

gateway of Burlington, Iowa (except the plant site of Spencer Chemical Division of Gulf Oil Corporation).

No. MC 136553 (Sub-No. E57), filed April 26, 1976. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th St., Dubuque, Iowa 52001. Applicant's representative: Arthur J. Pape (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer materials*, from Mason City, Iowa, to points in Indiana and points in Michigan on and west of U.S. Highway 27 and on and south of Interstate Highway 96. The purpose of this filing is to eliminate the gateway of Streator, Ill.

No. MC 136553 (Sub-No. E58), filed April 26, 1976. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th St., Dubuque, Iowa 52001. Applicant's representative: Arthur J. Pape (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer materials*, in bulk, from Henry, Ill., to points in Missouri on and west of a line beginning at the Missouri-Illinois State line and extending along U.S. Highway 61 to junction Missouri Highway 19, thence along Missouri Highway 19 to the Arkansas-Missouri State line. The purpose of this filing is to eliminate the gateway of Burlington, Iowa, (except the plant site of Spencer Chemical Division of Gulf Oil Corporation).

No. MC 136553 (Sub-No. E59), filed April 26, 1976. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th St., Dubuque, Iowa 52001. Applicant's representative: Arthur J. Pape (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer materials*, from Mason City, Iowa, to points in Iowa on, south, and east of a line beginning at the Iowa-Illinois State line and extending along U.S. Highway 30 to junction U.S. Highway 61, thence along U.S. Highway 61 to Burlington, Iowa. The purpose of this filing is to eliminate the gateway of Rock Island, Ill.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-36917 Filed 12-14-76;8:45 am]

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

[Ex parte No. MC-43]

At a Session of the Interstate Commerce Commission, Motor Carrier Leasing Board, held at its office in Washington, D.C., on the 29th day of November, 1976.

It appearing, That a petition has been filed by All American, Inc. (MC 29120 and numerous subs) and Terminal Transport Company, Inc., (MC 22229 and numerous subs) under common control, by American Commercial Lines, Inc., which is under control by Texas Gas Transmission Corp., for waiver of paragraphs (a) (3) and (c) of § 1057.4 of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057), concerning equipment leased and interchanged by petitioners;

It further appearing, That petitioners will maintain a jointly supervised program applying the same standards of inspection maintenance to equipment in accordance with the motor carrier safety regulations of the Department of Transportation;

It further appearing, That the Department offers no objection to granting the petition;

It is ordered, That waiver of paragraphs (a) (3) and (c) of § 1057.4 be, and, it is hereby granted *Provided*, That the equipment is inspected on the day it is to be leased and found to meet the requirements of the motor carrier safety regulations of the Department of Transportation and the petitioners remain in satisfactory compliance with these regulations and under common control.

By the Commission, Motor Carrier Leasing Board, Members Burns, Teeple, and Sibbald.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-36918 Filed 12-14-76;8:45 am]

[Notice No. 87]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 15, 1976.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under

Section 212a(b) in connection with transfer application under Section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 76856. By application filed December 6, 1976, CRESCENT MOVING & STORAGE, P.O. Box 4886, Highway 101 S. at Humboldt Hill Overpass, Eureka, CA 95501, seeks temporary authority to transfer the operating rights of JOSEPH D. SNIPES, an individual, d.b.a. CRESCENT MOVING & STORAGE, P.O. Box 4886, Highway 101 S. at Humboldt Hill Overpass, Eureka, CA 95501, under Section 210a(b). The transfer to CRESCENT MOVING & STORAGE of the operating rights of JOSEPH H. SNIPES, an individual, d.b.a. CRESCENT MOVING & STORAGE, is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-36916 Filed 12-14-76;8:45 am]

[Notice No. 88]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 15, 1976.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 76857. By application filed December 6, 1976, DEAN OF ITHACA, INC., 401 East State Street, Ithaca, NY 14850, seeks temporary authority to transfer the operating rights of WAYNE C. STEVENS, INC., 990 Sullivan Street, Elmira, NY 14905, under section Section 210a(b). The transfer to DEAN OF ITHACA, INC., of the operating rights of WAYNE C. STEVENS, INC., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-36914 Filed 12-14-76;8:45 am]

federal register

WEDNESDAY, DECEMBER 15, 1976



PART II:

DEPARTMENT OF JUSTICE

**Law Enforcement Assistance
Administration**



CONFIDENTIALITY OF IDENTIFIABLE RESEARCH AND STATISTICAL INFORMATION

Title 28—Judicial Administration
CHAPTER I—DEPARTMENT OF JUSTICE
Part 22—Confidentiality of Identifiable
Research and Statistical Information

Regulations governing confidentiality of research and statistical information collected in LEAA-funded projects have been prepared to implement Section 524 (a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. In general terms the Act provides that research and statistical information identifiable to a private person may only be used for the purpose for which obtained. The Act also provides that:

* * * copies of information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings.

