992.

17. 34 CFR parts 600 and 668, final regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions, published October 19, 1992 (57 FR 47752).

DATES: Effective date: December 3, 1992.

18. 34 CFR parts 300 and 301, correction to final regulations for Assistance to States for the Education of Children with Disabilities Program, published October 27, 1992 (57 FR 48694).

DATES: Effective date: November 13, 1992.

19. 34 CFR part 769, final regulations for the Library Literacy Program, published October 30, 1992 (57 FR 49264).

DATES: Effective date: December 14, 1992.

20. 34 CFR part 639, final regulations for the Law School Clinical Experience Program, published November 3, 1992 (57 FR 49650).

DATES: Effective date: December 18, 1992.

21. 34 CFR part 555, final regulations for the Bilingual Education: Evaluation Assistance Centers Program, published November 6, 1992 (57 FR 53194).

DATES: Effective date: December 21, 1992.

22. 34 CFR parts 755, 757, and 758, final regulations for the National Program for Mathematics and Science Education, FIRST: Schools and Teachers Program, and FIRST: Family-School Partnership Program, published November 6, 1992 (57 FR 53200).

DATES: Effective date: December 21, 1992.

23. 34 CFR part 637, final regulations for the Minority Science Improvement Program, published November 18, 1992 (57 FR 54301).

DATES: Effective date: January 2, 1993.

24. 34 CFR parts 76, 81, 86, 218, 221, 222, 300, 361, and 581, final regulations containing amendments to certain program regulations to permit filing by facsimile, published November 30, 1992 (57 FR 56794).

DATES: Effective date: January 29, 1993.

25. 34 CFR parts 600 and 668, final regulations for Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions, published December 3, 1992 (57 FR 57304).

DATES: Effective date: January 29, 1993.

26. 34 CFR part 668, final regulations for the Student Assistance General Provisions, published December 17, 1992 (57 FR 60032).

DATES: Effective date: January 31, 1993.

27. 34 CFR part 682, final regulations for the Federal Family Education Loan Program, published December 18, 1992 (57 FR 60280).

DATES: Effective date: February 1, 1993.

28. 34 CFR part 12, final regulations for Disposal and Utilization of Surplus Federal Real Property for Educational Purposes, published December 18, 1992 (57 FR 60394).

DATES: Effective date: February 1, 1993.

29. 34 CFR part 206, final regulations for Special Educational Programs for

Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program, published December 18, 1992 (57 FR 60406).

DATES: *Effective date:* February 1, 1993.

30. 34 CFR parts 674, 675, and 676, final regulations for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, published December 21, 1992 (57 FR 60700).

DATES: *Effective date:* February 4, 1993.

31. 34 CFR part 280, final regulations for the Magnet Schools Assistance Program, published December 24, 1992 (57 FR 61508).

DATES: *Effective date:* February 25, 1993.

32. 34 CFR parts 316, 318, and 319, final regulations for Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers, Grants for Personnel Training, and Grants to State Educational Agencies and Institutions of Higher Education, published on December 29, 1992 (57 FR 62094).

DATES: *Effective date:* February 25, 1993.

33. 34 CFR part 682, final regulations for the Federal Family Education Loan Program, published January 7, 1993 (58 FR 3174).

DATES: *Effective date:* February 25, 1993.

34. 34 CFR part 668, final regulations for the Student Assistance General Provision, published January 7, 1993 (58 FR 3180).

DATES: *Effective date:* February 25, 1993.

35. 34 CFR part 99, final regulations for Family Educational Rights and Privacy, published January 7, 1993 (58 FR 3188).

DATES: *Effective date:* February 25, 1993.

36. 34 CFR part 282, final regulations for the Territories and Freely Associated States Educational Grant Program, published January 19, 1993 (58 FR 5174).

DATES: *Effective date:* March 5, 1993.

37. 34 CFR part 305, final regulations for Regional Resource and Federal Centers, published February 19, 1993 (58 FR 9462).

DATES: *Effective date:* April 28, 1993.

38. 34 CFR part 628, final regulations for the Endowment Challenge Grant Program, published February 23, 1993 (58 FR 11162).

DATES: *Effective date:* April 28, 1993.

39. 34 CFR part 770, final regulations for the Library Services and Construction Act State-Administered Program, published February 23, 1993 (58 FR 11166).

DATES: *Effective date:* April 28, 1993.

40. 34 CFR part 200, final regulations for the Chapter 1 Program in Local Educational Agencies, published March 1, 1993 (58 FR 11920).

DATES: *Effective date:* April 28, 1993.

41. 34 CFR parts 230, 231, 236, and 238, final regulations for Drug-Free Schools and Communities, published March 9, 1993 (58 FR 13176).

DATES: *Effective date:* April 28, 1993.

42. 34 CFR parts 600 and 668, final regulations for Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and Student Assistance General Provisions, published March 10, 1993 (58 FR 13336).

DATES: *Effective date:* April 28, 1993.

43. 34 CFR part 612, final regulations for Drug Prevention Programs in Higher Education, published May 6, 1993 (58 FR 27140).

DATES: *Effective date:* June 20, 1993.

44. 34 CFR part 630, final regulations for the Fund for the Improvement of Postsecondary Education, published May 6, 1993 (58 FR 27144).

DATES: *Effective date:* June 20, 1993.

45. 34 CFR part 318, final regulations for Training Personnel for the Education of Individuals with Disabilities - Grants for Personnel Training, published May 7, 1993 (58 FR 27440).

DATES: *Effective date:* June 21, 1993.

46. 34 CFR parts 617, 624, 625, 626, 627, 636, and 648, final regulations removing regulations, published May 14, 1993 (58 FR 28504).

DATES: *Effective date:* June 28, 1993.

47. On March 15, 1985 (50 FR 10710) the Department of Education published regulations for 34 CFR part 690—Pell Grant Program. In the EFFECTIVE DATE section, the Department stated that the final regulations, with the exception of certain sections, would take effect either 45 days after publication in the Federal Register or later if the Congress took certain adjournments. The Department stated that the excepted sections, including § 690.72, would become effective following the Department's submission and OMB approval of information collection requirements contained in those sections under the Paperwork Reduction Act of 1980. The effective date statement in the regulations is corrected to reflect the determination of OMB that § 690.72 does not contain information collection requirements subject to OMB approval. Section 690.72 therefore became effective on the same date as other provisions of the regulations not containing these requirements.

DATES: *Effective date:* April 29, 1985.

48. On July 12, 1984 (49 FR 28520) the Department of Education published

regulations for 34 CFR part 628—Endowment Challenge Grant Program. In the EFFECTIVE DATE section, the Department stated that the final regulations, with the exception of certain sections, would take effect either 45 days after publication in the Federal Register or later if the Congress took certain adjournments. The Department stated that the excepted sections, including § 628.30, would become effective following the Department's submission and OMB approval of information collection requirements contained in those sections under the Paperwork Reduction Act of 1980. The effective date statement in the regulations is corrected to reflect the determination of OMB that § 628.30 does not contain information collection requirements subject to OMB approval. Section 628.30 therefore became effective on the same date as other provisions of the regulations not containing these requirements.

DATES: *Effective date:* September 14, 1984.

Dated: June 30, 1993.

Judith A. Winston,

General Counsel

[FR Doc. 93-16213 Filed 7-8-93; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL-4677-3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Workshop for Equipment Certifiers

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop for equipment certifiers.

SUMMARY: This notice announces a public workshop concerning the certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1405 through 85.1414. EPA will conduct the workshop for prospective certifiers as well as other interested parties in order to provide and explain generic certification application formats. Recommended certification formats will be tailored for each of the two compliance options and will distinguish between exhaust aftertreatment equipment and engine-based equipment.

DATES: The workshop will be held Monday, July 19, 1993, from 10 am to 5 pm.

ADDRESSES: The workshop will be held at the EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313) 668-4200.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Technical Support Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233-9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program, intended to reduce the ambient levels of particulate matter (PM) in urban areas, is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 sets particulate matter emissions requirements for each urban bus in an operator's fleet whose engine is rebuilt or replaced; Option 2 is a fleet averaging program that sets out a specific annual target level for average PM emissions from 1993 and earlier MY urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. Emissions requirements under either of the two options depend heavily on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. Technology must be certified in order for urban bus operators to take credit for a reduction in PM provided.

The certification process outlined in the retrofit/rebuild rule is based on existing regulations for aftermarket parts certification for light-duty vehicles and trucks. However, in order for equipment to be a trigger under Option 1 for an engine model, additional information regarding cost must be submitted in the application for certification. The certifier must guarantee that the equipment will be offered for sale under

an appropriate life cycle cost ceiling to all affected urban bus operators for which the equipment is certified to be a trigger under Option 1.

In order to provide sufficient lead time for urban bus operators to make plans and procure retrofit/rebuild equipment, it is important to have certified equipment available to urban bus operators as soon as possible. For this reason, and because most potential certifiers have had no previous experience with the similar aftermarket parts certification program or the life cycle cost requirements, EPA feels it would be worthwhile to provide and explain standardized formats for meeting the rebuild/retrofit equipment certification requirements as quickly and efficiently as possible.

II. Workshop Structure

EPA will arrange the workshop agenda to provide an overview of the retrofit/rebuild program followed by a detailed explanation of the equipment certification program and the standardized certification application formats. Ample time will be allowed for questions. Specific written questions or suggestions are encouraged to be provided in advance to the Contact Person. Further, all those planning to attend are requested to notify the Contact Person in advance to facilitate our planning.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-16312 Filed 7-8-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 414

[FRL-4610-7]

RIN 2040-AB65

Organic Chemicals, Plastics and Synthetic Fibers Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating amendments limiting effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (POTWs) by existing and new sources in the organic chemicals, plastics, and synthetic fibers (OCPSF) point source category.

EPA is adding Subpart J limitations based on the Best Available Technology

Economically Achievable (BAT) and New Source Performance Standards (NSPS) for 19 additional pollutants as well as Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) for 11 of these 19 pollutants. These amendments respond to the U. S. Fifth Circuit Court of Appeals' remand decisions on the OCPSF regulation, *Chemical Manufacturers Association v. U.S. EPA*.

EPA is also correcting the criteria for designating "metal-" and "cyanide-bearing" waste streams, and is adopting two nonsubstantive formatting changes.

DATES: These regulations are effective August 23, 1993. In accordance with 40 CFR 23.2, this regulation shall be considered promulgated for purposes of judicial review at 1 p.m. Eastern time July 23, 1993.

The compliance date for PSES is as soon as possible but no later than July 23, 1996. The compliance dates for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with 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 promulgation date of today's regulation 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 supporting information and all comments and responses on this amendment to 40 CFR part 414 will be available for inspection and copying at the EPA Water Docket, room L-102, Waterside Mall, 401 M Street SW., Washington, DC 20460. For access to Docket materials, call (202) 260-3027 between 9 a.m. and 3:30 p.m. for an appointment. The basis for this amendment is detailed in the supplement to the OCPSF record which is also in the Water Docket. For additional information contact George M. Jett, Project Officer, Chemicals Branch, Engineering and Analysis Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George M. Jett, (202) 260-7151, for information regarding the technical data, and Debra Nicoll, (202) 260-5386 for information regarding the economic data. Copies of the supplemental development document and

supplemental economic analysis may be obtained by writing or calling Mr. George Jett or Ms. Debra Nicoll, respectively, Engineering and Analysis Division (WH-552), U.S. EPA, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Organization of this Document:

- I. Legal Authority
- II. Background and Rationale for Amendments
- III. New Source Performance Standards and Pretreatment Standards for New Sources
- IV. BAT Subcategorization
- V. BAT Subpart J and Corresponding Amendments
 - A. Background
 - B. Final Regulatory Amendments
 - C. Basis for Economic Analysis
 - D. Summary of Economic Impacts
 - E. Small Plant Analysis
 - F. Cost-Effectiveness Analysis
- VI. Correction of Criteria for Designating "Metal-" and "Cyanide-Bearing" Waste Streams
- VII. Nonsubstantive Format Changes
- VIII. Public Participation and Summary of Selected Responses
 - A. Scope of the Remand
 - B. Appropriate Technology Basis for New Source Standards
 - C. Appropriate BAT Subcategorization
 - D. Applicability of the Revised Pass-Through Methodology
 - E. Land Availability
 - F. Guidance for Laboratory Analysis of Complex Matrices
 - G. Guidance for the Appropriate Flow Basis for Converting Concentrations into Mass-Based Limitations and Standards
- IX. Executive Order 12291
- X. Regulatory Flexibility Analysis
- XI. Paperwork Reduction Act

I. Legal Authority

The amendments to 40 CFR part 414 described in this notice are promulgated under 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" or "CWA."

II. Background and Rationale for Amendments

EPA's explanation of the background and rationale for today's amendments are contained in the December 6, 1991 proposal (56 FR 63897), the January 21, 1992 extension of comment period and correction notice (57 FR 2238), and the December 1, 1992 notice of availability and request for comments (NOA) (57 FR 56883), as supplemented by the information and references in the following sections of this preamble and by the rulemaking record.

Briefly, these amendments respond to the U.S. Fifth Circuit Court of Appeals' remand decisions on the November 5, 1987 OCPSF regulation, *Chemical*

Manufacturers Association v. U.S. EPA, 870 F.2d 177 (5th Cir.), modified, 885 F.2d 253 (5th Cir. 1989), cert. denied, *PPG Industries, Inc. v. U.S. EPA*, 495 U.S. 910 (1990). The Court remanded three aspects of the OCPSF guideline: the New Source Performance Standards (NSPS) and the Pretreatment Standards for New Sources (PSNS) for consideration of whether zero discharge limits would be appropriate for new plants in the OCPSF industry based on recycle of wastewater; the subcategorization of the industry into two subcategories imposing differing limitations based on Best Available Technology Economically Achievable (BAT), on the ground that the Agency did not provide sufficient notice of the scheme; and limitations for 19 of the 20 BAT Subpart J pollutants that were based upon in-plant biological treatment technology (and the corresponding New Source Performance Standards (NSPS) for these pollutants, as well as 13 corresponding Pretreatment Standards for Existing Sources and Pretreatment Standards for New Sources (PSES and PSNS respectively)), on the ground that the model treatment systems used to estimate the cost of compliance had shorter detention times than the systems on which the limitations were based.

In reconsidering new source performance standards, EPA has decided not to revise the NSPS and PSNS standards that were promulgated in the OCPSF guideline because, among other things, EPA's database does not demonstrate that total recycle is a demonstrated technology.

EPA also has decided not to revise the BAT subcategorization scheme for Subpart I and Subpart J. The Agency concluded that this is the most appropriate approach for the OCPSF industry.

EPA is promulgating the same numerical effluent limitations and standards that were proposed on December 6, 1991 for the 19 remanded BAT Subpart J and NSPS pollutants and for 11 of the 13 corresponding PSES and PSNS pollutants based on revised estimates for the cost of compliance derived from revised model in-plant biological treatment system designs. Pretreatment standards for phenol and 2,4-dimethylphenol are not being promulgated because, based on the revised pass-through methodology presented in the December 1, 1992 NOA, EPA has concluded they do not pass through POTWs.

These amendments also correct the criteria for designating "metal-" and "cyanide-bearing" waste streams, and adopt two nonsubstantive formatting changes. These actions do not arise out

of the litigation; rather, they result from independent EPA review of the regulation.

III. New Source Performance Standards and Pretreatment Standards for New Sources

In the 1987 OCPSF promulgation, the Agency promulgated NSPS for all direct discharging sources based on the best available demonstrated technology, as required by CWA section 306 (52 FR at 42545). NSPS was established for the three conventional pollutants regulated under the OCPSF guideline on the basis of BPT model treatment technology, and for the 63 OCPSF-regulated priority pollutants on the basis of BAT model treatment technology. The numerical standards are equivalent to the BPT and the BAT limitations (52 FR 42545). EPA also promulgated PSNS on the same technology basis as PSES; the numerical standards for 47 priority pollutants that were determined to pass through or otherwise interfere with the operation of publicly owned treatment works (POTWs) are equivalent to the PSES standards (52 FR 42549).

The Natural Resources Defense Council (NRDC) challenged the final NSPS and PSNS standards arguing, in part, that the Agency failed to give adequate consideration to better pollution control technologies that could be used by new sources.

On March 30, 1989, the Fifth Circuit rejected all but one of NRDC's challenges to the NSPS standards and remanded the NSPS standards to EPA "for consideration of whether zero discharge limits would be appropriate for new plants in the OCPSF industry because of the existence of recycling" (870 F.2d at 264). However, the Court left the standards in place during the Agency's response to the remand (870 F.2d at 266).

The Agency has reconsidered the issues related to establishing new source zero discharge standards based on process wastewater recycle and, as proposed, has decided not to revise the existing NSPS and PSNS standards. EPA received comments from NRDC urging EPA to promulgate zero discharge standards based on recycle of process wastewater, and numerous industry comments supporting EPA's proposal to retain the existing NSPS and PSNS standards. As explained more fully in Section VIII.B., below, the Agency has concluded that it has no basis to impose a zero discharge technology-based NSPS standard on any OCPSF source, and that, even if it were to undertake an extensive data collection and technical development effort, it is unlikely EPA could impose a zero discharge standard

on more than a few of the 25,000 product/processes in the OCPSF industry. First, the "concentration-based" approach which forms the framework of the OCPSF guideline limits the opportunities for the promotion of recycling and re-use of wastewater through a national guideline, in contrast to the "mass-based" approach adopted in other guidelines. The Agency explicitly recognized this limitation during the guideline development process, but opted for this approach nonetheless because it provided the basis for a guideline with more expansive coverage. This was a rational regulatory decision made by the Agency. Moreover, because the OCPSF record was imprecise with regard to its use of the term "recycle," both NRDC and the Fifth Circuit in its remand order misinterpreted the support in the database for zero discharge through recycling. In fact, the record contains very few reports of complete recycle and does not demonstrate that recycle is a demonstrated technology on which EPA can base a zero discharge standard.

IV. BAT Subcategorization

The original OCPSF guideline had two technology-based BAT subcategories for the control of toxic pollutants: one for any direct discharge point source that uses end-of-pipe biological treatment or installs end-of-pipe biological treatment to comply with BPT effluent limitations (Subpart I, § 414.90), and one for any direct discharge point source that does not use end-of-pipe biological treatment or does not install end-of-pipe biological treatment to comply with BPT effluent limitations (Subpart J, § 414.100). Subparts I and J set limits for 63 and 59 pollutants, respectively. Of the 59 Subpart J Maximum for Monthly Average limitations, 9 are identical to, 20 are more stringent than, and 30 are less stringent than the corresponding Subpart I limitations.

As explained in the proposal, EPA established this scheme based, in part, on its conclusion that there are plants in the OCPSF industry whose wastewaters have such low levels of Biochemical Oxygen Demand (BOD) that they will not be able to operate biological treatment systems effectively and do not need biological treatment systems to comply with the BPT BOD effluent levels (56 FR at 63899). Biological treatment systems rely on microorganisms to biodegrade or "eat" the organic pollutants in the wastewater. BOD, a measure of the organic pollution strength in water or wastewater, is determined by measuring

the oxygen used by microorganisms to oxidize or "eat" the organic contaminants of a sample. Consequently, BOD measures the amount of substrate or "food" available for the survival of microorganisms (*id.*). Biological treatment systems therefore require sufficient BOD levels to operate (*id.*).

NRDC challenged the BAT subcategorization scheme in the litigation over the OCPSF guideline, arguing that the Agency had failed to present its BAT subcategorization scheme for comment and also asserting that this type of BAT subcategorization violated the CWA because it allowed a discharger who chooses not to employ end-of-pipe biological treatment to be subject to fewer and less stringent BAT Subcategory J limitations, rather than the more stringent Subcategory I limitations which apply to plants with end-of-pipe biological treatment systems. NRDC also argued that, if it had had an opportunity to comment, it would have urged EPA to establish a raw waste BOD "floor" above which plants would not be able to qualify for Subpart J, or to limit the applicability of Subpart J to those categories of OCPSF production that tend to have low raw waste BOD levels (NRDC 6/30/88 Brief at 54).

On March 30, 1989, the Fifth Circuit Court of Appeals, without ruling on NRDC's substantive arguments, remanded the BAT subcategorization of the industry for notice-and-comment proceedings. The Court left the scheme in effect pending further rulemaking, reasoning in part that the notice-and-comment proceedings may disclose that the BOD floor urged by NRDC is neither necessary nor feasible (870 F.2d at 236).

The Agency has reconsidered the issues related to revising the BAT subcategorization scheme or otherwise limiting the applicability of Subpart J and has decided not to revise the existing scheme. The scheme accommodates the complexity of the industry and encourages source control and rational waste management decisions. In addition, EPA does not believe revision of the scheme is necessary. Plants must comply with low BPT limits, and plants that need to achieve significant BOD reductions will generally install biological treatment because other treatment alternatives are significantly more expensive. EPA does not believe plants' treatment decisions will be motivated by the desire to be subject to Subpart J. In any event, Subpart J is not significantly less stringent than Subpart I.

Moreover, the Agency does not have a technical basis to determine which

plants can sustain biological treatment because of the lack of a theoretical BOD floor for sustaining biological treatment and the great variability of OCPSF production and wastewater characteristics. For these reasons, as explained more fully in response to NRDC's comments, below, in the 1991 proposal, and in the rulemaking record, the Agency has decided not to establish a BOD floor or otherwise limit the applicability of Subpart J.

V. BAT Subpart J and Corresponding Amendments

A. Background

In the 1987 OCPSF guideline, EPA promulgated toxic pollutant effluent limitations based on the two subcategory scheme described in Section IV above. Subpart J established direct discharge toxic pollutant limitations for plants that comply with BPT limitations without the use of end-of-pipe biological treatment or contract hauling. The Subpart J toxic pollutant numerical limitations were based on the performance of in-plant wastewater treatment technology including steam stripping to remove volatile priority pollutants, chemical precipitation for metals, alkaline chlorination for cyanide, and in-plant biological treatment for removal of selected priority pollutants including polynuclear aromatics, phthalate esters, acrylonitrile, phenol, and 2,4-dimethylphenol (52 FR 42538-45; Final "Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics, and Synthetic Fibers Point Source Category," (EPA 440/1-87/009), October 1987 (hereafter referred to as 1987 DD), Vol. I, pp II-8 to 11).

Numerical standards for 20 of the Subpart J pollutants were based on the performance of three biological treatment systems with detention times of 1.6, 3.5, and 17.2 days. In contrast, detention times between 1 and 2.1 days were used to estimate the costs of compliance based on the model in-plant biological treatment systems (1987 DD, p VIII-189; R.93970-4020; EPA 9/23/88 Response Brief at 244-59).

The Chemical Manufacturers Association (CMA) challenged the Subpart J limitations based on in-plant biological treatment arguing, in part, that the plants used by EPA to derive the limitations based on in-plant biological treatment have more treatment in place than EPA's model treatment technology used to estimate costs of compliance and that EPA therefore significantly underestimated the costs of installing in-plant biological

treatment (CMA's 4/25/88 Brief at 58-76).

After the Fifth Circuit initially upheld these Subpart J limitations (870 F.2d at 240-42), CMA petitioned for reconsideration, again arguing, in part, that the Agency underestimated the costs of compliance due to the differences between the detention times of the plants that provided the basis for the numerical standards and the detention times of the model technology that provided the basis for estimating the engineering costs of compliance (CMA's 5/3/89 Brief on Petition for Rehearing, pp 8-11). The Court concluded that the detention time was a key variable in determining the effectiveness of biological treatment and that EPA had failed to demonstrate a reasonable basis to conclude that biological systems with a 1 or 2.1 day detention time would control pollutants as effectively as the biological systems with the 3.5 and 17.2-day detention times (885 F.2d at 265).

The Court remanded limitations for the Subpart J pollutants based on the two plants with these longer detention times. In a June 29, 1990 revocation notice (55 FR 26691), the Agency withdrew the BAT limits for the 19 of the 20 Subpart J limits that were based on these two plants. EPA left in effect the limitations for acrylonitrile, which were based upon the treatment system with the 1.6 day detention time. In this notice EPA also withdrew the 19 corresponding NSPS standards, and the 13 corresponding PSES and PSNS standards that were based on the remanded Subpart J limits.

The remand was based on the discrepancy between the detention times of the systems that provided the technical basis for the Subpart J limits and the detention times of the costed model in-plant systems, and not on the technical achievability of the limits generally. EPA therefore proposed on December 6, 1991 and January 21, 1992 the same numerical standards with revised estimates of costs of compliance. The revised compliance costs were based on revised model in-plant biological treatment systems with increased detention times as a function of reported or projected raw waste toxic pollutant concentrations.