The concern over confidentiality of research and statistical data has become increasingly apparent during recent years.

The growing trend toward use of computerized techniques for tabulation and analysis of data has furthered the potential for interfacing, accessing and otherwise "using" data which might otherwise remain buried in volumes of "raw data."

In light of the foregoing the development and implementation of appropriate confidentiality procedures appears critical at this time. The major objective of the LEAA Regulations is to protect the privacy of subjects included in LEAA-funded research and statistical projects. Of equal importance, the regulations clarify the duty and responsibility of research investigators supported under LEAA grants and contracts.

The regulations, in draft form, were published in the FEDERAL REGISTER on September 24, 1975. Public hearings and meetings on the regulations were held on October 16, 1975, and January 8, 1976. These final regulations incorporate the many recommendations elicited during the review and commenting period.

Pursuant to the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503), a new Part 22 is added immediately after Part 21 of Chapter I of Title 28, Code of Federal Regulations to read as set forth below:

Sec.	Purpose.
22.1	Purpose.
22.2	Definitions.
22.3	Applicability.
22.4	Use of identifiable data.
22.5	Revelation of identifiable data.
22.6	Privacy certification.
22.7	Information transfer agreement.
22.8	Final disposition of identifiable materials.
22.9	Requests for transfer of information.
22.10	Notification.
22.11	Use of data identifiable to a private person for judicial or administrative purposes.
22.12	Sanctions.

AUTHORITY: Secs. 501, 524(a), Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701, et seq.), as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

§ 22.1 Purpose.

The purpose of these regulations is to:

- Protect privacy of individuals by requiring that information identifiable to a private person obtained in a research or statistical program may only be used and/or revealed for the purpose for which obtained;

- Insure that copies of such information shall not, without the consent of the person to whom the information pertains, be admitted as evidence or used for any purpose in any judicial or administrative proceedings;

- Increase the credibility and reliability of federally-supported research and statistical findings by minimizing subject concern over subsequent uses of identifiable information;

- Provide needed guidance to persons engaged in research and statistical activities by clarifying the purposes for which identifiable information may be used or revealed; and

- Insure appropriate balance between individual privacy and essential needs of the research community for data to advance the state of knowledge in the area of criminal justice.

§ 22.2 Definitions.

(a) Person—means any individual, partnership, corporation, association, public or private organization or governmental entity, or combination thereof.

(b) Private person—means any person defined in § 22.2(a) other than an agency, or department of Federal, State, or local government, or any component or combination thereof. Included as a private person is an individual acting in his official capacity.

(c) Research or statistical project—means any program, project, or component thereof which is supported in whole or in part with funds appropriated under the Act and whose purpose is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. The term does not include "intelligence" or other information-gathering activities in which information pertaining to specific individuals is obtained for purposes directly related to enforcement of the criminal laws.

(d) Research or statistical information—means any information which is collected during the conduct of a research or statistical project and which is intended to be utilized for research or statistical purposes. The term includes information which is collected directly from the individual or obtained from any agency or individual having possession, knowledge, or control thereof.

(e) Information identifiable to a private person—means information which either—

- Is labelled by name or other personal identifiers, or

- Can, by virtue of sample size or other factors, be reasonably interpreted

as referring to a particular private person.

(f) Recipient of assistance—means any recipient of a grant, contract, inter-agency agreement, subgrant, or subcontract under the Act and any person, including subcontractors, employed by such recipient in connection with performances of the grant, contract, or inter-agency agreement.

(g) Officer or employee of the Federal Government—means any person employed as a regular or special employee of the U.S. (including experts, consultants, and advisory board members) as of July 1, 1973, or at any time thereafter.

(h) The act—means the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended.

(i) Applicant—means any person who applies for a grant, contract, or subgrant to be funded pursuant to the Act.

§ 22.20 Applicability.

(a) These regulations govern use and revelation of research and statistical information obtained, collected, or produced either directly by LEAA or under any interagency agreement, grant, contract, or subgrant awarded under the Act.

(b) The regulations do not apply to any records from which identifiable research or statistical information was originally obtained; or to any records which are designated under existing statutes as public; or to any information extracted from any records designated as public.

(c) The regulations do not apply to information gained regarding future criminal conduct.

§ 22.21 Use of identifiable data.

Research or statistical information identifiable to a private person may be used only for research or statistical purposes.

§ 22.22 Revelation of identifiable data.

(a) Except as noted in paragraph (b), of this section, research and statistical information relating to a private person may be revealed in identifiable form on a need-to-know basis only to—

- Officers, employees, and subcontractors of the recipient of assistance;

- Such individuals as needed to implement sections 303(a)(12), 402(c), 515(a), 518, and 521 of the Act; and

- Persons or organizations for research or statistical purposes. Information may only be transferred for such purposes upon a clear demonstration that the standards of § 22.26 have been met and that, except where information is transferred under paragraph (a)(1) and (2) of this section, such transfers shall be conditioned on compliance with a § 22.24 agreement.

(b) Information may be revealed in identifiable form where prior consent is obtained from an individual or where the individual has agreed to participate in a project with knowledge that the findings cannot, by virtue of sample size, or uniqueness of subject, be expected to totally conceal subject identity.

§ 22.23 Privacy certification.

(a) Each applicant for LEAA support either directly or under a State plan shall submit a Privacy Certificate as a condition of approval of a grant application or contract proposal which has a research or statistical project component under which information identifiable to a private person will be collected.

(b) The Privacy Certificate shall briefly describe the project and shall contain assurance by the applicant that:

(1) Data identifiable to a private person will not be used or revealed, except as authorized under §§ 22.21, 22.22.

(2) Access to data will be limited to those employees having a need therefore and that such persons shall be advised of and agree in writing to comply with these regulations.

(3) All subcontracts which require access to identifiable data will contain conditions meeting the requirements of § 22.24.

(4) To the extent required by § 22.27 any private persons from whom identifiable data are collected or obtained, either orally or by means of written questionnaire, shall be advised that the data will only be used or revealed for research or statistical purposes and that compliance with requests for information is not mandatory. Where the notification requirement is to be waived, pursuant to § 22.27(c), a justification must be included in the Privacy Certificate.

(5) Adequate precautions will be taken to insure administrative and physical security of identifiable data.

(6) A log will be maintained indicating that identifiable data have been transmitted to persons other than LEAA or grantee/contractor staff or subcontractors, that such data have been returned, or that alternative arrangements have been agreed upon for future maintenance of such data.

(7) Project plans will be designed to preserve anonymity of private persons to whom information relates, including, where appropriate, name-stripping, coding of data, or other similar procedures.

(8) Project findings and reports prepared for dissemination will not contain information which can reasonably be expected to be identifiable to a private person except as authorized under § 22.22.

(c) The applicant shall attach to the Privacy Certification a description of physical and/or administrative procedures to be followed to insure the security of the data to meet the requirements of § 22.25.

§ 22.24 Information transfer agreement.

Prior to the transfer of any identifiable information to persons other than LEAA or project staff, an agreement shall be entered into which shall provide, as a minimum, that the recipient of data agrees that:

(a) Information identifiable to a private person will be used only for research and statistical purposes.

(b) Information identifiable to a private person will not be revealed to any person for any purpose except where the information has already been included in research findings (and/or data bases) and is revealed on a need-to-know basis for research or statistical purposes, provided that such transfer is approved by the person providing information under the agreement, or authorized under § 22.24(e).

(c) Knowingly and willfully using or disseminating information contrary to the provisions of the agreement shall constitute a violation of these regulations, punishable in accordance with the Act.

(d) Adequate administrative and physical precautions will be taken to assure security of information obtained for such purpose.

(e) Access to information will be limited to those employees or subcontractors having a need therefore in connection with performance of the activity for which obtained, and that such persons shall be advised of, and agree to comply with, these regulations.

(f) Project plans will be designed to preserve anonymity of private persons to whom information relates, including, where appropriate, required name-stripping and/or coding of data or other similar procedures.

(g) Project findings and reports prepared for dissemination will not contain information which can reasonably be expected to be identifiable to a private person.

(h) Information identifiable to a private person (obtained in accordance with this agreement) will, unless otherwise agreed upon, be returned upon completion of the project for which obtained and no copies of that information retained.

§ 22.25 Final disposition of identifiable materials.

Upon completion of a research or statistical project the security of identifiable research or statistical information shall be protected by:

(a) Complete physical destruction of all copies of the materials or the identifiable portion of such materials after a three-year required recipient retention period or as soon as authorized by law, or

(b) Removal of identifiers from data and separate maintenance of a name-code index in a secure location.

The Privacy Certificate shall indicate the procedures to be followed and shall, in the case of paragraph (b) of this section, describe procedures to secure the name index.

§ 22.26 Requests for transfer of information.

(a) Requests for transfer of information identifiable to an individual shall be submitted to the person submitting the Privacy Certificate pursuant to § 22.23.

(b) Except where information is requested by LEAA, the request shall de-

scribe the general objectives of the project for which information is requested, and specifically justify the need for such information in identifiable form. The request shall also indicate, and provide justification for the conclusion that conduct of the project will not, either directly or indirectly, cause legal, economic, physical, or social harm to individuals whose identification is revealed in the transfer of information.

(c) Data may not be transferred pursuant to this section where a clear showing of the criteria set forth above is not made by the person requesting the data.

§ 22.27 Notification.

(a) Any person from whom information identifiable to a private person is to be obtained directly, either orally, by questionnaire, or other written documents, shall be advised:

(1) That the information will only be used or revealed for research or statistical purposes; and

(2) That compliance with the request for information is entirely voluntary and may be terminated at any time.