A large number of the comments on the proposal challenged EPA's determination in the original 1987 OCPSEF promulgation that phenol—one of the 13 pollutants for which pretreatment standards were remanded—passes through POTWs. Several comments raised the same issue with respect to 2,4-dimethylphenol—another of the 13 pollutants. Based on

EPA's assessment that these comments had merit, EPA announced in a notice of availability (NOA) published in the *Federal Register* on December 1, 1992, that it was considering revising its determination that phenol and 2,4-dimethylphenol pass through POTWs, based on a proposed modification to the Agency's traditional pass-through methodology (57 FR 56883). The revised methodology as proposed applied scientific and engineering judgment in conjunction with biological treatment performance data to determine that phenol and 2,4-dimethylphenol do not pass through POTWs.

EPA collected additional POTW phenol removal data and reviewed it in conjunction with the data that EPA used in the 1987 pass through analysis, and performed a chemical and engineering assessment of the fate of phenol and 2,4-dimethylphenol in biological treatment systems. EPA has concluded that these pollutants are highly biodegradable and that the removals of these pollutants achieved by POTWs are essentially equivalent to those achieved by direct dischargers. In addition, since phenol and 2,4-dimethylphenol are low volatility pollutants, the removals achieved by POTWs do not simply result from the transfer of the pollutants to the air.

Based on these conclusions, today's amendments are based on revised engineering costs of compliance and pollutant loading reductions for 11 of the 13 remanded pollutants. Final pretreatment standards for phenol and 2,4-dimethylphenol are not being promulgated today because the Agency has concluded they do not pass through POTWs.

B. Final Regulatory Amendments

As explained above, EPA is adding PSES and PSNS standards for 11 additional pollutants in the table appearing in the new § 414.111 (see Section VII). The 11 pollutants are acenaphthene, anthracene, bis(2-ethylhexyl) phthalate, di-n-butyl phthalate, diethyl phthalate, dimethyl phthalate, fluoranthene, fluorene, naphthalene, phenanthrene, and pyrene.

EPA is adding BAT and NSPS limitations and standards for 19 additional pollutants in the table in § 414.101. The 19 pollutants are acenaphthylene, benzo(a)anthracene, benzo(a)pyrene, 3,4-benzofluoranthene, benzo(k)fluoranthene, chrysene, 2,4-dimethylphenol, phenol, and the 11 pollutants listed in the previous paragraph.

C. Basis for Economic Analysis

The economic analysis of today's final BAT and PSES limitations is based on revised compliance costs for the same BAT numerical limitations and, with the exception of phenol and 2,4-dimethylphenol, for the same PSES numerical standards that were promulgated in 1987 and proposed in December 1991. Phenol and 2,4-dimethylphenol are not regulated under PSES because EPA has determined that they do not pass through POTWs (see Section V.A.).

EPA has revised its costing analysis in response to comments by CMA that the Agency underestimated the costs of compliance because the technical data base was not revised to reflect the information gathered in EPA's April 1991 survey of the 84 direct discharge plants that did not report the use of end-of-pipe biological treatment in the original OCPSEF CWA Section 308 survey. The principal changes based on the April 1991 survey reflect the shift in discharge status for 14 plants from direct to indirect discharge and the revised projection that 47 rather than 23 plants are subject to the BAT Subpart J limitations (May 1993 Supplement to the Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category, (EPA 821-R-93-007)). These changes are reflected in the economic analysis performed by EPA, described below. The changes do not materially affect EPA's analysis, nor do they affect the determination that today's rule is economically achievable.

In response to the remand of the Subpart J limitations, EPA considered whether the limitations are economically achievable given the revised compliance costs. The Agency's analysis of the revised costs parallels the economic analysis conducted for the 1987 rulemaking. The methodology for that analysis was described in the preamble to the 1987 final rule (52 FR 42550) and in the Agency's economic impact analysis that was published in support of that rule ("Economic Impact Analysis of Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Industry," (EPA 440/2-87-007), September 1987). The economic analysis for today's final rule is documented in a report: "Re-Evaluation of the Economic Impact Analysis of Effluent Limitations Guidelines for the Organic Chemicals, Plastics, and Synthetic Fibers Industry," May 1993. This report is available from

EPA; see the contacts identified at the beginning of this notice.

EPA undertook a revised plant impact analysis, a revised regulatory flexibility analysis, and a revised cost-effectiveness analysis to evaluate the effects of the final compliance costs. The plant impact analysis is the primary basis for evaluating economic achievability. The regulatory flexibility analysis provides information to determine whether small plants are disproportionately affected by the revised costs. The cost-effectiveness analysis provides information about the relative efficiency of the control option selected for reducing pollutant discharges.

The methodology for assessing plant impacts is the same as was used for the 1987 final rule. The impact of the compliance costs on OCPSF plants was evaluated using the following criteria: total annualized cost of the treatment technology, potential plant closures, potential product line closures, significant sales or profit impacts, and the job losses associated with closures. Additional information regarding the calculation of these impact measures and their significance is found in the economic impact analysis prepared for the 1987 final rule.

D. Summary of Economic Impacts

The costs used to evaluate today's final rule are based on the capital and annual operating costs of the model treatment technology, as described in the May 1993 final "Supplement to the Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category." In the following discussion, all cost estimates are reported in 1986 dollars to facilitate comparisons to the 1987 promulgated rule. Cost estimates in that preamble were reported in 1986 dollars.

For approximately 265 direct dischargers for which EPA has estimated compliance costs, the total annualized costs of the OCPSF guideline, as amended, are \$231.1 million. This is a \$6.9 million (3.1 percent) increase over the cost of the rule as promulgated in 1987. However, today's rule results in fewer incremental impacts (i.e., plant closures, product line closures, or employment losses) than those estimated for the 1987 promulgation. Two of the plants that were projected to close under BAT in 1987 were among the 14 plants that switched their discharge status to indirect and are now projected to close as indirect discharge plants under today's rule. The Agency estimates that

9 OCPSF direct discharging plants or product lines may close as a result of the compliance costs imposed by today's rule. These closures represent 3 percent of all direct discharging plants. For the 1987 rule and the 1991 proposal, the Agency estimated that 11 OCPSF plants or product lines would close as a result of the compliance costs. The employment reduction associated with the closures for today's rule is 1,060 (0.6 percent of total OCPSF employment).

For approximately 380 indirect dischargers for which EPA has estimated compliance costs, the total annualized costs of the OCPSF guideline, as amended, are \$254.4 million. This is a \$50.1 million (24.5 percent) increase over the cost of the rule as promulgated in 1987. Today's final cost estimate is \$7.0 million (2.8 percent) higher than the costs estimated for the December 1991 proposed rule; the net change in estimated costs reflect the shift in discharge status for 14 plants that were direct discharge facilities in 1987 but now discharge to POTWs, and the exclusion of phenol and 2,4-dimethylphenol in the final pretreatment standards. Overall, plant impacts for indirect dischargers increase slightly when compared to the 1987 and 1991 results. Sixty (60) plant and product line closures are projected to result from compliance with the OCPSF guideline as amended by today's rule. As originally promulgated, the number of plant and product line closures was 52. For the 1991 proposal, the estimate of plant and product line closures was 56. (Two of the additional four closures over the 1991 estimate result from the switch to indirect discharge status of two direct discharging plants that were projected to close.) When expressed in percentage terms (relative to the number of indirect dischargers), the closure rate for today's final pretreatment standards is 16 percent; at promulgation in 1987, the closure rate for indirect dischargers was 14 percent. The employment reduction associated with the closures for today's rule is 2,946, which is an increase (of 0.4 percent of total OCPSF employment) from 2,190 at the 1987 promulgation.

The Agency finds that the impacts imposed by the revised compliance costs for both BAT and PSES are not significantly different from the impacts projected in 1987, and that today's amendment is economically achievable.

In addition, EPA received comments that its approach understates the actual cost of compliance with today's rule. EPA disagrees and believes the costs it has presented are an accurate industry-wide estimation of compliance costs. However, EPA has conducted two

sensitivity analyses examining the projected impacts of increased compliance costs with today's rule, one which doubled the projected costs of compliance, and one based on assignment to individual plants of additional treatment unit operations that commenters claimed would be required (see Response to Comments Section of the Public Record). These highly conservative sensitivity analyses project one additional and four additional plant closures, respectively, which EPA finds would still be economically achievable. EPA believes that the closures estimated using the sensitivity analyses overstate the actual closures that will result from compliance with today's rule.

E. Small Plant Analysis

A regulatory flexibility analysis addresses the burden of regulatory actions on small entities. For today's final regulation, as in the 1987 final rule, the regulatory flexibility analysis examined whether small plants, as defined by a plant production threshold of 5 million pounds, were disproportionately affected by the regulation. The assessment includes consideration of plant and product line closures and profit and sales impacts. The assessment reflects the shift in discharge status for 14 plants, the revised compliance costs, and, for indirect discharge plants, the exclusion of phenol and 2,4-dimethylphenol from the PSES standards, as explained in Section V.C., above.

In the 1987 final rule, based on its small plant analysis, EPA set BAT equal to BPT for plants whose annual OCPSF production is less than or equal to 5 million pounds (52 FR 42539); EPA did not establish different PSES for any sector of indirect dischargers (52 FR 42548).

At promulgation in 1987, the Agency projected that 79 percent of the small direct discharging plants would be affected by plant or product line closures or profit or sales impacts; for today's rule, 77 percent of the small direct discharging plants are projected to be affected.

At promulgation in 1987, 61 percent of the small indirect discharging plants were projected to be affected; for today's rule, 63 percent of the small indirect discharging plants are projected to be affected by plant or product line closures or profit or sales impacts.

These plant impacts on small direct and indirect dischargers are not significantly different from the impacts evaluated for the 1987 final rule, and the basis for establishing BAT and PSES, as presented in the 1987 final

rule, is unchanged by the revised economic analysis. Thus, there is no change in the small plant analysis findings.

F. Cost-Effectiveness Analysis

EPA conducted a cost-effectiveness analysis for the 1987 final rule and reported the results in the preamble and in supporting documents. EPA's cost-effectiveness analysis compares the incremental cost of a control option (in 1981 dollars) to the pounds of pollutants removed by the control option, where those pounds are weighted by their relative toxicity. Additional descriptions of the cost-effectiveness methodology are found in the preamble to the 1987 final rule (52 FR 42552) and in a document included in the administrative record for that rule: "Cost-Effectiveness Analysis for the Organic Chemicals, Plastics, and Synthetic Fibers Industry," September 1987 (R. Sec. VI-11, pp 5155 to 98).

For today's final rule, EPA recalculated the cost-effectiveness ratios for BAT and PSES using the revised compliance costs and revised pollutant removal data to account for the exclusion of phenol and 2,4-dimethylphenol in the final pretreatment standards. The cost-effectiveness of the OCPSF BAT limitations, as amended, is \$4 per pound equivalent removed. The cost-effectiveness of the OCPSF PSES standards, as amended, is \$39 per pound equivalent removed.

The cost-effectiveness of the BAT limitations as amended is virtually the same as the result reported for the 1987 final rule. The notice of proposed rulemaking in December 1991 stated that as part of the assessment for publishing the final rule, EPA would consider the cost-effectiveness ratio of BAT Subpart J (56 FR 63905). The result of that calculation is a cost-effectiveness ratio of \$6 per pound equivalent removed for the final BAT limitations for Subpart J direct dischargers. The cost-effectiveness ratio for Subpart I direct dischargers is, when examined separately, \$4 per pound equivalent removed.

The cost-effectiveness ratio of PSES, as amended, is \$39 per pound equivalent removed; this result is comparable to the \$38 cost-effectiveness ratio reported in the December 1991 proposal. The result reported for the 1987 final rule was \$34 per pound equivalent removed. The cost-effectiveness of PSES as amended is not significantly different from the cost-effectiveness of PSES as originally promulgated.

VI. Correction of Criteria for Designating "Metal-" and "Cyanide-Bearing" Waste Streams

To control chromium, copper, lead, nickel, zinc, and total cyanide, the 1987 OCPSF guideline established concentration-based limitations that apply only to metal-bearing or cyanide-bearing waste streams. Other waste streams have a zero discharge allowance for these pollutants. EPA listed the product/processes considered to have metal-bearing or cyanide-bearing process wastewater in Appendix A of the regulation. However, EPA recognized that at some sites process wastewaters not listed in Appendix A may contain significant levels of metals or cyanide. In such cases, EPA intended for the regulations to authorize the permit writer or control authority to designate such waste streams as "metal-bearing" or "cyanide-bearing" on a case-by-case basis and to apply the concentration limitations set forth in the regulation to these waste streams.

The 1987 final regulation included language intended to require separate treatment of Appendix A waste streams and waste streams designated as metal-bearing or cyanide-bearing on a case-by-case basis, unless combination of such waste streams prior to treatment would result in substantial reduction of the metals or cyanide contained in the waste streams. The requirement was intended to prevent facilities from combining waste streams containing different metals prior to treatment, thereby complying, in whole or in part, with the promulgated limits through dilution rather than through treatment. However, as promulgated, the regulation incorrectly provided that a non-Appendix A waste stream, even if it contained significant quantities of metals or cyanide, could not be designated as metal-bearing or cyanide-bearing unless the combination of such waste stream with an Appendix A waste stream prior to treatment would result in substantial reduction of the pollutants. In other words, the prohibition against combined treatment inadvertently appeared as an independent restriction on the designation of non-Appendix A waste streams as "metal-bearing" or "cyanide-bearing," rather than a restriction on how those streams must be treated once they have been determined to be metal- or cyanide-bearing. The Agency did not intend to narrow the scope of waste streams that can be designated as metal- or cyanide-bearing, and intends that any waste streams with significant levels of metals or cyanide should be regulated as metal-bearing or cyanide-bearing,

respectively. The Agency is adopting the proposed revision that correctly reflects EPA's intent to restrict combined treatment, rather than to narrow the scope of metal-bearing and cyanide-bearing waste streams.

VII. Nonsubstantive Format Changes

The Agency is adopting the two nonsubstantive formatting changes that were proposed to improve the organization and utility of 40 CFR part 414 (56 FR 63904). First, the Agency is revising the order of the toxic pollutant listings in the regulatory tables to list the limitations and standards alphabetically by pollutant name. Second, the Agency is deleting multiple listings of the same table. With the exception of the footnotes for the zinc pretreatment standards in the tables for §§ 414.25 and 414.35, each of the tables in §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85 is identical. To consolidate the regulation, the Agency is adding Subpart K to list the pretreatment standards in one table with introductory text and an appropriate footnote for zinc (identical to Footnote 2 to the table in § 414.101), and deleting the tables of pretreatment standards and a portion of their introductory text from §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85. Appropriate references to Subpart K are replacing the tables in §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85. EPA is making corresponding changes to §§ 414.26, 414.36, 414.46, 414.56, 414.66, 414.76, and 414.86, so that both the PSES and PSNS regulations correctly refer to the consolidated table, rather than to the former, separate tables.

VIII. Public Participation and Summary of Selected Responses

The Agency received comments from 28 separate commenters on the December 6, 1991 proposal and January 21, 1992 extension of the comment period. These included three trade associations, two POTWs, 22 individual companies, and NRDC. The Agency received comments from 26 separate commenters on the December 1, 1992 NOA. These included four trade associations, four POTWs, the City of Philadelphia, and 17 individual companies.

The Agency's responses to comments are contained in the "Comment Summary and Response" section of the rulemaking docket. This section presents the Agency's responses to the principal comments relating to the remand issues. In addition, this section provides guidance in response to two

general OCPSP implementation issues raised in the public comments.

A. Scope of the Remand

Contrary to the assertions of CMA and other commenters (including ICI Americas, Inc., the Eastman Chemical Company (Kodak), Union Camp Corporation, and Allied-Signal, Inc.), EPA believes it correctly interpreted the Fifth Circuit's remand as limited to the re-costing of in-plant biological treatment systems based on the detention times used by the end-of-pipe systems on which the Subpart J limitations and corresponding pretreatment standards were based, and to the land availability issues associated with the larger systems EPA has costed (56 FR at 63903). The Court originally upheld the limits based on in-plant biological treatment, rejecting all of CMA's and other petitioners' arguments and concluding that the petitioners "have failed to demonstrate that end-of-pipe biological treatment systems are sufficiently different to make EPA's reliance on end-of-pipe data irrational" (CMA v. EPA, 870 F.2d at 240 (emphasis added)). As explained in Section V.A., above, the Court remanded 19 of the 20 BAT Subpart J limits on rehearing, based on the fact that the two plants used to derive those 19 limits had treatment systems with detention times that were significantly longer than the detention times of the model in-plant systems costed by EPA (CMA v. EPA, 885 F.2d at 265). The Court concluded that EPA had not adequately demonstrated that variation of other features of a plant's biological treatment system, such as the concentration of biodegrading organisms (MLVSS), could compensate for the shorter detention times. On this basis, the Court concluded that EPA "failed to demonstrate a reasonable basis for its conclusion that in-plant treatment can eliminate pollutants as effectively as the end-of-pipe systems of Plants 1293T and 948F [the two plants with the long-detention-time treatment systems]" (*id.*). EPA has fully addressed the remand by recosting the limits in question by projecting the cost of installing in-plant biological systems with the same detention times as the end-of-pipe systems on which the limits were based.

The commenters argue that the Court's remand requires a broader examination and demonstration of the technical achievability of the limits. First, they point out that the Court's remand language was not expressly limited to cost, but rather stated that EPA "failed to demonstrate" that in-plant biological treatment systems "can remove pollutants as effectively as the

end-of-pipe systems of Plants 1293T and 948F" (*see, e.g.*, CMA comment at 15). The commenters thus conclude that the Court's remand re-opened the general issue of whether EPA rationally relied on data from end-of-pipe biological treatment systems to establish limits for which the model treatment technology is in-plant biological treatment (*id.* at 16). Commenters raise numerous arguments related to the technical achievability of the limits generally, focusing largely on purported differences between the in-plant model technology and the end-of-pipe systems on which the limits are based, and on the purported differences between in-plant and end-of-pipe waste streams (*see, e.g.*, *id.* at 16-38).

The commenters' reading of the remand is wrong. The Court remanded only the limitations based on the two plants with the end-of-pipe treatment systems that had significantly longer detention times (3.5 and 17.2 days) than the model systems costed by EPA. The Court left in place the limitations for acrylonitrile, which were based on the end-of-pipe biological treatment system with the shorter detention time (1.6-day) that was within the range of detention times (1-2.1 days) used to estimate the cost of compliance for the model treatment systems (885 F.2d at 253; *see also* January 3, 1990 Settlement Agreement between CMA and EPA (agreeing that remand left in place limitations for acrylonitrile)). Had the Court generally rejected EPA's approach of establishing limits based on end-of-pipe treatment systems, it would have remanded all of the Subpart J limits and analogous pretreatment standards. It is clear from the scope of the remand and the Court's discussion that it remanded the 19 Subpart J limits and 13 analogous PSES standards based solely on the discrepancy in detention times between the costed model treatment systems and the two end-of-pipe systems. That is to say, the Court concluded that EPA had not demonstrated the achievability of the limits only in the sense that EPA had not demonstrated that the short-detention-time systems it costed could achieve the same removals as the longer-detention-time systems on which it based the limits. The Court's remand based on the limited issue of detention time did not otherwise negate its earlier determination that in-plant and end-of-pipe systems were not "sufficiently different" to make EPA's approach irrational (870 F.2d at 240). By recosting the model in-plant technology based on the longer detention times employed at Plants 1293T and 948F, EPA has fully addressed the only basis for the remand.

CMA in addition argues that the Court's remand should be interpreted as re-opening the technical achievability of the limits generally on the ground that CMA's challenges to the limits in comments during the original OCPSP rulemaking and in litigation raised issues relating to technical achievability generally (CMA Comments at 13-15). CMA points out, among other things, that it cited in litigation a number of concerns regarding the feasibility and effectiveness of in-plant biological treatment (*id.* at 13). However, the scope of the Court's remand, of course, is determined by the Court's decision, not by the issues raised by the litigants. The Court considered CMA's arguments and rejected them on the grounds that in-plant and end-of-pipe biological systems are not appreciably different (270 F.2d at 240). On reconsideration, the Court remanded the limits based solely on the discrepancy in detention times (285 F.2d at 265). It is clear that, aside from this single issue, the Court considered and rejected the range of arguments raised by CMA.

CMA and a number of other commenters raise essentially the same achievability arguments in this rulemaking as they had raised in their challenge to the 1987 OCPSP guideline. In addition to pointing out the discrepancy in detention times between the costed and the end-of-pipe systems, CMA argued extensively before the Fifth Circuit that the end-of-pipe systems involved more extensive treatment (including pre- and post-biological treatment and equalization for flow and concentration) than the costed system (*e.g.*, CMA Brief at 51-60), and that the influent to in-plant biological systems would have different characteristics (specifically, that it would have higher influent concentrations) than the influent to end-of-pipe systems (CMA Reply brief at 58 n.108, 62 n.13).

In addition, CMA and other commenters raise in comments now the same kinds of costing issues arising from their technical critique as they did in their challenge to the 1987 OCPSP guideline (*see, e.g.*, CMA Brief at 56 n.94, CMA Reply Brief at 61 n.112 (EPA has grossly underestimated cost of compliance and economic impacts because it did not cost sufficiently extensive treatment systems)). These issues have been litigated and decided in EPA's favor, and were not re-opened by the Court's remand. Rather, the issues opened by the remand are whether EPA has accurately re-costed the model in-plant technology to reflect the longer detention times assigned to the plants and whether EPA has

adequately accounted for land availability.

EPA has exhaustively addressed the technical and related costing issues raised by the commenters during the OCPSF rulemaking and litigation. Nevertheless, EPA has again addressed these issues raised by CMA and other commenters in the response to comments document accompanying today's rule, but it does not thereby concede that the issues raised are within the scope of the Court's remand or waive its position that the issues addressed are not open to further challenge in future litigation (see *Natural Resources Defense Council, Inc. v. Thomas*, 838 F.2d 1224, 1252 (D.C. Cir. 1988)).

B. Appropriate Technology Basis for New Source Standards

NRDC in its comments challenges the sufficiency of EPA's response to the Court's remand of NSPS. Contrary to NRDC's suggestion, EPA did take a "hard look" at the practicability of imposing a zero discharge NSPS and concluded that the administrative record for the guideline does not support recycle as a demonstrated technology for the promulgation of a technology-based NSPS zero discharge standard within the OCPSF industry. Simply put, recycle of wastewater is not a zero discharge technology. It is a water conservation method that may be implemented on a plant-by-plant basis—and is widely used in the OCPSF industry—but rarely, if ever, results in zero discharge.

EPA thoroughly reviewed its database and performed a detailed technical analysis of the potential candidates for zero discharge standards, and identified only three products—out of 25,000 in the industry—that held the potential to achieve zero discharge based on total recycle of process wastewater. (Technically, even for these products, EPA does not believe that zero discharge can be based on recycle alone since, as explained in the proposal, wastewater that is vacuum stripped from the reaction vessels must be partially evaporated before it can be recycled back to the reaction vessel (56 FR 63909)). As EPA explained, the record does not disclose the means actually employed to achieve zero discharge at the plants reporting zero discharge for these products (*id.*). Thus, even for these three products, EPA does not have a technical basis to impose a zero discharge NSPS.

Overall, NRDC faults EPA for not undertaking a major new data collection and technical development effort in response to the remand. The commenter

argues that EPA improperly rejected the imposition of zero discharge NSPS on the ground that it was impracticable for EPA to develop such standards, whereas the proper inquiry, they assert, is the practicability to the industry of achieving zero discharge. However, NRDC ignores EPA's point that, within the OCPSF industry, recycle is not a "technology" that can be applied across a range of OCPSF production, but, rather, is the result of a range of water use practices and process modifications that are practicable to a greater or lesser extent for individual product/processes (56 FR at 63907).¹ Recycle can be broadly divided between general water conservation practices—such as recycle of vent or air scrubber water—and recycle of water that is actually used in or generated from chemical reactions at a plant. This latter category can be further divided into recycle within individual processes and recycle of combined waste streams back into one or more processes (*id.*). Water in the first category is generally used to remove a substance from a medium, e.g., in an air pollution control device, to remove hydrochloric acid from the emissions from a reactor vessel. This type of recycle never results in zero discharge because the recycled water becomes progressively more saturated with the by-products or contaminants it is removing and must be released through a "blowdown" and replaced by clean water in order to perform its function (*id.*). The frequency of blowdown and quantity released is highly dependent on the specific process and the function of the water.