(b) Except as noted in paragraph (c) of this section, where information is to be obtained through observation of individual activity or performance, such individuals shall be advised:

(1) Of the particular types of information to be collected;

(2) That the data will only be utilized or revealed for research or statistical purposes; and

(3) That participation in the project in question is voluntary and may be terminated at any time.

(c) Notification, as described in paragraph (b) of this section, may be eliminated where information is obtained through field observation of individual activity or performance and in the judgment of the researcher such notification is impractical or may seriously impede the progress of the research.

(d) Where findings in a project cannot, by virtue of sample size, or uniqueness of subject, be expected to totally conceal subject identity, an individual shall be so advised.

§ 22.28 Use of data identifiable to a private person for judicial or administrative purposes.

(a) Copies of research or statistical information identifiable to a private person shall be immune from legal process and shall only be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding with the written consent of the individual to whom the data pertains.

(b) Where consent is obtained, such consent shall:

(1) Be obtained at the time that information is sought for use in judicial or administrative proceedings;

(2) Set out specific purposes in connection with which information will be used;

(3) Limit, where appropriate, the scope of the information subject to such consent.

§ 22.29 Sanctions.

Where LEAA believes that a violation has occurred of section 524(a), these regulations, or any grant or contract conditions entered into thereunder, it may initiate administrative actions leading to termination of a grant or contract, commence appropriate personnel and/or other procedures in cases involving Federal employees, and/or initiate appropriate legal actions leading to imposition of a fine of not to exceed \$10,000 against any person responsible for such violations.

Effective date: January 14, 1977.

RICHARD W. VELDE,
Administrator, Law Enforcement
Assistance Administration.

COMMENTARY

Section 22.2 Definitions. (a) Based on Administrative Procedures Act, 5 U.S.C. 551, (APA) definition.

(b) Under the proposed definition, all "individuals" are "private persons" (e.g., no distinction is made between an "individual" acting in a "private" as opposed to "official" capacity). This is consistent with the approach followed in the APA definition of "person," in which a private/public distinction is made with respect to organizations, but does not apply to "individuals." Note, therefore, that the regulations would limit use and revelation of data concerning on-duty activity of public officials, such as police officers, where such data was obtained for a research or statistical purpose.

(c) No comment.

(d) No comment.

(e) Definition follows concept used by Bureau of the Census.

(f) Definition covers subcontractors below the primary level. This is necessary to cover multi-level statistical projects.

(g) No comment.

(h) No comment.

(i) No comment.

Section 22.20 Applicability. (a) The procedural requirements of the regulations (e.g., privacy certificates, transfer agreements) are applicable to all projects which are awarded after the effective date of the regulations. The statutory provisions of section 524(a) of the Act, however, apply to all programs outstanding as of the effective date of the Act.

(b) The exemption in this paragraph insures that limitations of the regulations are not extended to cover the original files from which data was obtained (e.g., data in such records may continue to be used for any otherwise authorized purpose) or to records which are designated as public or data collected therefrom.

(c) The regulations do not apply to information relating to future criminal activity.

Section 22.21 Use of Identifiable Data. Under this provision, the limitation on use of identifiable information would be applicable—regardless of whether data collection activity was paid out of LEAA or match funds. This position is justified in the fact that section 524(a) refers to information "furnished under the Act"—rather than to specific information which is obtained with LEAA funds.

Section 22.22 Revelation of Identifiable Data. This section would allow revelation of identifiable information to LEAA and SPA program, audit or evaluation staff, to the Comptroller General of the U.S., and to other persons for research and statistics purposes (on condition of compliance with § 22.24 agreement). Note that identifiable information could be used or revealed for any research or statistical purpose regardless of whether or not it was related to the specific objectives in the original project. Data could also be revealed where consent had been provided by the individual or could, by virtue of sample size or unique characteristics of the subject, be inferred from voluntary participation in a project. This would cover, for example, the evaluation of specific organizations and subsequent release of evaluation results which were identifiable to the organization in question.

The "need-to-know" limitation would preclude release of information in identifiable form for longitudinal or other similar studies, when the objectives of such subsequent projects could be attained through use of names stripped and/or coded data.

The "need-to-know" limitation would also prohibit inclusion of identifiable data in publications or reports prepared for general dissemination.

Data could be revealed in symposia or other research-oriented meetings, however (if needed in identifiable form), provided that participants entered into § 22.24 agreements. Note that since agreements do not require LEAA review or approval the procedure should not present undue administrative burdens. (Although it should have the effect of curtailing "casual" dissemination of data and reinforcing awareness of confidentiality criteria.)

Section 22.23 Privacy Certification. A Privacy Certification would be required to be submitted by potential grantees, contractors, or subgrantees in any case in which a proposed project included a research or statistical component.

Note that subcontractors are not required to comply with this requirement (but are bound by agreements, as defined under § 22.24).

Section 22.24 Information Transfer Agreement. The agreement is intended to insure that transferred data remain subject to privacy protections of the regulations.