The second general category of recycle will seldom, and only under plant-specific circumstances, achieve zero discharge. Wastewater virtually always contains contaminants that, except in very rare cases, will prevent complete recycle (*id.* at 63908–09). As water is recycled, it becomes progressively more contaminated and, in almost all circumstances the Agency is aware of, will have to be released and replaced periodically or progressively. The extent to which recycle can be employed, and the frequency and quantity of discharge, will vary greatly from one product/process to another, depending on the types and amounts of

¹ In this respect, EPA disagrees with industry commenters who suggested that total recycle is not demonstrated because it is used by only 0.012% of the industry, e.g., CMA at 52. The application of a technology by a single industry plant, or even a pilot plant, might well provide a demonstrated basis for NSPS. EPA has concluded that total recycle is not demonstrated not simply because there are so few examples of it, but because the few examples are not transferable to the manufacture of other products.

contaminants in the wastewater, the sensitivity of the product/process to contamination, the grade of product required by a manufacturer's customers (the more contaminated the water input to a process, the lower the grade product that will be produced), and other factors (*id.*)

In general, OCPSF products are produced through chemical reactions in reaction vessels that are carefully maintained to maximize production of the desired product. Chemical processes almost never convert 100 percent of raw materials into the desired product; they inevitably result in the manufacture of by-products because there are a variety of "reaction pathways" which result in a variety of outputs of the chemical reaction. Depending on the nature of the by-products produced and a given facility's operations, the facility may be able to use some of the by-products in other processes or sell them; some of the by-products may need to be disposed of. In order to minimize production of undesirable by-products, as well as low grade products and "off-spec" products that may require disposal, OCPSF facilities typically "fine tune" the operations of reaction vessels by controlling the purity of raw material inputs, the physical condition of the chemical species (gas, liquid, or solid state), method of adding and mixing the reactants, temperature, pressure, the mix and quantities of solvents and catalysts, and the configuration of the process equipment. The appropriate balance of these factors will favor a particular reaction pathway and maximize the conversion of the raw materials into the desired product, thus minimizing the amount of raw material that is wasted or used inefficiently by being converted into undesirable by-products.

The chemical reactions used to produce the 25,000 OCPSF products are extremely complex and varied, and the complexity increases as the purity of the raw material inputs decreases (e.g., through recycle of concentrated, contaminated wastewater). The addition of impurities can affect chemical processes in ways that are difficult to predict. As explained in the proposal, the attempt to develop a zero discharge NSPS would require a detailed study and technical development effort on a product/process-by-product/process basis to determine the feasibility and effects of wastewater recycle. This type of major research and development effort is far beyond the scope of what EPA can practicably accomplish, and far beyond the inquiry into available technologies that EPA has taken in past guideline development efforts.

Moreover, virtually all chemical reactions will reach a tolerance level for accumulated contaminants in recycled wastewater and will require a discharge at some point, unless the contaminated water can periodically be incorporated directly into the facility's product. This will result in lower grade product, and the ability of individual facilities to do this will depend on customer demands. Since most OCPSF products are sold as intermediate products that will in turn be part of the raw material for a consumer product, customer demands vary greatly, depending on the purity of the raw material needed for the manufacture of the consumer product. In addition, although it is possible that individual facilities may be able to adjust other variables in their chemical processes to compensate to some extent for increased impurity from recycled wastewater, these adjustments would be highly facility-specific and would likely not reduce the production of by-products and/or off-spec products to the levels that could be achieved without the added contamination from the recycled wastewater. Some of the resulting by-product and off-spec product would likely be hazardous and require treatment and disposal under Subtitle C of the Resource Conservation and Recovery Act. Again, even if zero discharge were attainable, the extent to which the imposition of a zero discharge standard would result in non-water quality environmental impacts, and how those impacts would compare to the reduction of pollutant loadings to receiving waters, could only be evaluated on a product/process-by-product/process basis. (See Rohm and Haas Co. Comment at 2 (identifying non-water quality impacts that could result from total recycle, including impacts from increased use of solvents to replace water in cleaning operations and energy consumption resulting from evaporation or off-site transfer of wastewater, as well as from increased production of off-grade material requiring disposal)).

In the case of the three products identified in EPA's technical analysis as potential zero discharge candidates—melamine, phenolic, and urea resin—water that is produced in the process can be removed, partially evaporated to raise the concentration of raw materials, and reintroduced to the reactor vessel (56 FR 63909). (Again, even for these products, zero discharge is not achievable through recycle alone, but requires an evaporation step.) Even in this situation, the concentration of contaminants in the water will build as it is recycled and evaporated, and the

need to discharge (or otherwise dispose of) the wastewater could be eliminated only if the partially-evaporated water or "syrup" could be periodically incorporated directly into the facility's product (*id.*). This incorporation would result in lower grade product (which may or may not be saleable, depending on customer demands), and possibly off-spec product that would have to be disposed of. Therefore, EPA does not consider these products to be good candidates for a national zero discharge standard; rather, they are the only products EPA is aware of that appear to hold the potential to achieve zero discharge through "total" recycle under particular circumstances. Moreover, EPA believes that the potential for these products to be manufactured without wastewater discharge based on total recycle is limited by the unique process chemistry involved and would not be transferable to other industry product/processes (*id.* at 63909).

In addition, even if EPA were to study the plants that reported zero discharge based on recycle for these products, the most EPA could do would be to develop a technical basis for a zero discharge standard for the particular chemical processes employed by these plants to produce these products. The three products in question are produced through a variety of processes. The OCPSF rulemaking record identified six reaction pathways or process routes for the manufacture of melamine resins, eight process routes for urea resin manufacture, and 14 process routes for the manufacture of phenolic resins. With respect to new sources, this list of processes is almost certainly not a comprehensive list of possible processes; there are numerous ways to make most OCPSF products, and companies often choose or develop specific processes to maximize the use and re-use of raw materials and to respond to customer specifications. For example, a company may produce a product through a process that creates a by-product that can be used as an input for the manufacture of another product; the use of this by-product as an input would dictate the range of process options for production of the second product. Similarly, a plant may choose to employ a particular process to make a given product because the process creates a by-product that the plant can sell or use in another process. The development of new, valuable products through the beneficial use of by-products has been characteristic of the development of the OCPSF industry in this century (1983 DD, pp III-1 to 2).

Each of the processes used to manufacture the three candidate resins

differs significantly in terms of the raw material inputs to the reaction vessels, and likely differs significantly in terms of other variables associated with reactor vessel conditions. Even if EPA could determine that zero discharge was demonstrated for a particular process used to manufacture urea resin for example, that would not demonstrate that the manufacture of the same product through a different chemical process could achieve zero discharge, and would not provide the technology basis to impose a zero discharge standard on new plants using different processes to manufacture urea resin. It is entirely possible that no new plant will ever manufacture any of the three candidate products through the specific processes used by the plants identified in EPA's database. For EPA to go further and impose a zero discharge standard on manufacture of the product itself, without regard to process, would likely significantly constrict the manufacturing options open to future plants. EPA would be extremely reluctant to do this, given the flexibility that has characterized the development of the OCPSF industry and the inability to project the impacts of such a constriction, including non-water quality environmental impacts.

Kodak supports EPA's conclusions. Kodak states that the principal technical constraints on complete recycling include product specifications that require the use of very pure water, chemical reactions that generate water, and the need to eliminate from the water recycle loop trace contaminants that accumulate to undesirable concentrations when water is continually recycled and evaporation concentrates the contaminants. Kodak also notes that very few chemical processes share the necessary characteristics that might permit total recycle of wastewater—" * * * processes where any process wastewater and associated contaminants can be contained in the products and byproducts without infringing on product quality, and * * * processes in which all excess process water is evaporated * * * " (Kodak Comments at 3-4).

CMA in its comments also states, "The need for blowdown (a wastewater discharge) is characteristic of all recycle processes—accumulation of contaminants present in the process feedstocks and catalysts, generated by the chemical reactions, or brought in with the makeup water will eventually accumulate to unacceptable levels and adversely affect the product. The only time a process is truly zero discharge is when the blowdown is accomplished by

letting contaminants leave with the products. For basic organic chemicals, plastics, and synthetic fibers, this is rarely an acceptable approach" (CMA Comments at 50).

EPA cannot rule out the possibility that the manufacture of one or more of the remaining 25,000 products in the industry could achieve zero discharge through recycle, but EPA believes the number would be very small and the investment in resources to develop the technology basis would be enormous. As explained, it would require a detailed technical study of individual product/processes, treating separate product/processes as separate subcategories, and then determining the feasibility of total recycle and establishing design and operating parameters for each subcategory (56 FR 63906-07). EPA rejected this product/process-by-product/process approach as unworkable in the 1983 proposal that formed the basis for the entire OCPSF regulation, deciding to regulate the OCPSF industry through concentration-based rather than mass-based limits due to the complexity and variable production within the industry (*id.* at 63907). EPA recognized at the time that the concentration-based approach involved a trade-off, permitting broader industry coverage but diminishing the opportunity to promote recycle on a national level. This diminished opportunity arises because the concentration-based approach does not focus on specific product/processes but regulates through end-of-pipe limits imposed on broad, general subcategories of production (*id.*). EPA concluded at the time, and continues to believe, that the attempt to regulate the OCPSF industry through the analysis and regulation of individual product/processes is simply infeasible.

As EPA has explained, the concentration-based approach did not mean that recycling and reuse of wastewater would not be encouraged at individual plants. Rather, the guideline is structured so that recycling and reuse evaluations will be made on a facility-by-facility basis (which is the only way they can be made) by the permit writer or control authority, rather than through the national guideline (*id.*). In both the Development Document accompanying the final OCPSF guideline and in subsequent guidance, EPA provided guidance to permit writers in using flow reduction as the basis to set permit limits (*id.*). Elsewhere in today's preamble, EPA discusses this guidance further and urges permit writers to carefully evaluate the opportunities for wastewater recycle and reuse at individual plants.

EPA believes the detailed technical review it has performed fully complies with the Fifth Circuit's remand and the Clean Water Act. EPA developed a 600,000-page record for the OCPSF rule and, based on this record, has determined that the potential opportunity for total recycle in the OCPSF industry is extremely limited.² In this situation, EPA believes it has discretion to determine the utility of undertaking extensive additional data collection and technical analyses and, in this sense, believes it is appropriate to consider the "practicability" to the Agency of developing the technology bases for zero discharge standards. The Fifth Circuit, based upon its understanding of the OCPSF administrative record, ordered EPA to reconsider the appropriateness of zero discharge standards through recycling. EPA has done that and does not believe the remand imposed an obligation to undertake significant new data collection and analysis where, based on its review of the administrative record, EPA does not believe that a zero discharge standard based on recycle would be feasible for more than a few of the product/processes in the OCPSF industry. See *CMA v. EPA*, 870 F.2d at 209 (upholding EPA determination not to establish BPT limitations based on polishing ponds following biological treatment where EPA determined that, although 17 plants successfully employed ponds, the experience of these plants could not be transferred to other plants in the OCPSF industry due to the diversity of OCPSF wastewater characteristics).

C. Appropriate BAT Subcategorization

In its comments, NRDC argues that EPA's establishment of the BAT subcategorization scheme violates the Clean Water Act because it allows the discharger to choose the technology basis for the BAT limitations based on whether the discharger installs end-of-pipe biological treatment to comply with the BPT limitations. EPA disagrees. As a general matter, NRDC is correct in stating that it is EPA's responsibility to identify the best available technology and to establish limitations based on its

² EPA notes that the 1987 Development Document accompanying the final OCPSF guideline stated that "[r]ecycling systems can achieve significant pollutant load reductions or zero discharge at relatively low cost," at VII-8. Based on EPA's comprehensive re-evaluation of the OCPSF record and technical analysis in response to the remand, this statement is incorrect. Recycle is widely practiced in the industry and, depending on individual plant processes and configurations, can achieve significant pollutant load reductions. However, recycle alone, except in very limited circumstances, does not achieve zero discharge.

application. However, as EPA explained in its proposal, the Agency concluded that it was not feasible, necessary or desirable to eliminate or limit the applicability of the Subpart J, non-end-of-pipe biological treatment subcategory. Based upon these determinations, as described in the proposal and below, EPA believes the subcategorization scheme represents the best approach for the OCPSF industry and is a lawful application of EPA's discretion in selecting BAT. EPA does not believe the Clean Water Act requires the Agency to develop a scheme which is not technically defensible and which would create undesirable treatment incentives within the regulated community.

NRDC identifies three alternatives to the present scheme that it considers valid. Each is addressed in turn.

1. BOD Floor

First, as explained above in Section IV, NRDC suggests that EPA should develop a BOD "floor" (i.e., a minimum BOD level) to limit the applicability of Subpart J. However, as EPA explained in the proposal, the development of a floor is technically infeasible due to the lack of a theoretical minimum BOD level for sustaining biological treatment and the great variability of OCPSF production and wastewater characteristics.

EPA received a number of comments supporting its conclusion that it would be infeasible to establish a BOD floor for the OCPSF industry. CMA points out that there are a number of factors that affect a plant's ability to operate a biological treatment system effectively, including not only the plant's BOD load but also the variability of the plant's waste concentration, wastewater flows, and chemical composition and treatability (CMA Comments at 9). The Synthetic Organic Chemicals Manufacturing Association (SOCMA) states that, even though it may be theoretically possible to establish a BOD floor under steady-state laboratory conditions for a particular waste stream, it would be futile to try to establish cutoffs for the large number of full scale production facilities in the highly complex and diverse OCPSF industry (SOCMA Comments at 11). The Society of the Plastics Industry (SPI) agrees with EPA's view, presented in the proposal, that process streams in the OCPSF industry "may change frequently and dramatically" (SPI Comments at 2).

EPA continues to believe that the complexity of the industry and the frequent changes in production and wastewater characteristics, as described in the proposal and in comments, make

it infeasible to establish a BOD floor for the operation of biological treatment systems. While a given plant may be able to operate a biological system at a given long-term average BOD level, that does not assure that another plant with the same long-term average BOD level, but with a different waste stream composition or varying BOD levels, will also be able to operate a biological system.

The feasibility of establishing a floor is further limited by the complexity of the OCPSF industry and EPA's consequent inability to develop a detailed knowledge of the production practices and other factors affecting wastewater treatment at each OCPSF plant. In the face of this complexity, EPA based the OCPSF guidelines on a number of simplifying assumptions and conclusions (see, e.g., 56 FR at 63901). For example, in view of the fundamental, delicate inter-relationships among conventional, toxic, and non-conventional pollutant controls, EPA developed a scheme under which it recognized that different plants would exercise discretion to adopt plant-specific treatment configurations in order to comply with the promulgated BPT and BAT limits (*id.* at 62901-02). Without a more detailed working knowledge of individual plants, which would be extraordinarily difficult to develop, the establishment of a BOD floor or series of floors that would require plants to install end-of-pipe biological treatment systems would likely interfere with the comprehensive waste management systems that have been appropriately instituted at individual plants.

Moreover, as EPA explained in the proposal, the Agency does not believe it is necessary to establish a BOD floor because plants that need to achieve significant BOD reductions will generally be motivated by economic considerations to install biological treatment over the more costly alternatives. In addition, as explained in the proposal, the existence of Subpart J will not result in significantly increased discharges of pollutants to the environment over Subpart I. Based on EPA's 1991 survey of the 84 direct discharge plants that did not have end-of-pipe biological treatment at the time of promulgation of the OCPSF guideline, EPA concluded that 47 of the plants have not installed biological treatment to comply with the OCPSF guideline (April 26, 1991 memorandum to the December 6, 1991 Public Record: "Current Status of Direct Non-Biological Facilities," R.00365-428). (This is more than the 23 plants projected at OCPSF promulgation to comply without

installing biological treatment.) The maximum projected increased loadings of the OCPSF-regulated toxic pollutants to receiving waters associated with these plants' complying with Subpart J rather than Subpart I is estimated to be 2,471 lbs/yr for the 47 plants that have not installed end-of-pipe biological treatment as of April 1991. These estimates are lower than the comparable estimates presented at proposal because they account for the incidental removals of the four pollutants that are not regulated under Subpart J (the proposal noted that the estimates presented were high because incidental removals were not accounted for (56 FR at 63901)). These pollutants appear in waste streams with other pollutants that are regulated by Subpart J limits based on in-plant biological and/or activated carbon treatment, and are incidentally removed by these technologies (April 29, 1993 memorandum to the OCPSF Public Record "Toxic Pollutant Loadings for the 47 Projected Subpart J Plants"). (The total estimated industry loadings (before BAT and PSES) are 24,166,480 lbs/yr; projected loadings after compliance are 571,723 lbs/yr, 56 FR at 63901.) In addition, as explained in the proposal 1,188 lbs/yr (48 percent) of the additional removals accomplished by Subpart I are projected to result from volatilization of the pollutants into the air during end-of-pipe biological treatment.

In addition, EPA believes that a BOD floor would be undesirable in that it would likely result in irrational and undesirable wastewater treatment and waste management decisions. In particular, as explained in the proposal, EPA is concerned that plants that would otherwise be able to control BOD and TSS levels, and thereby comply with BPT, through in-plant product and by-product recovery or other source control measures would eliminate or otherwise reduce the effectiveness of these in-plant controls in order to ensure sufficient organic matter to operate a biological system, or to operate such a system in a cost-effective fashion. Even if a BOD floor could be developed, e.g., based on raw waste BOD load, such a structure would create incentives to maximize BOD at the end-of-pipe. One of the distinguishing features of the OCPSF industry, noted throughout EPA's development of the OCPSF guideline, is the variability of wastewater characteristics at individual plants, including BOD levels, and the need for plants to take protective measures to ensure stable, healthy populations of microorganisms to biodegrade the organic pollutants in

their waste streams (e.g., 56 FR at 63900). Plants that are required to comply with BAT limits most readily achieved through end-of-pipe biological treatment will often have the incentive to maximize end-of-pipe BOD levels to assure consistently adequate BOD levels to sustain biological treatment in the face of variability.

In-plant source controls can recover valuable manufacturing by-products (thus eliminating these by-products as wastes), reduce or eliminate waste streams, reduce in-plant and end-of-pipe treatment costs, and reduce or eliminate pollutants inhibitory or not amenable to end-of-pipe treatment systems. Process modifications, improved instrumentation, added operator training, and solvent recovery as well as water reuse, recovery, and recycle are the first considerations in the waste management and wastewater treatment process (Proposal "Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals and Plastics and Synthetic Fibers Point Source Category," (EPA 440/1-83/009-b), February 1983 (hereafter referred to as 1983 DD, Vol. I pp 119 to 122, Vol II pp VII-1 to 2; 1987 DD pp VII-1 to 10). Simple good housekeeping, such as proper maintenance and clean-up practices, contribute to reduced pollutant loadings. In addition to these water use techniques and best management practices, certain in-plant treatment techniques, such as steam stripping, recover valuable products and effectively eliminate pollutants from a plant's waste stream.

EPA believes these in-plant waste management practices are generally preferable to the alternative of letting pollutants remain in the waste stream to be removed by end-of-pipe treatment. In the 1983 OCPSF proposal, EPA discussed the advantages of a regulatory scheme that focuses on in-plant controls rather than end-of-pipe treatment: "Such an emphasis would result in a reduction of the overall pollutant release through various environmental media that might otherwise occur through a heavier reliance on end-of-pipe biological treatment. For example, biological treatment can, in some instances, cause the transfer of some volatile organic pollutants from the wastewater to the air, and the adsorption of some other organic pollutants, as well as metals, to the biological sludge, which is then disposed of through methods which may affect other media. While some in-plant physical/chemical controls may similarly transfer pollutants to other media * * *, other in-plant controls

and treatments return at least some pollutants to the process, thereby minimizing total environmental releases" (48 FR 11838; March 21, 1983).

In addition, the reduction of pollution or treatment of pollution in concentrated waste streams close to the process source is more efficient and often less energy-intensive than end-of-pipe biological treatment of combined waste streams (which is a relatively energy-intensive treatment method), and EPA intended under the OCPSF guideline that plant managers, who will have a far better working knowledge of the optimal treatment configurations for individual plants than EPA can acquire, have the discretion to weigh such factors. EPA is reluctant to establish a scheme that discourages plants from doing what it would otherwise encourage them to do, which is to reduce pollutants at the source, recycle waste streams to the extent practicable, or treat pollutants close to the source when that is the most efficient treatment alternative. SOCMA, in its comments, at 12, raises a similar concern, stating that limitation of Subpart J would prevent dischargers from selecting alternative in-plant controls and techniques such as recycling, waste reduction and material recovery.

EPA is especially reluctant to change the structure of the OCPSF guideline as suggested by NRDC at this point, more than five years after promulgation. Most plants in the industry are now required to be in compliance with all of the OCPSF limitations and standards including the BPT limits. Many of these plants may not have sufficient BOD levels to operate end-of-pipe biological treatment systems. Compliance with the OCPSF subcategorical "maximum for monthly average" and "maximum for any one day" BOD limitations requires plants to achieve long-term annual-average BOD effluent levels ranging from 12 to 41 mg/l depending on the subcategory or subcategory mix for any plant (12 mg/l BOD for Other Fibers, 16 for Rayon and Thermoplastics, 20 for Commodity Organics, 23 for Bulk Organics, 30 for Specialty Organics, and 41 for Thermoplastics; p VII-176, Vol. I, 1987 DD). These levels are below the levels for which the Agency has data demonstrating the feasibility of biological treatment. The OCPSF record has BOD data for 98 plants with end-of-pipe biological treatment. The influent long-term average BOD levels for these plants ranged from 60 mg/l (a single plant) to 9,420 mg/l, with only 12 plants below 125 mg/l. (The Agency's field sampling efforts identified one additional plant with a two-week

average influent value of 37 mg/l, but this value may not be representative of the plant's long-term average influent BOD concentration.) Thus, plants that have achieved compliance with BPT without the use of end-of-pipe biological treatment would likely have to (and, in any event, would likely have the incentive to) eliminate the in-plant source controls and/or cease operation of the in-plant treatment systems they have installed in order to elevate their BOD levels. EPA does not believe this is a rational regulatory result.

NRDC suggests, based on the OCPSF record, that even in instances of low BOD levels, nutrient addition, pure oxygen, or extended aeration could be used to operate end-of-pipe biological treatment systems. However, as EPA explained in the December 1991 proposal, these practices are not generally applicable substitutes for sufficient BOD to sustain biological treatment. In their comments, CMA, at pp 11-12, and Ashland Chemical, at p 3, agree. The several brief references identified by NRDC to practices used in the OCPSF industry, out of the 600,000-page OCPSF record, do not provide a basis to treat these techniques as "available technologies" on which EPA could base limits.

EPA agrees with CMA's assessment that the pure oxygen variation of activated sludge biological treatment offers no particular advantages because it is not used to treat low-strength (i.e., low BOD) wastewaters (CMA Comments at 11). The pure oxygen activated sludge variation generally treats widely fluctuating organic loadings and high-strength wastewaters more effectively than "standard" activated sludge designs. CMA also notes that high oxygen transfer rates in the aeration basins due to the use of pure oxygen assure that sufficient oxygen is available for biological removal of organics with high biomass populations. However, high biomass concentrations can only be achieved when ample biodegradable organic compounds (BOD) are available in the wastewater. Pure oxygen activated sludge treatment is not a solution for biological treatment of wastewater with low raw waste BOD concentrations.

In the case of extended aeration, which is a variation of the complete mix activated sludge design, low organic loadings and long aeration times permit more complete wastewater degradation and partial aerobic digestion of the microorganisms (p VII-63, Vol. I, 1987 DD). However, as CMA also notes, effective extended aeration operation requires a wastewater with sufficient organic substrate to form a biomass that

can be flocculated and kept in the treatment system for extended periods of time. Wastes with low BOD may not generate enough biomass that can be settled from the treated effluent by gravity and recycled to the aeration basin. In the case of insufficient raw waste BOD, the biological solids would wash out of the system, and extended aeration operation would not work. (CMA comment at 12). Extended aeration treatment is not a substitute for an adequate BOD level, and, as discussed above, whether an extended aeration system or any other type of biological system were used, the BOD level that would be sufficient to sustain biological treatment would vary from plant to plant.