Specifically, the agreement would require that physical and administrative security of data be insured (including use of need-to-know limits on access by employees and subcontractors) and that records of identifiable information obtained under the agreement be returned without copies retained (unless otherwise agreed to by the party providing the information under the agreement).

In the event that more restrictive rules would apply, such as 41 CFR Part 2, such limitations would be considered as part of the agreement.

Section 22.25 Final Disposition of Identifiable Materials. This section allows final protection of data to be accomplished through destruction of either the entire record or that portion which includes the identifiers or through substitution of code numbers and separate maintenance of a name-code index. LEAA will determine whether proposed procedures for securing the index are adequate.

Section 22.26 Request for Transfer of Information. This section sets forth the standards which must be met prior to approval of a request for information.

Strict criteria for review of the project for which data is requested have been included to insure that such transfers of data ostensibly for research purposes would not harm the individual providing original data.

Section 22.27 Notification. Subsections (a) and (b) have been set out separately to distinguish between (a) projects in which data is provided in response to specific questions and (b) projects in which information is obtained through observation of subject activity.

Subsection (c) permits waiver of the notification requirement where information is gathered through field observation and notification is considered impractical by the researcher. Note that § 22.23 requires that such proposed waivers be justified in the Privacy Certification.

Subsection (d) requires that persons be advised in situations where identity cannot be concealed because of uniqueness of subject matter or because of sample size.

Section 22.28 Use of Data Identifiable to a Private Person for Judicial or Administrative Purposes. Section 22.23 sets out the immunity provisions as contained in the Act. It should be noted that such immunity is specifically limited to copies of information (see § 524(a)).

Section 22.29 Sanctions. Sanctions are made available against "any person responsible for violations." This would include the grantee organization, as well as particular individuals (including grantee employees) committing violations. Actions against Federal employees are based on Title 18 U.S.C. 1905 (prohibiting disclosures of confidential information). Sanctions for violation of the regulations are applicable to violations occurring subsequent to the effective date of the regulations.

[FR Doc. 76-36654 Filed 12-14-76; 8:45 am]

federal register

WEDNESDAY, DECEMBER 15, 1976



PART III:

ENVIRONMENTAL PROTECTION AGENCY



NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

Interim Rulemaking

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCYSUBCHAPTER N—EFFLUENT GUIDELINES AND
STANDARDS

[FRL 656-3]

PART 421—NONFERROUS METALS MAN-
UFACTURING POINT SOURCE CATE-
GORYPRETREATMENT STANDARDS FOR
EXISTING SOURCESInterim Rulemaking, Secondary Aluminum
Smelting and Secondary Copper Sub-
categories

Notice is hereby given that pretreatment standards for existing sources set forth in interim final form below are promulgated by the Environmental Protection Agency (EPA or Agency). On April 8, 1974, EPA promulgated a regulation adding Part 421 to Chapter 40 of the Code of Federal Regulations (39 FR 12822). That regulation with subsequent amendments established effluent limitations and guidelines for existing sources and standards of performance and pretreatment standards for new sources for the nonferrous metals manufacturing point source category. The regulation set forth below will amend 40 CFR Part 421—Nonferrous Metals Manufacturing Point Source Category, by amending § 421.30 and adding § 421.34 to the secondary aluminum smelting subcategory (Subpart C), and amending § 421.60 and adding § 421.64 to the secondary copper subcategory (Subpart F), pursuant to section 307(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1316(b) and 1317(b) and (c), 1251, 1317(b), 86 Stat. 816 et seq.; Pub. L. 92-500) (the Act).

(a) *Legal Authority.* Section 307(b) of the Act requires the establishment of pretreatment standards for pollutants introduced into publicly owned treatment works (POTW) and 40 CFR 128 establishes that the Agency will propose specific pretreatment standards at the time effluent limitations are established for point source discharges. Pretreatment standards for the nonferrous metals manufacturing point source category were proposed on April 8, 1974 (39 FR 12822) and on February 27, 1975 (40 FR 8514). Sections 421.34 and 421.64 set forth below establish pretreatment standards for existing sources within the secondary aluminum smelting subcategory (Subpart C) and the secondary copper subcategory (Subpart F) of the nonferrous metals manufacturing point source category.

(b) *Summary and Basis of Pretreatment Standard for Existing Sources.* The regulation set forth below establishes pretreatment standards for pollutants introduced to publicly owned treatment works from existing sources within the subparts set forth in paragraph (a) above. This regulation is intended to implement the concepts of the general regulation for pretreatment standards for existing sources set forth in 40 CFR Part 128. This general regulation was proposed July 19, 1973 (38 FR 19236), and

published in final form on November 8, 1973 (38 FR 30982).

The general pretreatment standard divides pollutants into two broad categories: "compatible" and "incompatible." Compatible pollutants are generally not limited by specific or numerical pretreatment standards. Incompatible pollutants are subject to pretreatment standards as provided in 40 CFR 128.133. The amounts of pollutants which would impede the operation of a publicly owned treatment works are prohibited by the provisions of 40 CFR 128.131. Additionally, local pretreatment requirements may apply pursuant to section 307(b) (4) of the Act.