NRDC also misunderstands the function and purpose of "nutrient addition." As generally practiced in the OCPSF industry, nutrient addition is the process of adding nitrogen or phosphorous in a chemically combined form to a waste stream. (p XV-14, Vol. II, 1987 DD) These nutrients are analogous to vitamins; they may help a viable biological system operate optimally, but they are not a substitute for adequate substrate or "food." CMA's comments state that it is possible to add supplemental organic substrate to a treatment system, but this practice is at odds with the purpose of effluent treatment. CMA also correctly observes that the addition of readily biodegradable substrate, such as molasses, to a low strength wastewater does not ensure the growth of an activated sludge that is capable of effectively removing organic toxic pollutants. The biomass must be acclimated to the same or similar compounds that must be removed. This may create the need to add toxic pollutants to the wastewater to assure that they can be removed consistently by the treatment system. (CMA Comments at 12.) EPA is not aware that this technique is practiced in the OCPSF industry, and does not encourage it. The Agency believes that the framework of the OCPSF regulation should encourage plants to minimize the overall generation of raw wastes rather than create an incentive to increase the discharge of "biodegradable" compounds to ensure the operation of biological treatment systems.

With respect to these suggested solutions to low BOD levels, NRDC argues that EPA has based its rulemaking on ignorance, and that the Agency was obligated to collect additional information or perform additional technical analyses to evaluate whether nutrient addition or other techniques might be a substitute for low

BOD. EPA disagrees. EPA has evaluated these options, based on the voluminous OCPSF record and on comments received, and does not believe they are viable substitutes for adequate BOD. Rather, they are approaches that, under plant-specific circumstances, can be used to improve the operation of biological treatment systems. EPA does not have an obligation to collect data and perform extensive technical analyses to investigate options that it does not believe provide viable bases for technology-based limits in a national guideline.

More generally, NRDC argues that EPA has performed a "paper review" in response to the Fifth Circuit's remand rather than collecting additional data and performing additional technical analyses regarding the feasibility of establishing a BOD floor. NRDC believes that EPA should have evaluated the plants that have not installed end-of-pipe systems to determine a BOD floor for the subcategory. Again, EPA disagrees. EPA conducted a detailed technical re-evaluation in response to the Court's remand and concluded that the present subcategorization scheme is the best approach for the OCPSF industry; EPA does not believe the establishment of a BOD floor is necessary or desirable.

In addition, EPA does not read into the Fifth Circuit's remand the same requirements as NRDC does. The court remanded the subcategory scheme "for notice-and-comment proceedings," and remarked that such proceedings may disclose that NRDC's suggestions are neither necessary nor feasible (870 F.2d at 236). Prior to publishing the December 1991 proposal, EPA conducted an in-depth review of its OCPSF database, an extensive literature search, and additional pollutant loadings analyses to evaluate NRDC's suggestions. The Agency does not believe that the Court's remand, the Clean Water Act or general principles of administrative law require EPA to collect data and perform extensive additional analyses where, based upon the information before it, the Agency concludes that such efforts are not likely to be valuable.

The Clean Water Act authorizes EPA to consider non-water quality environmental impacts (including energy requirements) and other factors EPA deems appropriate in setting BAT limits. CWA 304(b)(2)(B). EPA believes it has discretion to create a BAT scheme that does not discourage plants from complying with BPT through in-plant source control and treatment, with the potential to recover product and by-product and otherwise to reduce

pollution at the source. EPA continues to believe that the current BAT subcategorization scheme is the appropriate scheme for the OCPSF industry.

2. Subcategory Limited to Certain Processes

Alternatively, NRDC argues that EPA should limit subpart J to those processes for which an adequate showing of low-BOD wastewater has been created through industry comments, such as the chlorosolvent industry. NRDC argues that EPA has impermissibly extended subpart J beyond the scope of the comments and data that support it. EPA disagrees. The OCPSF record supports the conclusion that the phenomenon of low BOD levels is not limited to specified industry segments; rather, low BOD wastewater may occur throughout the OCPSF industry. Therefore, EPA believes the availability of subpart J should not be limited to specific industry segments.

As NRDC notes, the specific comments and data during the 1987 OCPSF rulemaking with respect to low BOD levels related principally to the chlorosolvent industry. Nonetheless, EPA had already concluded that the characteristics associated with low BOD levels extended beyond chlorosolvent manufacture to other generic process chemistry and other product/processes. In response to the Halogenated Solvent Industry Alliance 1985 comment that EPA should set separate BAT limitations for stand-alone chlorosolvent production plants because biological treatment methods are not used and would be ineffective if used, EPA declined to establish a subcategory limited strictly to chlorosolvent plants, recognizing that other types of facilities are also expected to have low BOD levels (1987 Public Record comment response No. 254, R103,160).

In 1983, the Agency had studied 46 generic OCPSF process groups and their potential to generate various BOD loadings. The study identified 19 generic processes expected to generate wastewater of relatively low BOD when refractory chemical species predominate in the wastewater and when relatively few chemical species are present in the wastewater (1983 DD, Vol. I, p 63-68). EPA concluded at the time that the manufacture of halogen compounds in general, not just chlorosolvents in particular (chlorosolvents are included among halogen compounds), tend to generate relatively low raw waste BOD levels. Other generic process groups that tend to produce wastewater with the lowest BOD concentrations include alkylation, isomerization,

polymerization (bulk & addition), and phosgenation (*id.*). Plants with manufacturing activity limited to these groups generally, but not always, produce wastewater with relatively low BOD concentrations.

Further analysis following the 1983 OCPSF proposal revealed that, although generic process groups provide a rough correlation with raw waste BOD levels, individual product/processes within the generic process groups exhibit widely varying raw waste BOD levels, and generic process groups cannot be confidently classified as "low-BOD" or "high-BOD" raw waste groups. For example, even within the low BOD halogenation group, there is a significant variation of raw wastewater BOD concentrations—chlorobenzene processing averaged 20 mg/l BOD and trichloroethylene averaged 36 mg/l BOD; however, 2-dichloroethane averaged 1,869 mg/l BOD (Appendix S, draft "Contractors Engineering Report Analysis of Organic Chemicals and Plastics/Synthetic Fibers Industries," November 1981, pp S-1839, S-3301, and S-2084, respectively). Similar variability exists among the product/processes within the generic process chemistry groups that are projected to generate the highest levels of BOD. For example, within the high BOD esterification group, n-butyl acrylate/ethylhexyl acrylate processing averaged 5,481 mg/l BOD and dimethyl terphthalate processing averaged 1,310 mg/l; however, n-butyl methacrylate processing averaged 4 mg/l (*id.*, pp S-1,666, S-2,166, and S-1,770, respectively).

In supporting EPA's current BAT subcategorization scheme, CMA observed (and EPA agrees) that the Subpart J limits cannot be confined to a small number of subcategories since low-BOD wastewaters may occur across various subcategories, citing data from the OCPSF database showing low BOD levels across a range of product groups (CMA Comment, pp 3-4).

Thus, generic reaction chemistry and general product groups are incomplete predictors of the raw wastewater characteristics necessary to support effective biological treatment. EPA believes that the phenomenon of low BOD levels, and the availability of Subpart J, cannot be limited to certain industry segments, and, as explained above, believes that such a limitation would create undesirable incentives in other industry segments.³

³ NRDC similarly argues that BOD levels in the OCPSF industry generally appear high, and low BOD wastewater appears concentrated in the zero or alternative discharge categories (citing the 1987

3. FDF Variance Alternative

Finally, NRDC argues that EPA should eliminate Subpart J altogether and address low-BOD situations through fundamentally different factors (FDF) variances (or maintain the Subpart but apply it only where a site-specific showing of necessity is made). However, as explained above, EPA believes the current subcategorization scheme appropriately reflects the potential for low BOD levels throughout the OCPSF industry. Moreover, the current subcategorization scheme does not discourage source control and other in-plant waste management techniques. EPA has discretion in determining whether to account for industry characteristics through subcategorization or through the FDF process. In this instance, EPA's decision to subcategorize the industry was rational and within its discretion, for the reasons explained above.

D. Applicability of the Revised Pass-Through Methodology

A number of industry commenters supported the Agency's proposed conclusion presented in the December 1, 1992 NOA that phenol and 2,4-dimethylphenol do not pass through POTWs, but urged that the modified pass through analysis used to reach that conclusion be applied to the remaining 11 remanded PSES pollutants to determine that they also do not pass through. EPA disagrees, for the reasons explained below.

DD at IV-30-36 and V-32-33). However, the tables cited by NRDC display mean, aggregated BOD values for plants within different subcategories, and do not reflect variability of plants within the subcategories. For example, Table V-20, 1987 DD at V-32, shows a mean BOD value for 62 direct discharge thermoplastics plants (Part 414, Subpart D) of 725.190 mg/l. Despite this relatively high mean, individual plants within the Subcategory will exhibit a broad range of BOD values, and the mean reveals nothing about whether individual plants will have sufficient BOD levels to sustain biological treatment. As explained above, varying BOD levels occur throughout the industry, whether the average BOD level for a particular subcategory is low or high. In any event, the tables cited by NRDC contain too little zero/alternative discharge plant data for any meaningful comparison between regulated and zero discharge plants. For example, the data base used to display the average raw waste BOD levels presented in Table V-20 contained only one zero discharge plant with 2.28 percent of its production in the Specialty Organic Chemical Manufacturing subcategory. At this plant, 280 mg/l BOD in raw wastewater was attributed to Specialty Organic Chemical production. In contrast, the entire data base used to display average raw waste BOD levels for the industry contained the equivalent of 60.37 Specialty Organic Chemical plants on a production-weighted basis. The data derived from 2.28 percent of one zero discharge plant cannot be meaningfully compared with the data from 60.37 discharging plants to draw any conclusion about the BOD levels exhibited by zero discharge as opposed to discharging facilities.

1. Background

Under section 307(b) of the Clean Water Act, EPA is required to promulgate categorical pretreatment standards for pollutants which are determined not to be susceptible to treatment by POTWs or which would interfere with the operation of POTWs (33 U.S.C. 1317(b)(1)). The methodology EPA used to evaluate whether a pollutant is susceptible to treatment (i.e., whether it "passes through" POTWs) for purposes of establishing categorical pretreatment standards for the OCPSF point source category, as well as in previous guidelines, compared the median percent removal of each pollutant of concern achieved by direct dischargers employing BAT-level treatment to the median percent removal achieved by well-operated POTWs with secondary treatment (1987 DD, pages VI-22 to 32). The source of EPA's data on POTW removals used to determine pass through was a 1982 study of the performance of 50 POTWs (the 50 POTW Study; EPA 440/1-82/303).

Where EPA had data on pollutant removals from both POTWs and direct dischargers, EPA relied exclusively on a comparison of the percent removals demonstrated by the data (1987 DD, page VI-23). If the data showed that direct dischargers with BAT-level treatment achieved a higher percent removal of a pollutant than well-operated POTWs, then the pollutant was determined to pass through, and EPA established categorical pretreatment standards to regulate the pollutant. If the POTWs showed removals equal to or greater than the direct dischargers, then the pollutant was determined not to pass through, except for volatile and semi-volatile pollutants, for which EPA determined that some of the removals from the wastewater were accomplished as a result of "air stripping" (*id.*, p VI-27). Because these removals were the result of transfer of the pollutants to the air rather than treatment, EPA applied a "volatile override" to determine that they passed through and established pretreatment standards (*id.*, p VI-37). EPA also applied the volatile override to several pollutants for which it lacked POTW removal data based on its professional judgment that these pollutants volatilize based on their physical characteristics.

In determining the percentage of a pollutant that a plant removed, EPA compared the concentration of the pollutant in the influent to the concentration in the effluent. Where effluent concentrations for either direct dischargers or POTWs were below the

analytical minimum level, usually 10 ppb, EPA assigned this value to the effluent (*id.*, p VI-23). Although the actual concentrations may have been below the analytical minimum level, EPA concluded that this represented a reasonably conservative approach, since the actual levels could not be quantified. For phenol and 2,4-dimethylphenol, both the direct dischargers and well-operated POTWs in EPA's data base generally achieved effluent concentration levels that were below the analytical minimum level, which is 10 ppb, (*id.*, p VII-186). Accordingly, EPA assigned 10 ppb to the effluents. EPA's pass through methodology was upheld in the OCPSF litigation (*CMA v. EPA*, 870 F.2d at 243-48).

Allied Signal, Inc. and other commenters on the December 6, 1991 proposal argued that phenol and 2,4-dimethylphenol are highly biodegradable and are treated by POTWs to the same degree as direct dischargers, and that EPA's pass through analysis for these pollutants was therefore overly conservative. The commenters argued that the apparent difference between direct discharger and POTW performance arises from the fact that the direct dischargers in EPA's database have significantly higher influent concentrations than the POTWs; as a result, the direct dischargers show higher removals than the POTWs because their wastewater concentration is treated from a high concentration down to 10 ppb, whereas the POTWs' wastewater is treated from a comparatively lower concentration down to 10 ppb. The commenters also submitted performance data to support their claims, which consisted of pilot-scale biological treatment studies as well as actual sampling data from POTWs that receive industrial wastewaters containing these two pollutants showing their high biodegradability.

EPA concluded that the commenters' arguments might have merit. Using 2,4-dimethylphenol as an example, the median percent removal of this pollutant demonstrated by direct dischargers was 99.8 percent. This was based on data from four OCPSF plants with average influent concentrations ranging from 697 to 29,868 ppb, and with 30 of 37 effluent values below the analytical minimum level and therefore assigned values of 10 ppb. For POTW performance, EPA had a single observation of a POTW with an average influent concentration of 20.5 ppb and an average effluent concentration below the analytical minimum level, which was also assigned a value of 10 ppb.

Thus, POTW removal was calculated at 51.2 percent, and the pollutant was determined to pass through. In this case, the pass through determination may be an artifact of the differing influent concentrations and does not necessarily reflect a real difference in removals.⁴

In the December 1, 1992 NOA, EPA presented a comprehensive assessment of the available data with respect to phenol and 2,4-dimethylphenol, as well as a chemical and engineering analysis of the fate of these two pollutants in biological treatment systems. Based on this analysis, EPA proposed to conclude, and today has concluded, that these pollutants are treated to essentially the same levels by direct dischargers and POTWs and, therefore, do not pass through. However, as the Agency explained in the NOA, EPA generally is continuing to apply the median percent removal methodology used to determine pass through at promulgation of the OCPSF guideline (57 FR at 56885). This methodology was upheld in litigation as an appropriate, conservative approach to determining pass through (870 F.2d at 243-48), and EPA continues to believe it is the correct approach as a general matter. EPA determined that the approach is overly conservative for the highly-biodegradable phenol and 2,4-dimethylphenol, but believes it is appropriate for the other 11 remanded pollutants. As explained in the NOA and below, EPA believes these pollutants are less biodegradable and, consequently, less readily treatable by POTWs, which typically have biological treatment systems with much shorter detention times than the systems employed by direct dischargers.

⁴EPA acknowledged this phenomenon in developing the OCPSF rule and proposed several modifications of the pass through analysis, including applying a "removal differential" under which EPA would determine that a pollutant passed through only if the analysis found a difference between direct discharger and POTW removals that exceeded 5% or 10% (see, e.g., 50 FR 29084-85 (July 17, 1985)). However, after carefully reviewing comments arguing, among other things, that this approach would bias the analysis against a finding of pass through, EPA decided to employ its historical approach to pass through, with one variation. In the final OCPSF rule, EPA edited its database to exclude POTWs with influent concentrations of less than ten times the analytical minimum level (typically 100 ppb), unless there was no plant in the data base with influent concentrations that high, in which case EPA retained the 20 ppb cut-off used in previous guidelines (1987 DD at VI-33). This mitigated the underestimation of removals that could occur when comparing very low influent concentrations to the analytical minimum level.

2. Assessment of the Remanded Phthalate Esters and Polynuclear Aromatics

In the NOA and accompanying Technical Support Document (TSD; "Technical Support Document for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category Notice of Availability of New Information, November 30, 1992), EPA did perform a data review and technical analysis for the other 11 remanded pollutants similar to that performed for phenol and 2,4-dimethylphenol. The Agency reviewed the available data on the removal of the two phenols as well as the two other general pollutant categories covering the remaining 11 pollutants, phthalate esters (PEs) and polynuclear aromatics (PNAs). The Agency also reviewed the available literature on the biochemical mechanisms of biodegradation for all 13 pollutants, and investigated the adequacy of biological treatment systems at POTWs in effectively treating these pollutants via biodegradation. The Agency included all of its performance data from various data sources as well as information collected from the literature on the biochemical mechanisms of biodegradation of these pollutants in the Record supporting the NOA.

EPA's decision to modify its traditional pass through methodology for phenol and 2,4-dimethylphenol is based on EPA's conclusion that both the data available for these two pollutants and the chemical and engineering analysis performed by EPA indicated that the OCPSF pass through methodology is overly conservative for these pollutants. The data and technical analyses do not support a similar conclusion for the other 11 pollutants.

EPA's analysis focused first on the data from the OCPSF Record relating to phenol removal. A comparison of median removals (the original OCPSF methodology) indicated that phenol passes through POTWs (TSD at 11, Table II-2). However, when EPA arrayed all of the direct discharge and POTW data for phenol, it became apparent, as explained in the NOA, that the pass through conclusion was strictly an artifact of the higher influent concentrations for direct dischargers in EPA's database. Viewing the data as a whole, POTWs appeared to achieve removals that are essentially equivalent to those achieved by direct dischargers (57 FR 56886-87). This conclusion was confirmed by additional data EPA solicited from three POTWs, that demonstrated phenol removals from very high influent concentrations (e.g.,

4,043 ppb at the Sheboygan Regional Wastewater Treatment Facility) to below the analytical minimum level. In addition, as explained in the NOA and the accompanying TSD, EPA determined that 2,4-dimethylphenol would be removed by POTWs to the same degree as phenol, given its similar molecular structure.

Three of the remaining eleven pollutants—fluoranthene, bis(2-ethylhexyl)phthalate and di-n-butyl phthalate—were detected in POTW effluent in the 50 POTW Study (TSD at 11, Table II-2). For these pollutants, the results of the pass through determination clearly are not merely an artifact of differing influent concentrations but reflect worse performance by POTWs. EPA has no basis to conclude that these pollutants do not pass through.

With respect to the remaining eight pollutants, EPA does not have data comparable to the data that provided a basis to modify the pass through methodology for the phenols. In addition, EPA's technical analysis confirmed that phenol and 2,4-dimethylphenol are the most readily treatable by POTWs of the 13 pollutants. EPA noted that while phenols are rapidly biodegraded in biological treatment systems due to their simple molecular structure, PEs and PNAs would be expected to biodegrade at a much slower rate because of the additional time required to convert these pollutants into a form that can be readily biodegraded (TSD at 6).

Biodegradation does not commence until a pollutant is "sorbed" by (i.e., attached to) the microorganisms in the biological treatment system that degrade the pollutant ("OCPSF Remand Issues—Assessing the POTW Compatibility of Remanded Organic Pollutants Regulated by PSES," November 20, 1992 memorandum, Item No. 73 of the OCPSF December 1, 1992 NOA Public Record). Once sorbed, pollutants degrade at different rates that depend on structural complexity. In order to be biodegraded, a pollutant must be able to pass through the cell wall of a microorganism. This transfer will occur only if the pollutant is compatible with the proteins in the cell wall. While small, simple molecules are generally compatible, the more complex structures typical of PE and PNA organic pollutants must first be broken down into smaller chemical units by extra-cellular enzymes secreted by the microorganisms. Thus, biodegradation depends on the ability of the microorganisms to structurally alter pollutants outside the cell wall while they are sorbed.

As EPA explained in the NOA, the phenols have simple chemical structures that permit them to be rapidly transferred through the cell wall and biodegraded (57 FR 56888). This molecular-level analysis is confirmed by the fact that wastewaters containing phenol and 2,4-dimethylphenol have high "biodegradation rate constants" (*id.* at 56887). (As explained in the NOA (57 FR at 56887), "biodegradation rate constant" is a measure of how rapidly a compound or mixture of compounds biodegrades). In addition, these two pollutants have the highest compound-specific estimated biodegradation rate constants of the 13 remanded pollutants (TSD at 11, Table II-2)(biodegradation rate constants can be assigned to both individual pollutants and to waste streams containing mixtures of pollutants). In contrast, as further explained in the Supplement to the Development Document accompanying today's rule, the phthalate esters and polynuclear aromatics are structurally more complex, and require additional transformation steps before they can be transferred through the cell wall of the biodegrading microorganisms and biodegraded. These steps require additional time in the aeration basin of a biological treatment system that is generally available at OCPSF direct discharge facilities, which typically have detention times that exceed 24 hours, but may not be available at POTWs, where aeration basin detention times are usually four to eight hours.

Thus, based on rate of biodegradation, EPA believes that phenol and 2,4-dimethylphenol are more readily treatable by POTWs than the eight remaining pollutants. EPA recognizes, as several commenters on the NOA pointed out, that organic pollutants may be removed from wastewater by biological treatment systems to varying degrees by removal mechanisms other than biodegradation. In particular, pollutants may be removed by volatilization and by adsorption to sludge. However, as explained below, EPA believes that a pollutant's biodegradation rate is the most accurate indicator of whether the pollutant will pass through POTWs.

In general, volatile pollutants are not readily treated in POTWs; rather, these pollutants are volatilized or "stripped" to the atmosphere. As EPA explained above, EPA applied the volatile override in the 1987 OCPSF guideline to determine that several volatile and semi-volatile pollutants pass through where POTWs showed equal or better percent removals than direct OCPSF dischargers or where no POTW removal data were available. In determining

whether to apply the volatile override, EPA considered total estimated volatilization of a pollutant after leaving an indirect discharge facility—i.e., volatilization in both the aeration basin (i.e., the treatment basin) of the biological treatment system and volatilization in the sewer systems and pre-biological unit treatment operations that convey the pollutant to the aeration basin (1987 DD at VIII-281).

For five of the PNAs that were remanded—naphthalene, acenaphthene, anthracene, fluorene, and phenanthrene—EPA would have applied the volatile override in the 1987 OCPSF rule to determine these pollutants passed through if the percent removal analysis had not shown pass through. These pollutants have overall volatilization rates comparable to the rates for which the override was applied. For example, EPA applied the override to hexachlorobenzene, hexachloroethane and hexachlorobutadiene in promulgating the 1987 guideline (1987 DD at VIII-279). These pollutants have a 5 to 10 percent estimated volatilization rate in the aeration basin; the pre-biological volatilization rates for hexachlorobenzene, hexachloroethane and hexachlorobutadiene are estimated to range from 19 to 39 percent, 59 to 66 percent, and 48 to 73 percent, respectively (1987 DD at VIII-281). Similarly, the estimated aeration basin volatilization rates for the five remanded PNAs at issue range from 10 to 30 percent, and the estimated pre-biological volatilization rates range from 12 to 82 percent (*id.*) EPA notes that estimated volatilization rates for individual pollutants vary depending on the source of the estimate, and the aeration basin volatilization rates that appear in the TSD, at 11, Table II-2, vary from those presented in the 1987 Development Document because they are based on different technical studies. TSD Table II-2, however, does not account for pre-aeration-basin volatilization, and the overall estimated volatility of the five pollutants at issue is comparable to the estimated volatility of the pollutants to which EPA applied the volatile override in 1987. Because these pollutants are chemically more complex than phenol and 2,4-dimethylphenol and, EPA believes, therefore less readily biodegradable in POTWs, and because much of the "removal" of these pollutants prior to and during POTW biological treatment is likely the result of volatilization, EPA continues to conclude, based on its traditional methodology, that these five pollutants pass through POTWs.

EPA believes the remaining three pollutants—diethyl phthalate, dimethyl phthalate, and pyrene—are likely adsorbed to sludge in the biological treatment system. A compound's propensity to separate from the water phase and adsorb to sludge (which includes the microorganisms that degrade the compounds) is predicted by its "octanol/water partition coefficient." Pyrene, in particular, has a high estimated octanol/water partition coefficient, and would be expected to adsorb rapidly to the sludge in a biological system (TSD at 11, Table II-2). However, pollutants that are initially adsorbed onto the sludge may become "desorbed" (i.e., may detach from the sludge) and pass through into the receiving stream if they are not rapidly transferred through the cell wall and biodegraded.

The ability of complex, organic pollutants such as phthalate esters and polynuclear aromatics to remain adsorbed prior to being converted to simpler compounds for transfer through the cell wall can be affected by many conditions in the treatment system, including the presence of other pollutants, electrolytes, oils and greases and other more highly adsorbent compounds ("Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works," February 1986, (EPA/530-SW-86-004), p 4-5). This can cause the pollutants to desorb prior to conversion and biodegradation and pass through the POTW to the receiving water. EPA believes this phenomenon explains why organic pollutants which are generally considered highly adsorbable can sometimes be found at detectable levels in the POTW effluent. For example, anthracene and phenanthrene have high estimated octanol-water partition coefficients and therefore would be expected to adsorb rapidly to sludge (TSD at 11, Table II-2). POTW Number 6 from the 50 POTW Study shows an average influent concentration of anthracene and phenanthrene of 62.2 ppb and an average effluent concentration of 16.2 ppb, while POTW Number 52 has a much higher average influent concentration of 225.3 ppb for anthracene and 195.8 ppb for phenanthrene, both reduced to not detected at 10 ppb (1987 Public Record at 115910-115976). Based in this data, the propensity of these pollutants to adsorb to the sludge does not appear to be a good indicator of POTW removal performance. EPA believes that external conditions in a biological treatment system can affect the ability of a POTW

to remove more complex pollutants by adsorption or biodegradation.