The general pretreatment regulation (40 CFR Part 128) described above and its application to effluent limitations and standards has sometimes caused confusion. In order to correct any lack of clarity, 40 CFR 128 is set aside for existing sources within the subparts set forth in paragraph (a) above. In its place, the specific pretreatment standards applicable to each subcategory are set forth in detail below as the pretreatment standards for that subcategory. This mechanism will eliminate any possible confusion as to the materials which are limited or controlled by the pretreatment standard for each subcategory.

A supplemental technical study was made to determine the levels of pretreatment requirements which are appropriate considering the limitations established for direct dischargers under sections 301 and 304 and the requirements of section 307(b). The findings of this study and technical rationale for the establishment of pretreatment standards and guidance levels are summarized in Appendix A to this preamble.

The reports entitled "Supplemental for Pretreatment to the Development Document for the Secondary Aluminum Segment of the Nonferrous Metals Manufacturing Point Source Category" and "Supplemental for Pretreatment to the Development Document for the Secondary Copper Segment of the Nonferrous Metals Manufacturing Point Source Category" detail the additional technical analysis undertaken in support of the interim final regulation set forth herein and are available for inspection at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M St., S.W., Washington, D.C. 20460, at all EPA Regional offices and at State water pollution control offices. A supplementary analysis prepared for EPA of the possible economic effects of the regulation is also available for inspection at these locations. Copies of these documents are being sent to persons or institutions affected by the regulation or who have placed themselves on a mailing list for this purpose (see EPA's Advance Notice of Public Review Procedures, 38 FR 21202, August 6, 1973). An additional limited number of copies of these reports are available. Persons wishing to obtain a copy may write the Environmental Protection Agency, Effluent Guidelines Division, Washington, D.C. 20460, Attention: Distribution Officer, WH-552.

When this regulation is promulgated in final rather than interim form, revised copies of the technical documentation will be available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the economic analysis document will be available through the National Technical Information Service, Springfield, VA, 22151.

(c) *Public Participation.* Prior to this publication, many agencies and groups were consulted and given an opportunity to participate in the development of these standards. As a result of comments received on the proposed regulation and upon further consideration by the Agency, additional study of the pretreatment requirements for the nonferrous metals category has been made. Immediately prior to this rulemaking the results of this study were circulated for additional comments to persons known to be interested. A summary of public participation in this rulemaking, public comments and the Agency's response and reconsideration of these is contained in Appendix B of this preamble.

(d) *Economic Impact and Inflationary Impact Analysis.* The economic impact is expected to be minimal for the secondary aluminum subcategory. No price increase is anticipated for this subcategory as a result of the regulations. Additionally, no plant closures or production curtailments are anticipated. Total investment cost for this subcategory is estimated at \$878,000 while total annual costs are put at \$353,000.

The impact of these regulations is expected to be small for the secondary copper industry. No price increase is projected as the regulation impacts such a small portion of the total copper market. One plant is listed as a potential plant closure based on the economic evaluation of the effects of the regulations on the profitability of all the plants. Total investment costs for this subcategory is estimated at \$1,060,000 while total annual costs are put at \$507,000 per year. The economic impact is discussed in greater detail in Appendix A, which also contains the inflationary impact analysis.

The Agency was subject to an order of the United States District Court for the District of Columbia entered in *Natural Resources Defense Council v. Train et al.* (Civ. No. 2153-73, 75-0172, 75-1698 and 75-1267) which required the promulgation of pretreatment standards for this industry category no later than October 15, 1976.

It has not been practical to develop and republish regulations for this category in proposed form and to provide a 30 day comment period within the time constraints imposed by the court order referred to above. Accordingly, the Agency has determined pursuant to 5 U.S.C. 553 (b) that notice and comment on the interim final regulations prior to promulgation would be impractical and contrary to the public interest. Good cause is also found for these regulations to become effective immediately upon publication.

Interested persons are encouraged to submit written comments. Comments

should be submitted in triplicate to the Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, Attention: Distribution Officer, WH-552. Comments on all aspects of the regulation are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which are available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data suggest amendment or modification of the regulation. In the event comments address the approach taken by the Agency in establishing pretreatment standards, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of section 307(b) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A copy of the technical studies and economic study referred to above, and certain supplementary materials will be maintained at this location for public review and copying. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

All comments received on or before February 14, 1977 will be considered. Steps previously taken by the Environmental Protection Agency to facilitate public response within this time period are outlined in the advance notice concerning public review procedures published on August 6, 1973 (38 FR 21202).

In consideration of the foregoing, 40 CFR Part 421 is hereby amended as set forth below.

Dated: December 2, 1976.

RUSSELL E. TRAIN,
Administrator.

Part 421 is amended by adding Appendix A and B at the end thereof to read as follows:

APPENDIX A—TECHNICAL SUMMARY AND BASIS FOR REGULATIONS

This Appendix summarizes the basis of interim final pretreatment standards for existing sources.