The overall removal data for the 13 remanded pollutants appears to confirm that octanol/water partition coefficient is not a reliable indicator of pass through. Phenol has the lowest octanol/water partition coefficient of the 13 pollutants but is rapidly and virtually completely removed by biological systems, including POTW systems. In contrast, bis(2-ethylhexyl)phthalate and di-n-butyl phthalate have among the highest octanol/water partition coefficients, but achieved lower POTW removal levels (TSD at 11, Table II-2). In fact, the only pollutants among the 13 remanded that were detected in POTW effluents in the 50 POTW study—bis(2-ethylhexyl)phthalate, di-n-butyl phthalate and fluoranthene—also had the highest octanol/water partition coefficients of the 13 pollutants (TSD at 11, Table II-2).

In sum, EPA believes that a pollutant's estimated biodegradation rate is the best theoretical indicator of whether it will pass through POTW biological treatment systems. As a result, EPA continues to conclude that diethyl phthalate, dimethyl phthalate, and pyrene pass through based on its traditional pass through methodology. These pollutants are structurally more complex and consequently less readily biodegradable than phenol and 2,4-dimethylphenol, and are therefore more likely to pass through POTW biological treatment systems. Moreover, EPA does not have data demonstrating that these pollutants are adequately treated by POTWs.

E. Land Availability

CMA in comments asserts that EPA overestimated the land available for the construction of biological treatment systems in its survey of eight indirect discharge facilities by including in its analysis parcels of non-contiguous land and land that is obstructed by railroad tracks, buildings and other physical obstacles. (CMA Comments at 39-41). This is not true. Each of the eight facilities EPA surveyed has sufficient contiguous, unobstructed land for the installation of the model biological treatment system costed by EPA at proposal. Furthermore, the available land is configured such that it can accommodate the costed biological treatment systems.

In the December 1991 proposal, the Agency recognized that the larger in-plant biological treatment systems costed for compliance with the BAT Subpart J limits and corresponding pretreatment standards would require more land than the smaller systems

costed for the 1987 OCPSF promulgation. EPA investigated whether land availability would be a constraint on the ability of OCPSF plants to install in-plant biological treatment. EPA's investigation included the land requirements for treatment of all 13 of the remanded PSES pollutants, including phenol and 2,4-dimethylphenol, which are not being regulated by today's final rule. At that time, 20 of the 242 indirect discharge plants costed for in-plant biological treatment were projected to require more than one acre of land. EPA projected land requirements for individual facilities based on the modeled raw waste concentrations for the facilities developed by the Agency for purposes of costing compliance with the 1987 OCPSF guideline. The Agency visited the eight indirect discharge facilities with land estimates greater than one acre in the three-state area of New York, New Jersey, and Delaware. Indirect discharge facilities were selected because their typical location in urban areas makes them more likely than direct dischargers to have land-availability constraints. EPA believes the combination of large land requirements and an urban setting makes these eight plants a "worst case" sample of land availability.

Five of the plants visited had sufficient land based on the land requirements projected from their modeled raw waste concentrations (the remaining three had from 78 to 96 percent of the projected requirements). The remaining three had enough land based on their actual reported raw waste concentrations (the three plants had from 1.9 times to 3.7 times more than the required land). EPA generally was conservative in projecting raw waste characteristics in order to err on the side of overestimating rather than underestimating plant compliance costs. EPA thus believes its raw waste projections will often be higher than actual loadings (April 19, 1993 memorandum to the OCPSF Public Record "Estimation of BAT and PSES Compliance Costs). Based on this assessment, the Agency concluded that land availability is not a constraint for installing the model treatment technology (56 FR 63904; 1991 Supplement to the DD, p III-33).

The three plants for which CMA asserted the record shows insufficient contiguous land—Plants 257, 1853, and 1667—are the plants for which EPA determined that there is sufficient land based on the plants' reported raw waste concentrations (56 FR 63904). CMA apparently overlooked this portion of the analysis and based its comments on

the land estimates based on the plants' projected raw waste concentrations. As described in more detail below, all of the plants EPA visited have more than sufficient contiguous land to install in-plant biological treatment systems to comply with the land requirements estimated by EPA for compliance with the 13 remanded pretreatment standards.

Furthermore, based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, the estimated land requirements are lower for six of the eight plants visited than the requirements estimated at proposal for these plants based on their projected raw waste concentrations. Two plants no longer require in-plant biological treatment (257 and 2300), reducing their land requirements to zero. The estimated land requirements for four additional plants were reduced by 29, 69, 75 and 74 percent (plants 814, 1667, 1853 and 2485, respectively). The estimated land requirements for the remaining two plants have not changed from the 1991 estimates.

Addressing the plants individually, the commenter states that the available land claimed by the Agency for Plant 257 was made up of three parcels, that one parcel would require demolishing two buildings and that another parcel is crisscrossed by railroad tracks. At the time of the site visit, plant personnel informed EPA that plans called for the demolition of the two buildings in question and in fact demolition was already underway at the time of the site visit; the Agency reasonably concluded that the land made available by the demolition of these two buildings would be available, and notes that the pretreatment standards to which this plant was to be subject do not become effective until three years after the promulgation of today's amendments. The area made available by the demolition of these buildings in addition to the contiguous, open area designated as "A" to the left of the railroad tracks on the plot plan submitted by the facility will more than accommodate EPA's land requirement estimate of 0.55 acres for Plant 257 (1991 Supplement to the DD, p III-35). This land is contiguous and is not intersected by the railroad tracks. Finally, based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, Plant 257 no longer is projected to install in-plant biological treatment.

The commenter also claims that "part" of one of the parcels of land at Plant 1706 is unavailable because of a

nearby flare stack. But the commenter does not explain, and EPA does not understand, how a nearby flare stack would prevent installation of a biological treatment system. Nor did it indicate how much of the four-acre parcel in question it considered to be unavailable, and EPA has no basis to conclude that the presence of a nearby flare stack renders unavailable the 1.8 acres estimated as necessary for plant 1706 to install the costed biological treatment system.

The commenter also states that the Agency unrealistically utilized two parcels of land (1 acre and 0.2 acres) to meet the estimated land requirement of 1.25 acres for Plant 1667 (CMA Comment at 41). In addition to stating that the two parcels of land are not contiguous, the commenter states that the 0.2 acre parcel contains a 2 story brick building and the 1 acre parcel has a railroad track running through it. Again, the commenter has overlooked portions of the Agency's analyses contained in its Record. Even if the railroad track bisected the 1 acre parcel, the Agency's revised land estimate of 0.38 acres based on the facility's reported raw waste concentration (1991 Supplement to the DD, p III-35) could still be accommodated by either one of the two 0.5 acre parcels. Moreover, the Agency's Record clearly states that the 2 story brick building was confirmed as not in use and available (1991 Proposal Record, p R01236).

In a related argument, the commenter argues that EPA has included land in its analysis that is unavailable because of contamination and related factors. EPA disagrees with CMA's analysis of the record, as explained below.

The commenter states that personnel from Plant 2756 informed EPA that the availability of its land depended on getting clearance from the state agency because contamination was suspected. However, the plant provided no information during EPA's site visit or in comments regarding the likelihood, nature or extent of the suspected contamination, the procedures involved in obtaining clearance from the state, or the extent to which the contamination might preclude the installation of a biological treatment system to comply with today's regulations within the three years allotted. The Agency has conservatively estimated that 32 percent of the facility's unused land (equal to the 1.61 acres required) will be available to accommodate the installation of in-plant biological treatment.

The commenter also states that "Four of the eight acres identified for Plant 1853 were under investigation for possible contamination. EPA was

told by plant personnel that the availability of the land was dependent on the results of the investigation * * * (CMA Comment at 41).

However, the Agency's Record shows that the uncontaminated 4-acre parcel at the site will accommodate EPA's estimated land requirement of 2.16 acres, based on reported raw waste concentrations, for Plant 1853 (1991 Supplement to the DD, p III-35). In addition, EPA has insufficient information regarding the "possible" contamination to evaluate its effect on compliance with today's amendments.

The commenter states that plant personnel informed EPA that of the 130 acre site for Plant 2485, some unspecified portion of the plant site was under investigation for contamination and 30 percent of the site was considered fresh water wetlands. Since 30 percent of the total plant site totals 39 acres and since no accurate estimate of the extent of the contamination at the 130 acre plant site could be made by plant personnel, the Agency has conservatively estimated the amount of land available at 20 acres or about 15 percent of the total plant site, which is more than adequate for the 6.64 acres projected to be required at proposal. EPA also notes that no comments have been received to date regarding the results of the site investigation of potential contamination which was scheduled for completion in 1991. Finally, based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, the land requirements for Plant 2485 have been reduced from 6.64 acres to 1.68 acres.

The commenter also states that plant personnel at Plant 814 informed EPA that 11 of the 13 acres EPA included in its available area was under investigation for possible contamination. Subsequent correspondence from Plant 814 confirmed the presence of contamination but did not detail the extent of the contamination, only that remediation would be necessary and "a large portion of these areas will not be available for future construction other than that related to remediation * * * (1991 Proposal Record, p R01210). However, even according to the plant's information, 2.3 acres of land are not under investigation for contamination. Although this land is comprised of two separate parcels, the larger of the two alone is sufficient to install the costed biological treatment system. Based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, this plant only requires

1.55 acres of land to install the Agency's current recommended treatment system. Subtracting the smaller of the two available parcels (designated as area "J" on the facility plot plan, estimated at 0.5 acres) from the 2.3 acre total, approximately 1.8 contiguous, uncontaminated acres remain available, which will accommodate the current land requirement (1991 Proposal Record, p R01243). Moreover, only 14 percent of the 11 contaminated acres would be required to install the *entire* treatment system, not counting any of the 2.3 acres which the commenter admits is available. The information that "a large portion" of the 11 acres is unavailable does not provide a basis to conclude that the facility could not install a biological treatment system to comply with the promulgated pretreatment standards within three years.

Overall, EPA reasonably concluded that each of the plants visited should have sufficient contiguous, unobstructed, uncontaminated land to install the costed biological treatment systems. In addition, even if EPA's analysis indicated a lack of contiguous, available land, this would not necessarily preclude installation of the costed biological treatment systems. Individual pieces of a plant's treatment system, including separate aeration basins, can be physically located on non-contiguous parcels, or on different portions of a single parcel. In the OCPSF industry, plant manufacturing and/or treatment areas are sometimes segmented or separated by such things as utility roads, railroad tracks, canals, parking lots, warehouses, or other unrelated parcels of land. EPA cannot perform a detailed evaluation, in a national guideline, of how individual facilities in the industry can best comply with the promulgated limitations and standards. Especially with considerations as inherently plant-specific as land availability and potential contamination and remediation requirements, EPA can only assess whether, for the industry as a whole, sufficient land should be available to comply with the requirements of the guideline. EPA has performed such an assessment and has concluded that land availability will not be a constraint on compliance with today's limitations and standards. To the extent that an individual plant determines, after making a good faith effort to use the land available to it, that it is unable to comply with the requirements of today's rule, the plant may apply for an FDF variance.

F. Guidance for Laboratory Analysis of Complex Matrices

Several commenters stated that they were unable to measure some of the regulated pollutants in OCPSF wastewater at the concentrations required by the regulation due to matrix interferences, i.e., that the composition of wastewater samples complicates measurement of OCPSF-regulated pollutants at the low levels required to show compliance with the rule. They suggested that EPA provide notice that relief is available to the regulated community under this regulation when a permittee is unable to measure pollutants due to matrix problems.

At the time of promulgation of the OCPSF guideline in 1987, EPA found that for well-designed, well-operated treatment systems, matrix interferences should not present a problem. The limitations were based upon data that demonstrated that the pollutants have been and thus can be measured at the regulatory levels (52 FR 42563). EPA's determination that the regulated pollutants could be measured at the compliance levels was upheld by the Fifth Circuit (*CMA v. EPA*, 870 F.2d at 231).

Since promulgation of the OCPSF guideline, the Analytical Methods Staff of the Engineering and Analysis Division has been assisting EPA Regions and States in evaluating claims of matrix interferences and other analytical difficulties associated with OCPSF compliance monitoring. Since 1990, the Analytical Methods Staff has issued a series of draft reports that provide guidance to control authorities and laboratories for accommodating matrix-related problems that complicate laboratory measurements of the analytes of interest. These documents have been updated and expanded in one final publication, the May 1993 "Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring," (EPA 821-B-93-001) that is available from Mr. William A. Telliard, Chief, Analytical Methods Staff, Engineering and Analysis Division (WH-552), USEPA, Washington, DC 20460. The document includes: (1) A checklist of laboratory data required to support a claim that a permittee was unable to measure pollutants due to matrix problems, (2) guidance for analysts attempting to identify and quantify pollutants in wastewaters discharged from plants manufacturing OCPSF products, (3) cost estimates for resolving matrix interferences, (4) guidance for reviewing data from the analysis of organic compounds using

EPA 600/1600 series analytical methods, (5) case histories of data submitted for claims of matrix interferences under the OCPSF rule, and (6) guidance on contracting for analytical services.

The Agency's past experience is that nearly all matrix interference problems can be resolved when industries and their laboratories apply the philosophy and techniques suggested in the draft documents. Based on this experience, EPA does not believe matrix interferences will present a problem in demonstrating compliance with the OCPSF guideline.

Finally, EPA notes that this guidance regarding matrix interference is beyond the scope of the Fifth Circuit's remand and today's rule. As stated above, the Fifth Circuit upheld EPA's determination that the OCPSF-regulated pollutants can be measured at the compliance levels, and no issues relating to measurement were remanded. The above discussion is guidance only, and it relates only to implementation and enforcement issues; it does not provide a basis to challenge today's amendment.

G. Guidance for the Appropriate Flow Basis for Converting Concentrations Into Mass-Based Limitations and Standards

The Passaic Valley Sewerage Commissioners, referring to supporting correspondence from the State of New Jersey, complained about conflicting guidance and differing interpretations of the appropriate flow basis for calculating the mass-based permit limits. They requested that the Agency clarify its guidance for (1) determining the appropriate flow basis for establishing the permit limitations and standards as well as (2) the appropriate flow basis for converting compliance monitoring concentration data into mass-based figures.

Regarding the first issue—the appropriate flow basis for establishing permit limits—the promulgated OCPSF effluent limitations guidelines and standards listed in 40 CFR 414 are concentration-based and thus do not regulate flow. As required by the regulation, the permitting or control authority must multiply a reasonable estimate of a plant's regulated process wastewater discharge by the concentration limitations to develop mass limitations for each NPDES or industrial user permit.

The appropriate process wastewater flow to be used must be determined by the permitting or control authority on a case-by-case basis using current information provided by the applicant and other available data. EPA strongly

urges the permit writer or control authority to develop an appropriate process wastewater flow for use in computing the mass effluent or internal plant limitations based on water conservation practices. The factors that should be considered in developing the appropriate process wastewater flow include: review of the component flows to ensure that the claimed flows are, in fact, process wastewater flows as defined by the regulation; review of plant operations to ensure that sound water conservation practices are being followed (examples include 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 (e.g., pump seals, and equipment and area washdowns)); and review of barometric condenser use at the process level (barometric condensers often generate relatively large volumes of slightly contaminated wastewater; 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). (1987 DD, p IX-9-10)

Assuming proper water conservation is being practiced, the 1987 OCPSF Development Document accurately advises the control authority to "use the plant's annual average process wastewater flow to convert the concentration-based limitations into mass-based limitations" (*id.* at p IX-10). To clarify, the annual average flow is defined as the average of daily flow measurements calculated over at least a year. These average flows could be based on a single year's data; however, if available, multiple years' data are preferable to obtain a representation of annual average flow. The regulated OCPSF process wastewater flows, as defined by 40 CFR 401.11(q), are the process waste streams that are subject to 40 CFR Part 414.

Based on current guidance issued by the Office of Water Enforcement and Compliance, the permitting or control authority is advised to establish, for each direct or indirect point source discharge, a single estimate of the regulated long-term average of daily flow measurements based on three to five years of facility data. In the event that no historical or actual process wastewater flow data exists, such as for a new source, the permitting or control authority is advised to establish a reasonable estimate of the facility's projected flow. Historical or projected daily maximum, weekly maximum, or

monthly maximum flows and design-based or plant-capacity-based flows are not recommended as appropriate bases for determining a facility's regulated long-term or annual average of daily flow measurements and corresponding mass limits. The permitting or control authority is advised to establish a flow rate that is expected to be representative during the entire term of the permit or other individual control mechanism. If a plant is planning for significant changes in production during the effective period of the permit, the permitting or control authority may consider establishing multiple tiers of limitations as a function of the significant, projected changes in production. In addition, or in the alternative, a permit may be modified during its term, either at the request of the permittee (or another interested party) or on EPA's initiative, to increase or decrease the flow basis in response to a significant change in production (40 CFR 124.5, 122.62). A change in production could be an "alteration" of the permitted activity or "new information" that would provide the basis for a permit modification (40 CFR 122.62(a) (1), (2)).

Guidance for determining appropriate process wastewater flow is presented in several documents published by the EPA Office of Wastewater Enforcement and Compliance, Washington, DC: "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastewater Formula," 1985 (NTIS Order No. PB92-114438) and "Training Manual for NPDES Permit Writers, 1993 (EPA 833-B-93-003).

Confusion as to the recommended basis for determining appropriate process wastewater flow has arisen, however, due to several OCPSF guidance memoranda that present guidance that is in conflict with the guidance presented in the OCPSF preamble and the above-mentioned guidance documents. Specifically, two EPA guidance memoranda recommend, as a basis for establishing long-term average flow, that the permit writer or control authority use "the highest monthly average flow during the past twelve (12) months or the highest yearly mean of the twelve monthly average flows during the past five (5) years." These incorrect examples were listed in the February 16, 1989 memorandum to Regional Water Management Division Directors and NPDES Authorized State Directors from James R. Elder, Director, Office of Water Enforcement and Permits, entitled "NPDES Permitting Strategy for OCPSF Direct Dischargers" (pp. 29, 40, & 44), and in the October 12,

1988 memorandum to Regional Water Management Division Directors and NPDES State Directors from Mr. Elder entitled "Questions and Answers Regarding the OCPSF Effluent Limitations Guidelines" (p. 4). This guidance establishes an inappropriate basis for determining permit limits because the promulgated OCPSF maximum daily and maximum monthly average limitations were derived by multiplying the long-term average performance level of well-designed, well-operated treatment systems by the respective variability factors for the treatment system. The variability factors already include, among other components, the variability associated with day-to-day and month-to-month production and flow variations. As a result, the OCPSF limits and standards are, in general, considerably less stringent than the long-term averages achieved by the plants on which the limits and standards were based, and plants that design their operations and treatment systems to achieve the long-term averages for individual pollutants should be able to achieve the OCPSF limits and standards even during high-flow days and months. The data from any given day or month may not be representative of the plant's annual or long-term flow. Use of the highest monthly mean to set permit limits would "double count" the effect of flow variability, since the potential for high flow periods is already accounted for in the promulgated limits and standards. The approach presented in the two memoranda from Mr. Elder results in an overly generous permit limit. Therefore, the time period of the measure of production or flow should correspond to the time period used to derive the promulgated limitations, which is an annual average or long-term average measure.

Regarding the second issue—the correct flow basis for determining compliance—the Agency intends that compliance with the OCPSF standards should be evaluated based on the actual total applicable OCPSF-regulated flow discharged during the period for collecting the effluent sample, typically 24 hours. The cumulative 24-hour flow corresponding to the day on which sampling is performed, when combined with concentration data from 24-hour sampling, gives the best indication of the actual mass of pollutants discharged on a given day. The OCPSF mass-based permit limits are calculated using the regulated long-term or annual average of daily flow measurements, adjusted downward as appropriate based on potential for flow reduction, as

discussed above. The limits in 40 CFR part 414 are expressed as maximum for any one day and maximum for monthly average values. Since the limits in the permits are mass-based, the compliance data must also be mass-based. A daily mass value is defined as the total mass discharged over a 24-hour period (unless the operating day is less than 24 hours). Similarly, the monthly average is derived from averaging the available daily mass values in each calendar month. Compliance with the mass-based limits should be based on the actual total applicable OCPSF-regulated flow discharged on the day of sampling, not on the long-term average flow rate that provided the basis for establishing the permit limitations and standards.

Therefore, to determine compliance for OCPSF facilities, the measured concentration of the pollutant in question in the effluent sample should be multiplied by the total applicable OCPSF-regulated flow during the effluent sampling period. For example, if analytical data from a 24-hour sample period for a particular plant demonstrates a pollutant concentration of 0.055 mg/l, and the measured process wastewater flow for the same 24-hour period is 0.600 million gallons, then the plant's reported mass compliance value for that day is 0.275 pounds of the pollutant.

EPA notes that this guidance regarding the proper flow basis is beyond the scope of the Fifth Circuit's remand and today's rule. This guidance simply addresses conflicts in existing guidance and reaffirms that the contemporaneous guidance presented in the 1987 OCPSF Development Document correctly reflects EPA's judgment regarding appropriate implementation of the OCPSF guideline. The above discussion is guidance only, and it relates only to implementation and enforcement issues; it does not provide a basis to challenge today's amendments.

IX. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of \$100 million or more annually or have certain other economic impacts. This action is not a major rule because the estimated cost of today's rule is \$78 million annually. This figure differs from the \$61 million cost presented in the December 6, 1991 proposal because: (1) The costs reflect the shift in discharge status for 14 plants that were direct discharge facilities in 1987 but now discharge to POTWs; (2) the costs reflect the revised projection

that 47 direct discharge facilities are subject to the Subpart J BAT limitations rather than the 23 facilities estimated in 1987; (3) the costs associated with compliance with the pretreatment standards for phenol and 2,4-dimethylphenol have been eliminated since EPA is not promulgating pretreatment standards for these pollutants; (4) the cost is expressed in 1992 dollars rather than 1986 dollars as was done at proposal, because EPA has concluded that this approach more accurately reflects the cost of today's rule; and (5) the cost presented today reflects the total projected cost of the model in-plant biological treatment systems that provide the technology basis for the promulgated limits and standards, rather than simply the incremental cost of today's rule over the cost of the 1987 OCPSP guideline. This last point is explained further in response to the comments of Allied-Signal, Inc. Today's rule meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

X. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires EPA and other agencies to prepare a final regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As noted in Section V.E., the regulatory flexibility analysis for today's final rule, as in the 1987 final rule, examined whether small plants, as defined by a plant production threshold of 5 million pounds, are disproportionately affected by the regulation. The Agency's assessment concludes that no change in the small plant analysis findings is necessary. That is to say, the regulation continues to set BAT equal to BPT for plants with production less than or equal to 5 million pounds of OCPSP products per year, and makes no special provision for small plants complying with PSES standards.

XI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 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 rule contains no additional information collection requirements beyond those already required by 40 CFR part 403 and 40 CFR part 122, and therefore the review requirement of the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Part 414

Organic chemicals manufacturing, Plastics manufacturing, Synthetic fibers manufacturing, Water pollution control, Water treatment and disposal.

Dated: May 28, 1993.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR part 414 is amended as set forth below:

PART 414—ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Public Law 92-500, 86 Stat. 816, Public Law 95-217, 91 Stat. 156, Public Law 100-4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. Sections 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85 (including the tables) are revised to read as follows:

§ 414.____ Pretreatment standards for existing sources (PSES).

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 in accordance with § 414.111.

3. Sections 414.26, 414.36, 414.46, 414.56, 414.66, 414.76, and 414.86 are revised to read as follows:

§ 414.____ Pretreatment standards for new sources (PSNS).

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 in accordance with § 414.111.

4. In § 414.91, paragraphs (b)(1) and (b)(2) are removed and the second sentence of the introductory text of paragraph (b), the flush paragraph of paragraph (b), and the table are revised and combined to form one paragraph to read as follows:

§ 414.91 Toxic pollutant effluent limitations and standards for direct discharge point sources that use end-of-pipe biological treatment.

*** 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 OCPSP process wastewater streams identified by the

permitting authority on a case-by-case basis as metal or cyanide bearing based upon a determination that such streams contain significant amounts of the pollutants identified above. Any such streams designated as metal or cyanide bearing must be treated independently of other metal or cyanide bearing waste streams unless the permitting authority determines 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.

Effluent characteristics	Effluent limitations BAT and NSPS ¹	
	Maximum for any one day	Maximum for any monthly average
Acenaphthene	59	22
Acenaphthylene	59	22
Acrylonitrile	242	96
Anthracene	59	22
Benzene	136	37
Benzo(a)anthracene	59	22
3,4-Benzofluoranthene	61	23
Benzo(k)fluoranthene	59	22
Benzo(a)pyrene	61	23
Bis(2-ethylhexyl) phthalate	279	103
Carbon Tetrachloride	38	18
Chlorobenzene	28	15
Chloroethane	288	104
Chloroform	46	21
2-Chlorophenol	98	31
Chrysene	59	22
Di-n-butyl phthalate	57	27
1,2-Dichlorobenzene	163	77
1,3-Dichlorobenzene	44	31
1,4-Dichlorobenzene	28	15
1,1-Dichloroethane	59	22
1,2-Dichloroethane	211	68
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
Diethyl phthalate	203	81
2,4-Dimethylphenol	36	18
Dimethyl phthalate	47	19
4,6-Dinitro-o-cresol	277	78
2,4-Dinitrophenol	123	71
2,4-Dinitrotoluene	285	113
2,6-Dinitrotoluene	641	255
Ethylbenzene	108	32
Fluoranthene	68	25
Fluorene	59	22
Hexachlorobenzene	28	15
Hexachlorobutadiene	49	20
Hexachloroethane	54	21
Methyl Chloride	190	86
Methylene Chloride	89	40
Naphthalene	59	22
Nitrobenzene	68	27

Effluent characteristics	Effluent limitations BAT and NSPS ¹	
	Maximum for any one day	Maximum for any monthly average
2-Nitrophenol	69	41
4-Nitrophenol	124	72
Phenanthrene	59	22
Phenol	26	15
Pyrene	67	25
Tetrachloroethylene ..	56	22
Toluene	90	26
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
1,2,4-Trichlorobenzene ..	140	68
1,1,1-Trichloroethane ..	54	21
1,1,2-Trichloroethane ..	54	21
Trichloroethylene	54	21
Vinyl Chloride	268	104

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.

5. In § 414.101, paragraphs (b)(1) and (b)(2) are removed and the second sentence of the introductory text of paragraph (b), the flush paragraph of paragraph (b), and the table are revised and combined to form one paragraph to read as follows:

§ 414.101 Toxic pollutant effluent limitations and standards for direct discharge point sources that do not use end-of-pipe biological treatment.

(b) * * * 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 OCPSF process wastewater streams identified by the permitting authority on a case-by-case basis as metal or cyanide bearing based upon a determination that such streams contain significant amounts of the pollutants identified above. Any such streams designated as metal or cyanide bearing must be treated independently of other metal or cyanide bearing waste streams unless the permitting authority determines 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.

Effluent characteristics	BAT effluent limitations and NSPS ¹	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Acenaphthylene	47	19
Acrylonitrile	232	94
Anthracene	47	19
Benzene	134	57
Benzo(a)anthracene ..	47	19
3,4-Benzofluoranthene ..	48	20
Benzo(k)fluoranthene ..	47	19
Benzo(a)pyrene	48	20
Bis(2-ethylhexyl) phthalate	258	95
Carbon Tetrachloride ..	380	142
Chlorobenzene	380	142
Chloroethane	295	110
Chloroform	325	111
Chrysene	47	19
Di-n-butyl phthalate ..	43	20
1,2-Dichlorobenzene ..	794	196
1,3-Dichlorobenzene ..	380	142
1,4-Dichlorobenzene ..	380	142
1,1-Dichloroethane ...	59	22
1,2-Dichloroethane ...	574	180
1,1-Dichloroethylene ..	60	22
1,2-trans-Dichloroethylene ...	66	25
1,2-Dichloropropane ..	794	196
1,3-Dichloropropylene ..	794	196
Diethyl phthalate	113	46
2,4-Dimethylphenol ..	47	19
Dimethyl phthalate ...	47	19
4,6-Dinitro-o-cresol ...	277	78
2,4-Dinitrophenol	4,291	1,207
Ethylbenzene	380	142
Fluoranthene	54	22
Fluorene	47	19
Hexachlorobenzene ..	794	196
Hexachlorobutadiene ..	380	142
Hexachloroethane ...	794	196
Methyl Chloride	295	110
Methylene Chloride ..	170	36
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
Phenanthrene	47	19
Phenol	47	19
Pyrene	48	20
Tetrachloroethylene ..	164	52
Toluene	74	28
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
1,2,4-Trichlorobenzene ..	794	196
1,1,1-Trichloroethane ..	59	22
1,1,2-Trichloroethane ..	127	32
Trichloroethylene	69	26
Vinyl Chloride	172	97

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.

6. Part 414 is amended by adding subpart K to read as follows:

Subpart K—Indirect Discharge Point Sources

Sec.

414.110 Applicability; description of the subcategory of indirect discharge point sources.

414.111 Toxic pollutant standards for indirect discharge point sources.

Subpart K—Indirect Discharge Point Sources

§ 414.110 Applicability; description of the subcategory of indirect discharge point sources.

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 indirect discharge point source.

§ 414.111 Toxic pollutant standards for indirect discharge point sources.

(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 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 these 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 OCPSF process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination that such streams contain significant amounts of the pollutants identified above. Any such streams designated as metal or cyanide bearing must be treated independently of other metal or cyanide bearing waste streams unless the control authority determines 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.

Effluent characteristics	PSES and PSNS ¹	
	Maximum for any one day	Maximum for any monthly average
Acenaphthene	47	19
Anthracene	47	19
Benzene	134	57
Bis(2-ethylhexyl) phthalate	258	95
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
Chloroethane	295	110
Chloroform	325	111
Di-n-butyl phthalate ..	43	20
1,2-Dichlorobenzene ..	794	196
1,3-Dichlorobenzene ..	380	142
1,4-Dichlorobenzene ..	380	142
1,1-Dichloroethane ...	59	22
1,2-Dichloroethane ...	574	180
1,1-Dichloroethylene ..	60	22
1,2-trans-Dichloroethylene ...	66	25
1,2-Dichloropropane ..	794	196
1,3-Dichloropropylene ..	794	196
Diethyl phthalate	113	46
Dimethyl phthalate ...	47	19
4,6-Dinitro-o-cresol ...	277	78
Ethylbenzene	380	142
Fluoranthene	54	22
Fluorene	47	19
Hexachlorobenzene ..	794	196
Hexachlorobutadiene ..	380	142
Hexachloroethane	794	196
Methyl Chloride	295	110
Methylene Chloride ..	170	36
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene ..	164	52
Toluene	74	28
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc ²	2,610	1,050
1,2,4-Trichlorobenzene ..	794	196
1,1,1-Trichloroethane ..	59	22
1,1,2-Trichloroethane ..	127	32
Trichloroethylene	69	26
Vinyl Chloride	172	97

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.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. 92-E]

RIN 2132-AA40

Charter Services Demonstration Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: Section 3040 of the Intermodal Surface Transportation Efficiency Act (ISTEA) directs the Federal Transit Administration (FTA) to issue regulations establishing a demonstration program which would permit transit operators to provide charter services for purpose of meeting the transit needs of government, civic, charitable, and other community activities which otherwise would not be served in a cost effective and efficient manner. Section 3040 also requires the FTA to consult with a board representing public transit operators and privately owned charter services. Today's final rule describes the demonstration program that the FTA has developed in consultation with a committee equally representative of the public and private sectors. During the demonstration program, recipients in eight sites within four States will be allowed to provide direct charter service as determined by local officials according to certain set criteria.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On April 13, 1987, the FTA, then the Urban Mass Transportation Administration, revised its charter service regulation, 49 CFR part 604. The principle underlying this regulation is that federally funded equipment and facilities may not be used to compete unfairly with private charter operators, in keeping with sections 3(f) and 12(c)(6) of the Federal Transit Act, as amended (49 U.S.C. 1602(f) and 1608(c)(6)). When the regulation went into effect on May 13, 1987, it was subject to five limited exceptions, set out in 49 CFR 604.9. Under these exceptions, a recipient of Federal funds may provide charter services if: (1) there

is no willing and able private charter operator; (2) the private charter operator does not have the capacity needed for a particular charter trip; (3) the private charter operator is unable to provide equipment accessible to the elderly and persons with disabilities; (4) is non-urbanized areas, the charter service that would be provided would result in a hardship on users; or, (5) private charter operators are not capable of providing service for special events.

On December 22, 1987, the President signed the Department of Transportation and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202, 101 Stat. 1329; hereafter the "FY 1988 Act"). In the Conference Report accompanying the FY 1988 Act, the FTA was directed to amend its charter service regulation to "permit non-profit social service agencies to seek bids for charter service from publicly funded operators." (Conf. Rept., Committee Print accompanying Department of Transportation and Related Agencies Appropriations Act, 1988, 100th Cong., 1st Sess. 62). This report suggests that "[t]hese non-profit agencies * * * be limited to government entities and those entities subject to sections 501(c) 1,3,5[sic] and 19 of the Internal Revenue Code." The Report recommends that "[i]n such cases, the public operator * * * be required to identify to the chartering organizations any private operator that has notified it of its willingness and ability to provide comparable charter service."

Further to this congressional directive, the FTA amended its charter regulation on December 30, 1988, to provide three additional exceptions to the general prohibition on the use of federally funded equipment and facilities for charter service (53 FR 53348).

The first exception allows the use of FTA-funded equipment and facilities for direct charter service with non-profit social service agencies that are governmental entities or organizations exempt from taxation under Internal Revenue Code 501(c) (1), (3), (4) and (19), provided that the agency is contracting for service for persons with disabilities; is a recipient of funds under certain U.S. Department of Health and Human Service ("USDHHS") programs; or has been State-certified according to the procedure set forth in § 604.9(b)(5)(iii) of the Charter Service Regulation.

The second exception provides an additional exemption for nonurbanized areas by allowing FTA-funded equipment and facilities operated by recipients in such areas to be used incidentally in direct charter service for

social services agencies that are governmental entities or organizations exempt under Internal Revenue Code 501(c) (1), (3), (4) and (19), provided that the agency is contracting for service for elderly persons. The third exception allows FTA-funded equipment and facilities to be used on an incidental basis in any particular charter service for which the FTA recipient and the local private operators have reached an agreement as part of the willing and able determination allowing the recipient to provide such service.

II. Section 3040 of ISTEA

On December 18, 1991, the President signed the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 3040 of ISTEA directs the FTA to issue regulations implementing a charter services demonstration program in not more than 4 states. Under this demonstration program, transit operators would be permitted to provide charter service for the purposes of meeting the transit needs of government, civic, charitable, and other community activities which otherwise would not be served in a cost effective and efficient manner. Section 3040 provides that in developing such regulations, the FTA shall consult with a board that is equally represented by public transit operators and privately owned charter services. The FTA is directed to transmit to Congress, not later than 3 years after the date of enactment of the Federal Transit Act, a report containing an evaluation of the effectiveness of the demonstration program regulations established under this section and to issue regulations to improve the current charter services regulation.

The Conference Report accompanying ISTEA, (H.R. Rep. No. 404, 102nd Cong., 1st Sess. 424 (1991)), explains that the demonstration program has been mandated in response to the concerns expressed by local transit operators regarding the existing charter service regulation. The Report states that the implementing regulations should be designed to enable public transit operators to provide charter services to government, civic, charitable and other community organizations that serve a public purpose and help address unmet transit needs. According to the Report, it is intended that these regulations will grant public transit operators additional flexibility that is not afforded under the existing charter regulations, without creating undue competition for privately owned charter operators. The Report indicates that the results of the demonstration program should provide Congress and the FTA with data to

determine the most effective method for providing charter services to local communities, and whether the current regulations are in need of modification. The Report recommends that the FTA select the state of Michigan as a participant in the program.

III. The NPRM

On October 28, 1992, the FTA issued in the Federal Register, a Notice of Proposed Rulemaking (NPRM) outlining its proposed demonstration program. The NPRM did not propose to overhaul the charter regulation during the demonstration period, but instead to amend the regulation to allow grant recipients in demonstration sites additional flexibility in adjusting to local circumstances. Since these circumstances are defined by specific local conditions, rather than attempting to predetermine the adjustments needed, the FTA proposed that such decisions should be made locally by appropriate officials.

Moreover, both section 3040 of ISTEA and the Report made it clear that the demonstration program should not interfere with the viability of the private charter industry, nor generate unfair competition with private operators. Accordingly, the FTA's proposed demonstration project would allow service decisions to be made by local officials, with the advice and recommendations from a panel composed of an equal number of representatives of the public and private sectors.

In formulating the proposal which appeared in the NPRM, the FTA consulted with a board equally representatives of public and private transit providers. Pursuant to section 3040(b) of ISTEA, the FTA appointed a Charter Services Demonstration Program Federal Advisory Committee (Advisory Committee), composed of 24 representatives of the public and private sectors. The Advisory Committee met for the first time on May 4, 1992, to provide advice and comments on a draft proposal for a demonstration program developed by the FTA. The advice and comments of the Advisory Committee were incorporated into the NPRM.

The committee membership is as follows:

Public Transit Operators and Their Representatives

1. Capital Area Transportation Authority, Lansing, Michigan
2. Metropolitan Transit Authority of Harris County, Houston, Texas
3. Monterey-Salinas Transit Authority, Monterey, California
4. Central Oklahoma Transit Authority, Oklahoma City, Oklahoma

5. Toledo Area Transit Authority, Toledo, Ohio
6. Mass Transit Administration, Baltimore, Maryland
7. Metropolitan Atlanta Regional Transit Authority, Atlanta, Georgia
8. Pinellas-Suncoast Transit Authority, Clearwater, Florida
9. Greenville Transit Authority, Greenville, South Carolina
10. American Public Transit Association, Washington, DC
11. Michigan Department of Transportation, Lansing, Michigan
12. Sacramento Area Council of Governments, Sacramento, California

Privately Owned Charter Services and Their Representatives

1. Indian Trails Bus Company, Oswosso, Michigan
2. American Bus Association, Washington, DC
3. Lake Front Lines, Brookpark, Ohio
4. American Coach Lines, Tuxedo, Maryland
5. Academy Bus Tours, Newark, New Jersey
6. Kerrville Bus Lines, San Antonio, Texas
7. Antelope Valley Bus, Lancaster, California
8. Hotard Destinations Services, New Orleans, Louisiana
9. Airport Ground Transportation Assn., Knoxville, Tennessee
10. Arrow Stage Lines, Phoenix, Arizona
11. California Bus Association, San Francisco, California
12. Northfield Lines, Inc., Northfield, Minnesota

Under the demonstration program as outlined in the NPRM, a State Department of Transportation (State DOT) or metropolitan planning organization (MPO) in each of the selected sites would appoint a local advisory panel composed of representatives of the public and private sectors. The advisory panel would recommend to the State DOT or MPO that a public transit agency participating in the program be allowed to provide certain types of charter service. The State DOT or MPO would accept recommendations which received a unanimous vote from the advisory panel, and decide to grant or deny other recommendations, based on certain set criteria. These criteria include cost, equipment uniqueness, service nature, and specific local factors. There would be a limited appeal to the FTA of the State DOT's or MPO's decision. The demonstration would take place during a 12 to 18 month period, in six different sites. Data collected during the demonstration would be presented to Congress as directed by section 3040(c) of ISTEA.

The NPRM requested proposals from localities wishing to participate in the demonstration program. It also sought comments from interested parties on the substance and structure of the proposed demonstration program. Comments and

proposals were due on or before December 28, 1992. The Advisory Committee met on January 11, 1993, to discuss the comments and proposals, and to provide recommendations on the selection of sites for the demonstration. The FTA has modified the demonstration program as it appeared in the NPRM in keeping with the comments and with the recommendations of the Advisory Committee.

The FTA received comments and proposals from 22 organizations, which break down as follows:

- 1 Senior Citizens' Association.
- 3 Private Trade Associations.
- 1 Public Trade Association.
- 4 Private Charter Operators.
- 10 FTA Recipients.
- 2 Metropolitan Planning Organizations.
- 1 State Department of Transportation.

22 Total

A summary of the significant comments and the proposals and the FTA's response to them is set forth in the following section, which also identifies the localities selected to participate. In the Analysis of the Amendment, the FTA will describe in detail the Charter Services Demonstration Program.

IV. Comments and Proposals Submitted in Response to the NPRM

A. Comments

In the NPRM, the FTA sought responses to the following questions:

1. Who should comprise the advisory panel that makes recommendations to the State Department of Transportation (DOT) or metropolitan planning organization (MPO), and who should appoint its members?

In the NPRM, the FTA proposed that either a State DOT or MPO be empowered to receive and rule on applications by FTA recipients to provide charter service during the demonstration program. Applications would be forwarded to the State DOT or MPO by an advisory panel composed of 4 to 6 persons, with equal representation of public transit providers or local business organizations and representatives of local private operators. Members of the advisory panel would be appointed by the State DOT or MPO.

Most commenters agreed that a local advisory panel should be set up in each of the demonstration sites, and that it should serve the purpose described in the NPRM. Some commenters, however, felt that existing private sector committees could serve the same function, and that the creation of a special ad hoc panel would create

unnecessary duplication. Others stated that the FTA should either appoint the members of the advisory committee, or that the FTA, and not local bodies, should decide what types of service would be provided under the demonstration.

As indicated above, the Conference Report accompanying ISTEA states that the demonstration program should not create undue competition for privately owned charter companies. In keeping with this intent of the Conference Report that private operators not suffer financial injury as a result of the demonstration, the FTA believes it is essential that private operators be consulted on the types of charter service public agencies may provide during the demonstration period. The FTA believes that a local advisory panel equally representative of public and private operators is an appropriate means for ensuring such consultation.

The FTA recognizes, on the other hand, that many localities already have in place committees of public and private operators that serve as consultative forums. The FTA agrees that where such local committees exist and adequately represent the interests of public and private operators, the creation of an additional body would constitute unnecessary duplication. This final rule therefore allows participating sites having demonstrated in their proposals that their existing local advisory committees can effectively represent both public and private operators, to utilize these committees for the purposes of the demonstration. In all other sites, the creation of an advisory panel as outlined in the NPRM, would be required.

Moreover, since needs for and access to charter services vary greatly from one locality to another, the FTA believes that local officials are best able to determine which services should be provided during the demonstration program. The FTA thus proposes a demonstration program that provides for local decisionmaking. In accordance with this local decisionmaking structure, the FTA believes that local officials, and not the FTA, should appoint members of advisory panels to be created under the demonstration, and should decide what types of service are to be provided.

2. Should there be criteria for exceptions other than those listed in subsection III(C) of the NPRM (i.e., cost, equipment uniqueness, service nature, specific local factors)?

In the NPRM, The FTA proposed that the State DOT or MPO be allowed to grant or deny exceptions to the charter

regulation which would allow FTA recipients to provide direct charter service during the demonstration program, on the basis of the following criteria: (1) The difference between the cost of service provided by public and private operators; (2) customers' needs for specific types of vehicles, e.g., trolleys or buses accessible to the elderly and persons with disabilities; (3) the nature of the service is such that only an FTA recipient can adequately provide it; (4) a specific local need that is important to the social or economic vitality of the locality that cannot be met by the private sector.

Most commenters supported the use of the criteria proposed by the FTA for determining which types of charter service should be provided by participants in the demonstration. Some commenters found, however, that certain criteria, such as "service nature" or "cost," were too vague or failed to provide sufficient flexibility. One commenter suggested that "service nature" be replaced by "service deficiency," i.e., public agencies may provide service if private operators are unwilling or unable to do so, or if the service they offer is inordinately expensive.

The FTA notes that given the great variation in local conditions, it is difficult to establish one universal set of criteria that will apply to all localities. The criteria must necessarily be broad if they are to be adapted to a wide range of local circumstances. Moreover, any one or a combination of these criteria can be used in deciding which types of service should be provided. The fourth criterion, "specific local circumstances," affords especially wide latitude in formulating exceptions which respond to local conditions, and should address the "service deficiency" concerns described above. Accordingly, with the exception of "cost evaluation" discussed in subsection 3, below, the FTA believes that there is no need to modify the criteria set out in the NPRM.

3. When evaluating public and private costs of providing charter service, what difference should be considered "significant?"

In the NPRM, the FTA proposed that a State DOT or an MPO may grant an exception if an FTA recipient offers service at a significantly lower cost than can private charter operators. Under the NPRM proposal, cost differences may be considered significant when there is approximately a twenty percent difference between the average charge for service by private operators, and the FTA recipient's fully allocated cost of providing the service.

Commenters representing the private sector agreed that a difference of at least twenty percent between the fully allocated cost of providing charter service and a private operator's charges for comparable service could be considered "significant." On the other hand, commenters representing the public sector felt that twenty percent was excessive and that the differential should be much lower, or that it should not include capital costs for non-profit and government-related charters. One commenter stated that "cheaper is cheaper," and that a public agency should provide the service when it can do so at lesser cost, regardless of the differential.

The FTA maintains that a difference of twenty percent between public and private charges can be generally recognized as "significant" and provides a reasonable benchmark. At the same time, however, the FTA recognizes that a key element of the demonstration is local decisionmaking, and that participants must respond to a great diversity of local conditions. Therefore, the final rule provides that participants should use a twenty percent figure when gauging whether the difference in public and private costs are significant. However, the final rule allows the local advisory panel to set its own cost differential, which may be higher or lower, depending on local circumstances.

The FTA notes that this rule creates an additional exception to, but does not supersede the existing charter regulation. Therefore, participants should, in conformance with the regulation, provide only "incidental" charter service. As a general rule, service which does not meet its fully allocated cost cannot be considered "incidental." See 52 FR 42252, November 3, 1987. Under the FTA's fully allocated cost guidelines, capital costs should be reflected in a public agency's cost of providing a particular service. See, "Fully Allocated Cost Analysis—Guidelines for Public Transit Providers," April 1987. The FTA intends to provide all participants in the demonstration with specific guidance on the fully allocated cost methodology.

4. Which groups are not being served under the current charter regulations?

The Conference Report accompanying ISTEA explains that the demonstration program has been mandated in response to the concerns expressed by local transit operators regarding the existing charter service regulation. The Conference Report states that the implementing regulations should be designed to enable public transit operators to provide charter services to

government, civic, charitable and other community organizations that serve a public purpose and help address unmet transit needs. In the NPRM, the FTA asked commenters to identify the groups that are not being served under the current regulation, but to whom recipients could provide service under the demonstration.

Among the groups identified by commenters as having unmet charter needs were the following: Persons and groups in rural areas; local economic development organizations; County and State government organizations; chambers of commerce; and certain groups of disadvantaged individuals and persons with disabilities.

The FTA points out that exceptions to the current charter regulation allow recipients to provide direct charter service to most of these groups. For instance, under 49 CFR 604.9(b)(3), a recipient in a non-urbanized area may petition the FTA to provide charter service directly when service provided by a private operator would create a hardship for the customer. Moreover, 49 CFR 604.9(b)(7) permits a recipient to provide any type of charter service it may specify when there is an agreement to that effect between the recipient and local private operators. It is the FTA's position that the charter needs of most of the groups mentioned by commenters can be accommodated under the current regulation.

However, during the demonstration, the FTA will conduct a process of data collection, validation, and evaluation. The data to be collected will include the number and duration of charter trips provided; the number and type of groups served; whether or not the group served used a private charter for the same trip before the demonstration; variation between public and private costs for the same types of trips; and the effect of this cost variation on the frequency of charter trips.

A report to Congress will be prepared following the demonstration. This report will serve as the basis for determining whether there are unmet needs for charter service, and, accordingly, whether the current regulation is in need of modification.

5. Should there be an appeal to the FTA of a decisionmaker's denial or granting of an exception?

In the NPRM, the FTA proposed that the FTA entertain appeals of an MPO's or State DOT's denial or granting of an exception if the four regulatory criteria were not properly applied in the decisionmaking process of the MPO or State DOT.

The commenters were overwhelmingly opposed to the creation

of an appeal to the FTA of a decisionmaker's denial or granting of an exception. One commenter stated that the appeal process associated with the local private operator's council should be used. Another stated that the two-step NPRM process for determining exceptions is sufficient, and that an appeal to the FTA would constitute an administrative burden. Only one commenter felt that there should be an appeal to the FTA, indicating that private operators might otherwise be harmed under the demonstration.