(1) *General methodology.* The pretreatment standards set forth herein were developed in the following manner. The point source category was first studied for the purpose of determining whether separate standards are appropriate for different segments within the category. This analysis included a determination of whether differences in raw material used, product produced, manufacturing process employed, age, size, waste water constituents and other factors require development of separate standards for different segments of the point source category. The raw waste characteristics for each such segment were then identified. This included an analysis of the source, flow and volume of water used in the process employed, the sources of waste and waste waters in the operation and the constituents of all waste water. The compatibility of each raw waste characteristic with municipal treatment works was then considered. The constituents

of the waste waters which should be subject to effluent limitations were identified.

The control and treatment technologies existing within each segment were identified. This included an identification of each distinct control and treatment technology, including both in-plant and end-of-process technologies, which is existent or capable of being designed for each segment. It also included an identification of, in terms of the amount of constituents and the chemical, physical, and biological characteristics of pollutants, the effluent level resulting from the application of each of the technologies. The problems, limitations and reliability of each treatment and control technology were also identified. In addition, the nonwater quality environmental impact, such as the effects of the application of such technologies upon other pollution problems, including air, solid waste, noise and radiation were identified. The energy requirements of each control and treatment technology were determined as well as the cost of the application of such technologies.

The information, as outlined above, was then evaluated in order to determine what levels of technology reflected the application of the best practicable pretreatment technologies. In identifying such technologies, various factors were considered. These included the total cost of application of technology, the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements) and other factors. The data upon which the above analysis was performed included EPA permit applications, EPA sampling and inspections, consultant reports, and industry submissions.

(2) *Summary of conclusions with respect to the secondary aluminum smelting subcategory (Subpart C) and the secondary copper subcategory (Subpart F) of the nonferrous metals manufacturing point source category.*

(i) *Categorization.* For the purpose of establishing pretreatment standards, secondary aluminum and secondary copper were each considered to be a single subcategory. Factors such as type of product, raw waste load, type of manufacturing process, and treatability of wastewaters were considered in these determinations. In general, the largest contributing factors were the manufacturing operations and the treatability of wastewaters therefrom.

Although pretreatment standards have been previously proposed for the bauxite refining, primary aluminum smelting, primary copper, primary lead and primary zinc subcategories, these subcategories were not included in this rulemaking because very few, if any, of the plants in these industries are known to discharge to municipal treatment plants.

(ii) *Waste characteristics.* (a) *Secondary aluminum.* The known significant wastewater pollutants and pollutant properties resulting from secondary aluminum smelting include pH, total suspended solids, COD, aluminum, zinc, copper, cadmium, chloride, ammonia, and oil and grease.

(b) *Secondary copper.* The known significant wastewater pollutants and pollutant properties resulting from secondary copper smelting and refining include pH, total suspended solids, COD, copper, lead, zinc, cadmium, selenium, boron, and oil and grease.

(iii) *Origins of wastewater pollutants.* (a) *Secondary aluminum.* Wastewaters are generated in metal cooling, demagging and residue milling. Metal cooling involves the direct contact of water on molten or semi-molten aluminum after casting into ingots. Wastewaters from this operation contain oil and grease, COD, suspended solids, small con-

centrations of metals including aluminum and are slightly acid. The parameter which has been selected for the pretreatment standards is oil and grease. Other parameters were rejected because either they were removable in publicly owned treatment works (POTW) or they are present at relatively low levels.

Wastewaters from demagging are generated by the removal of magnesium from molten aluminum with chlorine or aluminum fluoride and are derived from the scrubber which cleans the furnace off-gas. The wastewaters contain large amounts of chloride and lesser amounts of aluminum, suspended solids, copper, zinc and cadmium and are generally very acidic. Chloride was not selected as a pollutant parameter because it is not removable by relatively inexpensive technologies. Additionally, copper, zinc and cadmium were not selected as pollutant parameters for this subcategory because significant concentrations of these constituents were not found frequently enough to warrant limitations. Plant data suggest that zinc and cadmium may be occasionally present at significant levels. Cadmium is an extremely toxic material which is nonbeneficial and nonessential. It is deposited and accumulated in various body tissues and is found in varying concentrations throughout all areas where people live. Increased industrial production and use of this material during the past two decades has been accompanied by incidences of acute cases of clinically identifiable cadmiumosis. Further, cadmium is known to upset POTW operation at concentrations of 1 mg/l and above and has been found to pass through POTW with little or no removal. Cadmium was found at average levels of 1.82, 0.3, 0.18, 0.076 and 0.066 at the five plants in the secondary aluminum industry which were tested, including both indirect and direct dischargers. The highest concentration was found at the plant which also had the highest concentration of zinc. Although five of the eight samples taken at this plant showed cadmium concentrations greater than 1.0 mg/l, none of the other plants exhibited concentrations of this magnitude in their individual samples. Dissolved zinc is generally not susceptible to treatment by biological treatment processes at POTW. In slug doses, and particularly in the presence of copper, dissolved zinc can interfere with or seriously disrupt the operation of POTW using biological processes by reducing overall removal efficiencies, largely as a result of the toxicity of the metal to biological organisms. The average total zinc concentrations found at the five plants were 38.7, 12.0, 3.58, 2.38 and 0.952 mg/l.