Because of the general tenor of the comments, the FTA will not provide an appeal to FTA as part of the regulations establishing the demonstration program. However, the FTA notes that § 604.15 of the current regulation provides a complaint process under which any interested party may seek redress of alleged charter violations. Consequently, any aggrieved private operator may file an appeal under this provision of a decision on a charter exception it believes is in violation of the regulation.

B. Proposals

Because of the difficulty and cost associated with conducting demonstrations on a statewide basis, the FTA proposed that three pairs of sites be selected. The NPRM stated that these sites should fall into the following population ranges: (1) Under 250,000; (2) 250,000 to 999,999; and (3) 1,000,000 to 2,999,999. The FTA excluded very large metropolitan areas because of the difficulty of monitoring programs in these areas, and because they are generally well served by local charter operators. The FTA considers that conducting the demonstrations in matched pairs of sites should provide a basis for comparison and ensure that the data collected does not reflect only unique local circumstances.

In the NPRM, the FTA solicited proposals from public agencies wishing to participate in the demonstration. The FTA asked that the proposals include the following:

- The geographic area of the demonstration and a list of public and private charter operators.
- Evidence of local consensus on the demonstration among public and private operators, e.g., a written agreement by public and private operators that they are willing to participate in the demonstration.
- A plan for providing demonstration data.
- A proposed procedure for establishing an advisory panel and the identification of either the State DOT or MPO to rule on local exceptions to

be allowed under this proposed demonstration,

- An indication of a willingness of the local public operators and private charter service providers to coordinate their activities during this demonstration effort,
- Identification and analysis of groups not being served under the current charter regulation but which would be eligible under the criteria for exceptions set out in the NPRM.

The FTA received proposals from six public agencies: (1) Monterey-Salinas Transit; (2) the Central Oklahoma Transportation and Parking Authority; (3) the Bi-State Development Agency; (4) the Metro-Dade Transit Agency; (5) the Sacramento Area Council of Governments on behalf of the Sacramento Regional Transit Authority and the Yolo County Transit Authority; and (6) the Michigan Department of Transportation on behalf of four transit agencies within the State of Michigan.

The FTA presented the proposals to the Advisory Committee, which discussed them at the January 11, 1993, meeting. On the basis of FTA staff evaluations, the responsiveness of the proposals to the factors set out in the NPRM, and the population ranges of the areas served by the respondents, the Advisory Committee recommended that the following public agencies be selected to participate in the demonstration program:

(1) Monterey-Salinas Transit Authority

Monterey-Salinas Transit (MST), headquartered in Monterey, California, is a small transit authority that serves the major tourist demand on the central coast of California, about 100 miles south of San Francisco. The American Public Transit Association 1992 Membership Directory (APTA Directory) reports that MST serves a population of some 250,000 with 57 buses and 167 employees. The Association of Monterey Bay Area Governments, the local MPO, will oversee the local demonstration program.

(2) Central Oklahoma Transportation and Parking Authority

The Central Oklahoma Transportation and Parking Authority (COTPA) serves the Oklahoma City, Oklahoma, urbanized area, which includes Canadian, Logan, Oklahoma, and Pottawatomie Counties, an area of 2,884 square miles having a population of approximately 1,000,000. According to the APTA Directory, COTPA has about 100 buses and 200 employees. The Private Operators Coordinating Council, composed primarily of private

operators, will serve as an advisory panel.

(3) Bi-State Development Agency

The Bi-State Development Agency (Bi-State), located in St. Louis, Missouri, provides service to the St. Louis/East St. Louis metropolitan area, and serves a population of about 2 million. According to the APTA Directory, Bi-State has 638 buses, including 457 lift-equipped vehicles, and 1,900 employees. The East-West Coordinating Council, the local MPO, will oversee the local demonstration.

(4) Michigan Department of Transportation

The Michigan Department of Transportation (Michigan DOT), will oversee demonstrations in four sites within the State. These sites will include two nonurbanized areas (under 250,000 population), and two small urban areas (between 250,000 and 999,999 population). Michigan DOT will create a statewide steering committee composed of representatives of Michigan DOT, private transportation companies and public transit agencies, to act as an advisory panel.

(5) Yolo County Transit Authority

Yolo County, California is directly west of Sacramento County, and has a population of about 160,000. The Yolo County Transit Authority (Yolo) operates 23 buses and 6 paratransit vehicles serving the cities of Woodlake, Davis, West Sacramento and Winters. Yolo will establish a seven-person advisory panel composed of three public transit providers, three private charter operators, and a staff person from the Sacramento Area Council of Governments.

Moreover, section 3040 of ISTEA specifies that demonstrations should be conducted in not more than four States. It should be noted that the sites selected include four participants in areas with populations under 250,000, two more than proposed in the NPRM. The inclusion of the two additional sites is intended to address the concerns of the Michigan DOT, one of the selected participants, that rural areas, as well as smaller sized cities, be covered by the demonstration. The demonstration program in Michigan will therefore include two matching sites in rural areas. The data collected in these sites during the demonstration should allow Congress and the FTA to determine whether the current exception for rural areas, § 604.9(b)(3) of the regulation, is adequate, or whether an additional exception is needed to accommodate needs for charter service in such areas.

With the selection of these participants, the demonstration will be conducted in eight different sites, in matched pairs varying in population size from rural to large urban areas.

Demonstrations will be conducted for a 12-month period, to be followed by a 6-month period of data collection. This will provide the FTA with sufficient time to evaluate the effect of the demonstration program on the availability of local charter service, given seasonal variations. It will also provide the FTA with sufficient time to analyze the data gathered during the demonstration and prepare for Congress the report required by section 3040(c) of ISTEA.

V. Analysis of the Amendment

Section 604.9 is amended by adding subparagraph 604.9(b)(8), which allows a State DOT or MPO to receive and rule on applications by FTA recipients to provide charter service during the demonstration program. Applications will be based upon the criteria outlined in subsection (A) below, and will be forwarded to the State DOT or MPO by an advisory panel. The local advisory panel will be either created by the grantee, the State DOT or the MPO for the purposes of the demonstration, or will be part of the grantee's existing private sector consultation process. If there is unanimity by the advisory panel, the State DOT or MPO will accept the panel's recommendation. If there is not unanimity, the State DOT or MPO will take into consideration the various positions expressed and will make a decision based on the criteria listed in Subsection (A) below.

A. Criteria for Exceptions

The FTA has determined that the State DOT or MPO will be allowed to grant or deny exceptions to the charter regulation which would allow FTA recipients to provide direct charter service during the demonstration program, on the basis of the following criteria:

1. Cost Evaluation

A State DOT or an MPO may grant an exception if an FTA recipient offers service at a significantly lower cost than can private charter operators. Cost differences may be considered significant when there is approximately a twenty percent difference between the average charge for service by private operators and the FTA recipient's fully allocated cost of providing the service, or if the local advisory panel determines that the difference is significant.

2. Equipment Uniqueness

A State DOT or an MPO may grant an exception if an FTA recipient possesses equipment not available from private operators and which, if obtained from a public source, would result in a substantial surcharge for charter customers. The equipment must be essential to the purpose of the charter. Examples may include lift-equipped vehicles for persons with disabilities, air-conditioned buses during the summer months, and special vehicles such as trolley buses for special events that would be enhanced by such equipment.

3. Service Nature

A State DOT or an MPO may grant an exception if the nature of the service is such that only an FTA recipient can practically provide it. For example, unscheduled or demand responsive service may not be available from a private provider without advance notice and a considerable cost increase to the customer. Public mass transit schedules also may make it impractical to lease public transit equipment to a private operator for certain types of service and at certain times of day.

4. Specific Local Factors

A State DOT or an MPO may grant a waiver to accommodate a specific local need that cannot be met by the private sector, and which is important to the economic or social health and vitality of the local area. Given the great diversity of conditions from one locality to another with respect to the availability of charter service, the participants in the demonstration program should be given wide latitude in formulating exceptions which respond to these conditions. One such example of specific local needs could be the use by a municipality of FTA-funded buses to transport potential investors to the site of a future industrial complex.

B. Protection or Private Charter Operators

Under subparagraph 604.9(b)(8)(iii), exceptions may not be granted if the MPO or State DOT determines that exceptions would jeopardize the economic viability of individual private charter operators or would seriously detract from private charter business. Moreover, service provided by recipients under these exceptions should meet its fully allocated cost.

C. Length of the Demonstration

Subparagraph 604.9(b)(8)(iv) provides that demonstrations will be conducted for a 12-month period, to be followed immediately by a 6-month period of

data collection. This will provide the FTA with sufficient time to evaluate the effect of the demonstration program on the availability of local charter service, given seasonal variations. It will also provide the FTA with sufficient time to analyze the data gathered during the demonstration and prepare for Congress the report required by section 3040(c) of ISTEA.

VI. Regulatory Impacts and Assurances

A. Executive Order 12291

This action has been reviewed under Executive Order 12291. The FTA believes that the rule will not result in an annual effect on the economy of \$100 million or more, and therefore is not a major rule under Executive Order 12291. Because this rule would only implement a limited demonstration, the FTA finds that the economic impact of this proposed regulation is so minimal that a full regulatory evaluation is not necessary. The costs of the demonstration would be included in the fully allocated costs to the public operators of providing charter services during the demonstration. Further, applications to provide service will not be granted if they would jeopardize the economic vitality of individual private charter operators or would seriously detract from private charter business. Moreover, in the NPRM, the FTA solicited, but received no comments on, the potential costs or benefits of the demonstration program. An appropriate regulatory evaluation would accompany any rules proposed as a result of this demonstration program.

B. Departmental Significance

This regulation is considered to be a significant rule as defined by the Department's Regulatory Policies and Procedures on Improving Governmental Regulations. This regulation allows FTA recipients to provide a limited number of direct charter trips in up to eight sites nationwide for the purpose of implementing the demonstration program mandated by Congress in ISTEA to improve the charter service regulations.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96-354, the FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act

The FTA anticipates a small additional collection of information required by the regulations proposed in this document that is subject to the

Paperwork Reduction Act, Public Law 96-511, 44 U.S.C. chapter 35. This increase has been calculated in the collection of information for 49 CFR part 604 (Control #2132-0543) that has been submitted to the Office of Management and Budget.

E. Federalism

This regulation has been reviewed under Executive Order 12612 on Federalism and the FTA has determined that this action does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty. Moreover, this demonstration program has been mandated by statute (section 3040 of ISTEA).

List of Subjects in 49 CFR Part 604

Bus, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, title 49, Code of Federal Regulations, part 604, Charter Service, is amended as follows:

PART 604—[AMENDED]

1. The authority citation for part 604 continues to read as follows:

Authority: Federal Transit Act, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

2. Section 604.9 is amended by adding paragraph (b)(8) to read as follows:

§ 604.9 Charter service.

* * * * *

(b) * * *

(8) During the demonstration period described in paragraph (b)(8)(iv) of this section, recipients in the FTA-selected sites may submit applications to provide charter service to an advisory panel equally representative of public transit providers or local business organizations and local private operators, and which has either been created for such purpose by the grantee, the State Department of Transportation (State DOT), or metropolitan planning organization (MPO), or which is part of the recipient's existing private sector consultation process.

(i) The advisory panel will forward these applications to the State DOT or

MPO, which will grant those recommended by unanimous vote of the advisory panel.

(ii) If the advisory panel does not unanimously endorse an application, the State DOT or MPO will make a decision to grant or deny the application based on the following criteria:

(A) *Cost evaluation.* A recipient may provide charter service when it can do so at a significantly lower cost than can private charter operators. Cost differences may be considered significant when there is approximately a twenty percent difference between the average charge for service by private operators and the recipient's fully allocated cost of providing the service, or when the advisory panel determines them to be significant.

(B) *Equipment uniqueness.* A recipient may provide charter service using equipment that is not available from a private source, when such equipment is essential to the purpose of the charter trip.

(C) *Service nature.* A recipient may provide unscheduled or demand responsive service that could not be provided by a private operator without advance notice or at a substantial surcharge to the customer.

(D) *Specific local factors.* A recipient may provide service which responds to a clear need that cannot be met by the local private sector, and which is important to the economic or social health and vitality of the local area.

(iii) The State DOT or MPO may not grant applications to provide service that would jeopardize the economic vitality of individual private charter operators or would seriously detract from private charter business.

(iv) The service described in this subsection may be provided only during the demonstration program to be conducted from August 9, 1993 to August 9, 1994 in the following sites:

(A) Monterey, California;

(B) Oklahoma City, Oklahoma;

(C) St. Louis, Missouri;

(D) Yolo County, California;

(E) Four sites within the State of Michigan to be selected by the Michigan Department of Transportation and approved by the Federal Transit Administration prior to the start of the demonstration program.

Issued on July 6, 1993.

Robert H. McManus,
Acting Administrator.

[FR Doc. 93-16297 Filed 7-8-93; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 921105-3165; I.D. 063093A]

King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area

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

ACTION: Removal of interim final rule.

SUMMARY: NMFS is issuing a technical amendment to regulations at 50 CFR part 671, which are applicable to the king and Tanner crab fisheries in the Bering Sea and Aleutian Islands management area (BSAI). The technical amendment removes an interim final rule that had been published to supersede State of Alaska regulations establishing certain crab pot limits in the exclusive economic zone in the management area. This action is necessary because the State of Alaska rescinded the regulations that had implemented the pot limits in question, obviating the need for the interim final rule. It is intended to promote the goals and objectives of the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI (FMP).

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

Fishing for king and Tanner crab by U.S. vessels in the BSAI is governed by the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with oversight by the Council and the Secretary of Commerce, delegates management of the crab resources in the BSAI to the State of Alaska.

During its March 3-5, 1992, meeting, the State of Alaska's Board of Fisheries (Board) adopted certain uniform crab pot limits to manage the king and Tanner crab fisheries. Specifically, the Board established the following pot limits, which became effective as State regulations at 5 Alaska Administrative Code (AAC) on June 19, 1992: 250 king crab pots in Bristol Bay (5 AAC 34.825); 100 king crab pots in the Bering Sea (5 AAC 34.925); and 250 Tanner crab pots

in the Bering Sea (5 AAC 35.525). On December 3, 1992, NMFS published an interim final rule (57 FR 57112) that superseded these State of Alaska regulations in the management area. Reasons for this action by NMFS are contained in the preamble to the interim final rule.

On December 12, 1992, the State of Alaska promulgated an emergency order rescinding the aforementioned pot limits, obviating the need for the interim final rule. Therefore, NMFS removes the interim final rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this technical amendment is necessary for the conservation and management of the king and Tanner crab fisheries in the BSAI, and that it is consistent with the Magnuson Act and other applicable laws.

This action removes an interim final rule, which is no longer necessary, because the State of Alaska has rescinded the pot limit regulations that the interim final rule superseded. As such, provision for advance public comment is not necessary under 5 U.S.C. 553(b)(B), and good cause exists under 5 U.S.C. 553(d) not to delay the effective date of the technical amendment for 30 days. Furthermore, the Assistant Administrator has determined that it is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216-6.

This rule is being issued without prior comment and is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis. Therefore, none has been prepared.

This rule removes an inoperative rule that has been determined not to be a major rule under E.O. 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. No changes in the regulatory impacts previously reviewed and analyzed will result from implementation of the technical amendment.

The Director of the Alaska Region, NMFS, has determined that this technical amendment will not adversely affect endangered or threatened species. Therefore, further consultation pursuant to section 7 of the Endangered Species Act is not required for the

implementation of this technical amendment.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: July 2, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

PART 671—[REMOVED]

For the reasons set out in the preamble, 50 CFR part 671 is removed and reserved.

[FR Doc. 93-16214 Filed 7-2-93; 4:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 58, No. 130

Friday, July 9, 1993

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

RIN 3150-AE40

Disposal of High-Level Radioactive Wastes in Geologic Repositories; Investigation and Evaluation of Potentially Adverse Conditions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to clarify its regulations with respect to the consideration of certain defined geologic and other conditions that, if present, are potentially adverse to the ability of a geologic repository to meet the prescribed performance objectives with respect to isolation of high-level radioactive waste. The proposed revisions attempt to make clear that the adequacy of a license applicant's investigations and evaluations will be judged in terms of their significance to compliance with post-closure performance objectives. In addition, provisions that deal with information presentation in the license application would be completely separated from the technical criteria and moved to the section that defines the required contents of the license application.

DATES: Comments must be submitted on or before October 7, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Mark S. Delligatti, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852, telephone (301) 504-2430.

SUPPLEMENTARY INFORMATION: As reflected in the Nuclear Waste Policy Act of 1982, as amended, the Nuclear Regulatory Commission exercises licensing and related regulatory authority with respect to geologic repositories that are to be constructed and operated by the U.S. Department of Energy (DOE) for the disposal of high-level radioactive waste. The Commission's regulations pertaining to such geologic repositories appear at 10 CFR part 60. The Commission has lately been engaged, with the assistance of its federally-funded research and development center (the Center for Nuclear Waste Regulatory Analyses, or "CNWRA"), in a review of the requirements of part 60, with particular attention to any matters that may be ambiguous or inconsistent with other expressions of its regulatory policy. The results of CNWRA's review were reported in CNWRA 90-003, "Identification and Evaluation of Regulatory and Institutional Uncertainties in 10 CFR part 60." The proposal that is presented by this notice deals with a matter that was brought to light by this review.

Background

To place the issue at hand in context, it would be useful to describe generally the principal features of part 60.

1. Before construction of the repository, DOE is required to obtain a "construction authorization" from NRC (10 CFR 60.3(b)).

2. DOE's license application, which is to be submitted when it seeks construction authorization, must contain the information described in a detailed section on "Content of application" (10 CFR 60.21).

3. Upon consideration of DOE's application, the Commission may authorize construction, considering whether required information has been submitted and whether the site and design comply with the Technical Criteria (10 CFR 60.31(a)).

4. The "Technical Criteria" in 10 CFR part 60, subpart E include, among other things, certain performance objectives (10 CFR 60.111-60.113) as well as siting criteria (10 CFR 60.122) and design criteria (10 CFR 60.130-134).

The issues to be addressed concern: (1) The meaning of two provisions of the siting criteria, particularly as they may relate to the performance objectives; (2) the way individual potentially adverse

conditions must be considered; and (3) the appropriateness of moving, from the siting criteria to the content of application section, those requirements that deal with information to be provided by DOE, including the provisions of the siting criteria described above.

The siting criteria include a listing (in 10 CFR 60.122(b)) of certain "favorable conditions" and also (in 10 CFR 60.122(c)) of certain "potentially adverse conditions." The significance of these conditions is that they may affect the performance of the repository in isolating any emplaced waste—i.e., inhibiting the transport of radioactive materials from emplaced waste so amounts and concentrations entering the environment will be kept within prescribed limits.

CNWRA's review of the regulation did not identify any regulatory uncertainty with respect to the treatment of favorable conditions. The treatment of potentially adverse conditions was viewed, however, as being unclear. The regulation appropriately notes that if any of the potentially adverse conditions is present, it may compromise the ability of the geologic repository to meet the performance objectives relating to isolation of the waste.¹ It then goes on to specify ways in which it can be demonstrated that such a condition does not so compromise the performance of the repository. For the demonstration to meet the requirements of the rule, the potentially adverse condition must have been "adequately investigated" and its effect must have been "adequately evaluated."

Each of these terms gives rise to a regulatory uncertainty. Specifically, the issue concerns the standard by which the "adequacy" of the investigation and evaluation is to be measured: Is the proper standard that which is relevant

¹ See Staff Position 60-002, "The Meaning of the Phrase 'Performance Objectives Relating to Isolation of the Waste,'" where it was concluded, on the basis of the rulemaking record for 10 CFR part 60, that the subject phrase (in 10 CFR 60.122) refers to the performance objectives set out in 10 CFR 60.112, "Overall Performance Objective for the Geologic Repository after Permanent Closure," and 10 CFR 60.113, "Performance of Particular Barriers after Permanent Closure," but does not refer to the performance objectives set out in 10 CFR 60.111, "Performance of the Geologic Repository Operations Area through Permanent Closure." Availability of this staff position was noted at 55 FR 33565; August 16, 1990.

and material to judging whether the performance objectives relating to isolation of the waste have been met, or is it some other standard, (and if so, what standard)?² In addition, the CNWRA interpreted 10 CFR 60.122(a)(2) to require analyses of the effect of each potentially adverse condition on performance and therefore, 10 CFR 60.122(a)(2) constitutes a separate regulatory requirement independent of the performance objectives in 10 CFR 60.112 and 10 CFR 60.113. The CNWRA concluded that even if compliance was demonstrated with 10 CFR 60.112 and 10 CFR 60.113, additional demonstration of compliance would be necessary to address the potentially adverse conditions listed in 10 CFR 60.122(c).

Discussion

The Commission believes that its intention has been consistent and manifest throughout the rulemaking process. The Commission has endeavored to establish a set of regulations that would facilitate a judgment, in accordance with the Atomic Energy Act, of whether the proposed disposal of high-level waste in a geologic repository would create any unreasonable risk to the health and safety of the public. Although certain

requirements may be stated in unqualified terms, we have noted that we do not expect that complete assurance that they will be met can be presented. A reasonable assurance, on the basis of the record before the Commission, that the objectives and criteria will be met, is the general standard that is required. In particular, proof of the future performance of engineered barrier systems and the geologic setting over time periods of many hundreds or many thousands of years is not to be had, in the ordinary sense of the word. What is required is reasonable (not complete) assurance that the outcome will be in conformance with those objectives and criteria. The Commission has stated that demonstration of compliance will rely on data from accelerated tests and predictive models that are supported by such measures as field and laboratory tests, monitoring data, and natural analog studies. 10 CFR 60.101(a)(2).

Reasonable assurance that the outcome will be in conformance with the stated objectives and criteria represents a judgment that the overall performance of the geologic repository, and the performance of particular subsystems, would achieve specified levels of radionuclide containment and isolation, coupled with an expectation that certain design and quality assurance features would be incorporated so as to enhance confidence that such performance would be achieved. Concern with potentially adverse conditions was spelled out clearly: it was to assure that they would be " * * * assessed in order to assure that they will not compromise the ability of the geologic repository to meet the performance objectives [relating to isolation of the waste]." (Emphasis added.) 48 FR 28194, 28201, June 21, 1983 (final rulemaking).

It was our inclusion in the technical criteria of provisions that relate not to the performance of the repository, but to methodology for demonstrating that performance that gave rise to the regulatory uncertainty identified by CNWRA. Such matters are ordinarily dealt with in procedural sections of the regulations, and in particular those sections that define the requirements for the content of license applications, and should have been treated in like manner in 10 CFR Part 60. Had this been done, there would be no uncertainty. The rule would then have been a straightforward reflection of the Commission's intent. DOE would need to demonstrate that the performance objectives would be met, taking into account the presence of potentially adverse conditions. DOE

would not have to demonstrate, as well, that there had been an "adequate investigation" or "adequate evaluation" above and beyond what might be needed to show, with reasonable assurance, that the performance objectives related to isolation of the waste would be met. We do, in fact, anticipate that quite thorough investigations will be undertaken and that very sophisticated evaluations will be needed, but the measure to be applied is only that which is relevant and material to a finding that the performance objectives have been satisfied.

It is also appropriate to clarify our expectation that the evaluation of potentially adverse conditions should take into account the interaction of such conditions. Indeed, it would be inappropriate to attempt to evaluate a condition such as evidence of dissolution (60.122(c)(10)) without considering, as well, the potential for changes in hydrologic conditions resulting from reasonably foreseeable climatic changes (60.122(c)(6)). The very reason for requiring consideration of potentially adverse conditions is to ensure that the performance objectives will be met and this cannot be accomplished if combined effects are not taken into account. While the regulation does refer to evaluating the significance of each of the potentially adverse conditions, this was intended to mean that the evaluation must demonstrate how the potentially adverse condition is taken into account in meeting the performance objectives (i.e., the application would need to describe the presence of the condition and consider that condition in the evaluation of performance). The rule does not and was never intended to exclude the consideration of other conditions, whether favorable or potentially adverse, that would have a bearing upon performance and the sensitivity of such performance to the potentially adverse condition in question. That is exactly what is called for by 10 CFR 60.21(c)(1)(ii)(B), which requires the applicant's Safety Analysis Report to include an assessment that, among other things, analyzes " * * * the extent to which it contributes or detracts from isolation." Although we acknowledge that the wording of the existing rule could be read to call for a more compartmentalized approach to the analysis of potentially adverse conditions, we view that construction as inappropriate.

The first change that is proposed, therefore, is to remove from the technical criteria that portion of the text

² The full text of the pertinent regulation, 10 CFR 60.122(a), reads as follows:

(a)(1) A geologic setting shall exhibit an appropriate combination of the conditions specified in paragraph (b) of this section so that, together with the engineered barriers [sic] [barrier] system, the favorable conditions present are sufficient to provide reasonable assurance that the performance objectives relating to isolation of the waste will be met.

(2) If any of the potentially adverse conditions specified in paragraph (c) of this section is present, it may compromise the ability of the geologic repository to meet the performance objectives relating to isolation of the waste. In order to show that a potentially adverse condition does not so compromise the performance of the geologic repository the following must be demonstrated:

(i) The potentially adverse human activity or natural condition has been adequately investigated, including the extent to which the condition may be present and still be undetected taking into account the degree of resolution achieved by the investigations; and

(ii) The effect of the potentially adverse human activity or natural condition has been adequately evaluated using analyses which are sensitive to the potentially human activity or natural condition and assumptions which are not likely to underestimate its effect; and

(iii)(A) The potentially adverse human activity or natural condition is shown by analysis pursuant to paragraph (a)(2)(ii) of this section not to affect significantly the ability of the geologic repository to meet the performance objectives relating to isolation of the waste, or

(B) The effect of the potentially adverse human activity or natural condition is compensated by the presence of a combination of the favorable characteristics so that the performance objectives relating to isolation of the waste are met, or

(C) The potentially adverse human activity or natural condition can be remedied.

that deals with methodology, as contrasted with the physical characteristics of the site. Section 60.122 will still include a list of favorable conditions and potentially adverse conditions. Section 60.122(a)(1) will continue to require that the geologic setting exhibit an appropriate combination of favorable conditions to provide reasonable assurance that the performance objectives relating to isolation of the waste (clarified by incorporating specific reference to 10 CFR 60.112 and 10 CFR 60.113) will be met. However, the treatment of potentially adverse conditions would be modified. Instead of setting out a methodology for demonstrating that a potentially adverse condition does not compromise the geologic repository's ability to meet the performance objectives relating to isolation of the waste, this portion of the rule would simply declare that the presence of potentially adverse conditions must not so compromise repository performance. Under § 60.21(c)(1)(ii)(B), the applicant would still be required to carry out the investigations needed to determine whether or not a potentially adverse condition may be present.

Although the means for evaluating the significance of potentially adverse conditions would no longer appear in the technical criteria, they would still be an integral part of the regulation as a whole. This can be demonstrated readily, as follows:

Currently, 10 CFR 60.122(a)(2) requires that the potentially adverse human activity or natural condition be *adequately investigated*, including the extent to which the condition may be present and still be undetected taking into account the degree of resolution achieved by the investigations. The proposed rule would accomplish exactly the same thing by amending 10 CFR 60.21(c)(1)(ii)(B), which deals with a site assessment that must be included in the Safety Analysis Report, to specify that "for each potentially adverse condition, the analysis shall demonstrate either its absence or the extent to which its presence may have been underestimated or undetected, taking into account the degree of resolution achieved by the investigations." The phrase "adequately investigated," which was found to be a source of regulatory uncertainty, is to be removed from the regulation. Note that the description of the investigation has been refined to reflect possible underestimation of, as well as nondetection of, potentially adverse conditions. Currently, 10 CFR 60.122(a)(2) requires that the effect of the potentially adverse human activity or natural condition on the site be *adequately evaluated* using analyses which are sensitive to the potentially adverse human activity or natural condition and assumptions which are not likely to underestimate its effect. Again, the proposed rule serves the same purpose, by amending the "Content of Application,"

§ 60.21(c)(1)(ii)(C), to incorporate the same level of detail. The amended language requires evaluations of performance that "shall consider all of the potentially adverse conditions and favorable conditions enumerated in § 60.122 that have not been determined to be absent," and "in considering any such potentially adverse condition, assumptions should be used that are not likely to underestimate its effects." The phrase "adequately evaluated" is eliminated, but the standard for adequacy of evaluation is made explicit by stating that: "The evaluations must demonstrate that, considering the potentially adverse conditions in combination with other characteristics of the site and design, the performance objectives relating to the isolation of the waste as set out in §§ 60.112 and 60.113 of this part will be met."

The proposed rule would differ in two other respects from the existing rule. The new rule clearly indicates that the required evaluations are to be undertaken in combination. This means that the effect of a particular potentially adverse condition would not be studied in isolation but in the context of other characteristics of the site and design as well. This is accomplished by requiring the evaluation of the potentially adverse conditions " * * * in combination with other characteristics of the site and design." The second difference relates to the elimination of three clauses currently contained in § 60.122(a)(2)(iii) that set out alternative ways how the applicant can deal with the presence of potentially adverse conditions—by showing that they are not significant, that they are compensated for by the presence of favorable conditions, or that they can be remedied. What is required is clear: reasonable assurance that the performance objectives relating to isolation of the waste will be satisfied. For the reasons indicated above, the three clauses currently appearing as § 60.122(a)(2)(i)(ii) and (iii) that indicate how the requirement might be satisfied are unnecessary. Thus, even though the alternative ways of dealing with the presence of potentially adverse conditions are not listed, the applicant may continue to employ any of them in demonstrating that the pertinent performance objectives have been satisfied.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on a DOS-formatted (IBM compatible) 5.25 or 3.5 inch computer diskette. Text files should be provided WordPerfect format or unformatted ASCII code. The format and version

should be identified on the diskette's external label.

Environmental Impact

The NRC has determined that this proposed regulation is the type of action described in 10 CFR 51.22(d), pertaining to the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications, under part 60. Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150-0127.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies may be obtained from Mark S. Delligatti, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852, telephone (301) 504-2430.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The only entity subject to regulation under this rule is DOE.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because affected facilities are not licensed under 10 CFR part 50, and therefore, a backfit analysis is not required. This proposed rule affects only those facilities that will

be used for the disposal of high-level waste.

List of Subjects in 10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting requirements, and Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553, NRC is proposing to adopt the following amendments to 10 CFR part 60.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

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

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141).

2. Section 60.21 is amended by revising paragraphs (c)(1)(ii)(A), (B), and (C) to read as follows:

§ 60.21 Content of application.

(c) * * *

(1) * * *

(ii) The assessment shall contain:

(A) An analysis of the geology, geophysics, hydrogeology, geochemistry, climatology, and meteorology of the site.

(B) Analyses to determine the degree to which each favorable condition and potentially adverse condition enumerated in § 60.122 has been characterized and has been found to be present. For each potentially adverse condition, the analysis shall demonstrate either its absence or the extent to which its presence may have been underestimated or undetected, taking into account the degree of resolution achieved by the investigations. For these purposes, investigations shall extend from the surface to a depth sufficient to determine critical pathways for radionuclide migration from the underground facility to the accessible environment. Potentially adverse conditions shall be investigated outside

of the controlled area if they may affect isolation within the controlled area.

(C) An evaluation of the performance of the proposed geologic repository for the period after permanent closure, assuming anticipated processes and events, giving the rates and quantities of releases to the accessible environment as a function of time; and a similar evaluation that also assumes the occurrence of unanticipated processes and events. The evaluations shall consider all of the potentially adverse conditions and favorable conditions enumerated in § 60.122 except those that have been determined to be absent. In considering any such potentially adverse condition, assumptions should be used that are not likely to underestimate its effects. The evaluations must demonstrate that, considering the potentially adverse conditions in combination with other characteristics of the site and design, the performance objectives relating to the isolation of the waste, as set out in §§ 60.112 and 60.113, will be met.

* * *

3. Section 60.122 is amended by revising paragraph (a) to read as follows:

§ 60.122 Siting criteria.

(a)(1) A geologic setting shall exhibit an appropriate combination of the conditions specified in paragraph (b) of this section so that, together with the engineered barrier system, the favorable conditions present are sufficient to provide reasonable assurance that the performance objectives relating to isolation of the waste, as set out in §§ 60.112 and 60.113, will be met.

(2) The presence of potentially adverse conditions must not compromise the ability of the geologic repository to meet the performance objectives relating to isolation of the waste.

* * *

Dated in Rockville, Maryland, this 2d day of July, 1993.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-16240 Filed 7-8-93; 8:45 am]

BILLING CODE 7590-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 37-7-5882; FRL-4677-7]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision, South Coast Air Quality Management District, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on March 6, 1992 and by the Santa Barbara County Air Pollution Control District (SBCAPCD) on November 5, 1991. The California Air Resources Board (CARB) submitted these revisions to EPA on September 14, 1992 and June 19, 1992 respectively. The revisions concern the following rules: revised SCAQMD Rule 1115, Motor Vehicle Assembly Line Coating Operations; and new SBCAPCD Rule 339, Motor Vehicle and Mobile Equipment Coating Operations. These rules control the emissions of volatile organic compounds (VOCs) from motor vehicle assembly line and motor vehicle refinishing coating operations. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated both the revisions to SCAQMD Rule 1115 and SBCAPCD 339 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under the CAA provisions cited above because the rules do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before August 9, 1993.

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A-5-3), Air and Toxics Division, Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and the new rule, and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions and new rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation, 2020 L Street, Sacramento, CA 95814.
South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765-4182.
Santa Barbara Air Pollution Control District, 26 Castilian Drive, B-23 Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT:
Chris Stamos, Rulemaking Section II (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744-1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Los Angeles-South Coast and Santa Barbara Air Basins. 43 FR 8964; 40 CFR 81.305. Because the Los Angeles-South Coast and Santa Barbara Air Basins were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. The Los Angeles-South Coast and the Santa Barbara Air Basins did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD and the SBCAPCD portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the

date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.¹ EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme and the Santa Barbara Air Basin is classified as moderate;² therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many new and revised RACT rules to EPA for incorporation into its SIP on September 14, 1992 and June 19, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for the following rules: revised SCAQMD Rule 1115, Motor Vehicle Assembly Line Coating Operations; and new SBCAPCD Rule 339, Motor Vehicle Assembly and Mobile Equipment Coating Operations. These submitted rules were found to be complete on November 20, 1992 and August 27, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V³ and are being proposed for limited approval and limited disapproval.

Rules 1115 and 339 control VOC emissions from motor vehicle assembly line coating operations and from motor vehicle refinishing operations. VOCs contribute to the production of ground level ozone and smog. Rule 1115 was originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. Rule 339 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SCAQMD Rule 1115 and SBCAPCD Rule 339.

¹ Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

² SCAQMD and SBCAPCD were redesignated as nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

³ EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act. For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1115 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks" EPA-450/2-77-008. There is no applicable CTG for automobile refinishing operations, covered by SBCAPCD Rule 339. Therefore Rule 339 and Rule 1115 were also evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 Federal Register; May 25, 1988 (EPA's "Blue Book"), and against other EPA policy including the EPA Region 9 CARB document entitled, Guidance Document for Correcting VOC Rule Deficiencies (April, 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD revised Rule 1115 is significantly improved from its current SIP version, which dates back to August 21, 1989, and includes the following significant changes:

- An expanded definitions section with an added definition of exempt compounds,

- New alternative emissions control plan requirements by reference to SCAQMD Rule 108,

- Added surface preparation and cleanup standards by reference to SCAQMD Rule 1171,

- An expanded test methods section.

SBCAPCD Rule 339 is a new rule which was adopted to control VOC emissions from motor vehicle refinishing operations. It requires the use of low VOC coatings and the use of an application method that achieves at least 65 percent transfer efficiency in mobile equipment coating operations.

EPA has evaluated SCAQMD's submitted Rule 1115, and SBCAPCD's submitted Rule 339 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions in Rule 1115 and new Rule 339 address and/or correct many deficiencies previously identified by EPA. These corrected deficiencies in Rule 1115 have resulted in a clearer, more enforceable rule. Rule 339 is new rule for the SBCAPCD and serves to strengthen the SIP by controlling a previously unregulated source category.

Although SCAQMD Rule 1115 and SBCAPCD Rule 339 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. These deficiencies are related to rule applicability, recordkeeping requirements, VOC limits (Rule 1115), executive officer's discretion in determining test methods (Rule 339), and insufficient test method references for determining transfer efficiencies. A detailed discussion of rule deficiencies can be found in the Technical Support Document for SCAQMD's Rule 1115, and SBCAPCD's Rule 339 (both dated 4/12/93) which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The

approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD's submitted Rule 1115 and SBCAPCD's submitted Rule 339 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Sanctions related to highway funding and to offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the SCAQMD and the SBCAPCD and are currently in effect in the South Coast and in Santa Barbara. EPA's limited disapproval action in this NPR does not prevent EPA, SCAQMD, or SBCAPCD from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401-7671q.

Dated: June 30, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93-16314 Filed 7-8-93; 8:45 am]

BILLING CODE 6580-50-P

40 CFR Part 81

[MT16-1-5699; FRL-4677-1]

Designation of Area for Air Quality Planning Purposes; Montana; Designation of Whitefish PM10 Nonattainment Area

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Clean Air Act as amended in 1990, EPA is authorized to promulgate new designations of areas (or portions thereof) as nonattainment for the PM10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS). In this notice, EPA is proposing to revise the PM10 designation for a portion of Flathead County, Montana. Previously, consistent with the Act, EPA notified the Governor of Montana that the area around Whitefish, Montana should be redesignated from unclassifiable to nonattainment for PM10. The redesignation is based upon violations of the PM10 NAAQS which were monitored during February and March of 1992.

DATES: All written comments should be submitted by August 9, 1993.

ADDRESSES: All comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART-AP), EPA Region VIII, 999 18th Street, suite 500, Denver, CO 80202-2466.

Information supporting today's action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 6th Floor, South Tower, Denver, Colorado 80202-2466.

The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, Air Programs Branch, EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 293-1754.

SUPPLEMENTARY INFORMATION:

I. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for PM10 pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), on July 16, 1992, the

Administrator of EPA Region VIII notified the Governor of Montana that EPA believed that the area around Whitefish should be redesignated as nonattainment for PM10. Under section 107(d)(3)(B), the Governor of Montana was required to submit to EPA the designation he considered appropriate for the area around Whitefish within 120 days after EPA's notification. The EPA received the State's response for Whitefish, Montana on November 13, 1992. Now, the EPA must promulgate the redesignation that it deems necessary and appropriate, consistent with section 107(d)(3)(C) of the Act.

Based upon EPA's review of the State submittal for Whitefish, EPA is proposing redesignation which is consistent with the request submitted by the Governor of Montana. EPA is requesting comments on today's proposal and will consider any relevant comment in taking final action on today's proposal.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. The EPA has proposed that Whitefish, Montana, addressed in today's notice, be redesignated nonattainment. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for PM10¹ [see section 107(d)(1)(A)(i)]. Thus, in determining the appropriate boundaries for the nonattainment areas proposed today, EPA has considered not only the area where the violations of the PM10 NAAQS are occurring, but nearby areas which significantly contribute to such violations.

II. Background for PM10

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM10, that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth the regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy, elaborating PM10 control strategies necessary to assure attainment and maintenance of the PM10 NAAQS

¹ The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

[see generally 52 FR 24672]. The EPA adopted a PM10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM10 NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas that might well have been attaining the PM10 NAAQS and whose existing SIPs most likely needed less adjustment were placed in Group II; and (3) areas with a strong likelihood of attaining the PM10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679-24682). At that time, Whitefish was categorized as a Group III area.

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as Group I and other areas which had monitored violations of the PM10 NAAQS prior to January 1, 1989, were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment for PM10. All other areas of the Country, such as the Whitefish area, were similarly designated unclassifiable for PM10 (see section 107(d)(4)(B)(iii) of the Act; 40 CFR 81.327 (1992) as amended by 57 FR 56762, 56772 (Nov. 30, 1992) (PM10 designations for Montana)). After EPA adopted the PM10 NAAQS, EPA identified and listed the Group I and Group II areas in a Federal Register notice published on August 7, 1987 (52 FR 29383). In that notice, EPA indicated that Group III areas consisted of that portion of a State not placed in Group I or II. Descriptions of the areas identified as Group I and II areas were later clarified in a Federal Register notice dated October 31, 1990 (55 FR 45799). That notice also identified Group II areas which violated the standards prior to January 1, 1989. EPA announced all areas which were designated nonattainment by operation of law for PM10 upon enactment of the 1990 Amendments in a Federal Register notice dated March 15, 1991 (56 FR 11101). In addition, EPA has published a follow-up notice correcting the boundaries and designations of some of the areas in light of comments received addressing that March 1991 notice (see 56 FR 37654 (August 8, 1991)). Formal codification in 40 CFR part 81 of those areas designated nonattainment for PM10 by operation of law upon enactment was announced in a Federal Register notice dated November 6, 1991 (56 FR 56694). The November 6, 1991 Federal Register notice was

subsequently amended on November 30, 1992 (57 FR 56762).

III. Today's Action for Whitefish, MT

As noted above, pursuant to section 107(d)(3) of the Act, EPA is authorized to initiate the redesignation of areas as nonattainment for PM₁₀. Based on eight exceedances of the 24-hr PM₁₀ NAAQS recorded between February 4 and March 13, 1992, ranging from 163 to 333 µg/m³, EPA notified the Governor of Montana on July 16, 1992, that the area around Whitefish, Flathead County, Montana should be redesignated from unclassifiable to nonattainment for PM₁₀. (See 40 CFR 50.6.)

Further, section 107(d)(1)(A)(i) provides that a nonattainment area shall consist of that area violating the PM₁₀ NAAQS or contributing significantly to violations in a nearby area. Generally, the PM₁₀ nonattainment area boundaries are presumed to be, as appropriate, the county, township, or municipal subdivision in which the ambient particulate monitor recording the PM₁₀ violations is located. EPA has presumed that this would include both the area violating the PM₁₀ NAAQS and any area significantly contributing to the violations. However, a State may demonstrate that a boundary other than the county perimeter or municipal boundary may be more appropriate.

In response to EPA's July 16, 1992 letter, on November 13, 1992, the Governor of Montana requested that the City of Whitefish and surrounding vicinity, in a portion of Flathead County, Montana, be redesignated as nonattainment for PM₁₀. The more detailed boundaries are provided in the table below. Based on the information provided by the Governor, including monitoring data, EPA believes that the nonattainment boundaries submitted by the Governor are appropriate. The table below indicates how EPA is proposing to revise the PM₁₀ designation for a portion of Flathead County, Montana in 40 CFR 81.327 from unclassifiable to nonattainment.

Designated area	Designation date	Designation type	Classification date	Classification type
Flathead County (part)—The City of Whitefish and surrounding vicinity bounded by lines from Universal Transmicator (UTM) coordinates 695000 mE, 5370000 mN, east to 699000 mE, 5370000 mN, south to 699000 mE, 5361000 mN, west to 695000 mN, 5361000 mN, and north to 695000 mE, 5370000 mN.	Proposing	Nonattainment ..	Proposing	Moderate.

The technical information supporting the redesignation request and the boundary selection are available for public review at the address indicated above.

IV. Significance of Today's Action for Whitefish, MT

If the Whitefish area of Montana is redesignated nonattainment when EPA takes final action on today's proposal, such area will be classified as moderate PM₁₀ nonattainment area by operation of law at the time of the designation (see section 188(a)). Montana must submit an implementation plan to EPA for such area within 18 months after final action on today's proposal and promulgation of the nonattainment redesignation, meeting the requirements of Part D, Title I of the Act (see section 189(a)(2)(B) of the Act).

The Clean Air Act provides that the plan for the area must contain, among other things, the following requirements:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM₁₀ NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable;

2. Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation;

3. A permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM₁₀; and

4. Quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 171(l), toward timely attainment.

See, e.g., sections 188(c), 189(a), 189(c) and 172(c) of the Act. EPA has issued detailed guidance on the statutory requirements applicable to moderate PM₁₀ nonattainment areas (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

If EPA ultimately redesignates the Whitefish area as nonattainment in taking final action on this notice, EPA will also establish a date by which the State must submit the contingency measures required by section 172(c)(9) of the Act (see 57 FR 13498 at 13510-12 and 13543-44). Section 172(b) of the Act provides that such date shall not be later than 3 years from the date of the nonattainment redesignation. EPA would likely establish a schedule requiring that contingency measures be submitted within 18 months from the redesignation, to coincide with the due date for the rest of the moderate PM₁₀ nonattainment area SIP.

V. Request for Public Comments

The EPA is, by this notice, proposing that the PM₁₀ designation for a portion of the Flathead County, Montana be

revised. The EPA is requesting public comments on all aspects of this proposal including the appropriateness of the proposed designation and the scope of the proposed boundary. Public comments should be submitted to EPA at the address identified in ADDRESSES by August 9, 1993.

VI. Other Regulatory Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the

redesignation request will not affect a substantial number of small entities.

B. Executive Order 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501-7515, 7601.

Dated: May 26, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93-16309 Filed 7-8-93; 8:45 am]

BILLING CODE 8560-50-P

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Legal Services Corporation's ("LSC" or "Corporation") regulation implementing the Freedom of Information Act ("FOIA") by giving authority to process and to grant or deny requests for records of the Corporation's Office of Inspector General ("OIG") to an official within the OIG. In addition, this proposed rule also makes other technical and procedural changes intended to reflect the Corporation's internal administrative structure and procedures and to better conform the regulation to the FOIA.

DATES: Comments must be received by August 9, 1993.

ADDRESSES: All comments should be addressed to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, 202-336-8810.

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978 was amended in 1988 to provide for the statutory establishment of Offices of Inspector General at 33 "designated Federal entities," one of which is LSC. 5 U.S.C. App. 3 Sec. 8E. The primary function of LSC's OIG is to promote economy and efficiency and to prevent and detect fraud, waste and abuse in LSC's programs and operations. Because of the independent and investigative nature of the OIG, OIG records are kept separate from other LSC records, and many are of a confidential nature. Although not required, it is appropriate to amend Part 1602 to give the OIG the authority to process and to grant or deny FOIA requests for OIG records.

Accordingly, this proposed rule adds a definition for "Office of Inspector General records" as records that are in the exclusive possession and control of the OIG. This proposed rule also gives the authority to process and to grant or deny a request for OIG records to the Counsel to the Inspector General, and maintains the authority to process and to grant or deny a request for all other Corporation records with the General Counsel. It further makes clear that the General Counsel may delegate this authority to a designee and provides that the Counsel to the Inspector General also may delegate to a designee. Also, the proposed rule gives the Inspector General the authority to decide appeals of requests for OIG records, while the President of the Corporation retains the authority to decide all other appeals.

Although requests for OIG records will be processed by the OIG, the proposed rule provides that all requests be directed initially to the Office of the General Counsel ("OGC"). The General Counsel or his designee is required by the proposed rule to promptly refer to the OIG any request or portion thereof determined to be for OIG records and to send the requester notice of such referral.

In addition, this proposed rule adds the requirement that the OGC consult with the OIG before granting any requests for records or portions of records which originated with the OIG or contain information which originated with the OIG, but which are maintained by other components of the Corporation. Examples of such records would be written reports by OIG personnel; minutes, notes or transcripts of oral reports by the Inspector General to the Board of Directors of the Corporation during closed portions of Board meetings; and travel vouchers prepared by OIG personnel. Such reports, minutes, notes and vouchers all have

the potential to reveal the identity of confidential sources or targets and the investigative or audit strategy of the OIG or to otherwise interfere with its ongoing activities. Similarly, this proposed rule requires the OIG to consult with the OGC prior to granting any request.

This proposed rule also amends § 1602.9(b)(iv) by adding language found in the corresponding FOIA exemption that appeared to be unnecessary prior to the establishment of the OIG. The FOIA exemption at 5 U.S.C. 552(b)(7)(D) protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's current rule has no language protecting such documents. Because the OIG conducts investigations into criminal activities, addition of the language would appear to be appropriate.

Technical and Procedural Revisions

This proposed rule also amends Part 1602 by making numerous technical and procedural changes that reflect the Corporation's internal administrative structure and procedures. For example, the proposed rule states that all LSC records are maintained at the Corporation's headquarters in Washington, DC, and that the OGC is responsible for handling FOIA requests, except requests for OIG records. Also, the proposed rule deletes references to a central records room to better reflect LSC's practice of maintaining its records in the various divisions of the Corporation.

The fees section has been revised to better reflect categories of employees and to update labor costs. It has also been amended to add an assumption that requesters agree to pay all charges for services associated with their requests up to \$25. For requests estimated to exceed \$25, the Corporation will consult with the requester prior to processing the request. Also, requests estimated to exceed \$25 will not be deemed to be received by the Corporation for purposes of the initial ten-day response period until the requester agrees to pay all fees for services. This amendment allows requesters to reconsider their request before generating fees they may not have anticipated.

In addition, the proposed rule amends the language of Part 1602 that applies to matters specifically exempted from disclosure by statute. See § 1602.9(a)(2). The change is intended to better conform the rule to the corresponding FOIA exemption, 5 U.S.C. 552(b)(3).