Although these levels are somewhat elevated, only two of the plants showed total zinc concentrations greater than 10, and one plant was just marginally over that concentration. Additionally, the dissolved portion of the total metal analysis is the deleterious part, and at a pH around 9, most of the metal is in the suspended form. Because these metals were only found at one single plant in very significant quantities and because the data indicates low flow levels (i.e., 25 gpm) from demagging operations, it was the judgement of the Agency that pretreatment limitations for these metals was not justified for all the plants in the industry. Therefore, guidance limitations are suggested in lieu of pretreatment standards for these metals. In view of the demonstrated health hazards and effects on POTW, a cadmium limitation of 0.2 mg/l (30 day average) and 0.4 mg/l (daily maximum) and a zinc limitation of 2.5 mg/l (monthly average) and 5 mg/l (daily maximum) is recommended as guidance for the purpose of assisting local authorities in carrying out programs of this type. The technology for achieving these limitations as well as the supporting data is detailed in the Supplemental for Pretreatment to the Development Document for the

Secondary Aluminum Segment of the Non-ferrous Metals Manufacturing Point Source Category. A pH range was established for this subcategory for the purpose of limiting the concentrations of dissolved aluminum.

Wastewaters from residue milling are generated when the slags, drosses or other residues are milled to recover aluminum. The exact type of waste is somewhat dependent upon the type of residue being processed. Certain types of residues contain aluminum nitrides and when processed, these create ammonia in the wastewater. Chloride, suspended solids, aluminum and oil may also be present. The pH is generally alkaline. The suspended solids levels are generally so high that plants have to employ some sort of settling (akin to scale pits in the steel industry) so that sewer pipes do not plug up. Chloride is not removable by relatively inexpensive technologies. Oil is compatible with POTW at the low concentrations found here. Aluminum was found to be present at low concentrations. Ammonia was selected as a parameter. Although ammonia may not cause interference with POTW operation when present in small quantities, excess concentrations will disrupt POTW operation, causing reduced BOD removal.

(b) Secondary copper. In the secondary copper industry, waste water is generated principally from four operations: cooling of molten unalloyed or alloyed copper, slag quenching and granulation, furnace exhaust scrubbing, and electrolytic refining. A fifth operation, slag milling and classification, generates a process waste water stream at some secondary copper smelters, but this operation was not found at any of those plants which introduce pollutants to POTW. Each of these streams is an integral part of the total water usage at a given plant, although each operation may not be performed at every plant. Water is consumed in these operations by evaporation and/or by removal of sludges.

Waste waters from each of these operations contain certain metals at relatively high levels, usually copper, cadmium, zinc, and lead. Oil and grease used as lubricants in the process is found in trace amounts, as is boron, which is derived from the box used in furnace operations. Traces of chromium and mercury also appear. Each of these parameters, particularly copper, cadmium, zinc, and lead, were found to pose a threat to the operation of POTW, to pass through POTW, or to plants grown on soil treated with sludge from POTW. The pH of the wastewater was found to depend upon the type of operation producing the stream. Some metal cooling operations and all electrolytic operations produce acidic streams, but it was found that most streams are slightly alkaline. Streams from slag granulation operations were found to be near the optimum pH for metals removal.

(iv) Treatment and control technology. Wastewater treatment and control technologies have been studied for these industries to determine what is the best practicable pretreatment technology.

The following discussions of treatment technologies provide the bases for the pretreatment standards. These discussions do not preclude the selection of other wastewater treatment alternatives which provide equivalent or better levels of treatment.

(a) Secondary aluminum. Present treatment technologies employed for metal cooling wastewater include settling and grease traps. While these may assist in removing the oil, better removals would be attained with oil skimmers and this is the best practicable pretreatment technology. Oil skimmers have been thoroughly demonstrated to reduce oil concentrations to less than 10 mg/l, far less than the limitation established here.

Present treatment technologies employed for demagging scrubber wastewater are pH adjustment. In some cases, this neutralization may be performed in 55-gallon drums. Because of the need for precipitation of dissolved aluminum, the best practicable pretreatment technology is pH adjustment to a range of from 5.0 to 10.0. While there are other methods available to the industry for demagging which result in no wastewaters being generated, these would not constitute a pretreatment technology. Two items must be emphasized here—fairly precise pH control and avoidance of the use of waste caustic. Reasonably precise pH control can be attained in very small operations by the use of more accurate pH papers, some of which show increments as small as 0.2 of a pH unit. While waste caustic may be less expensive than "new" caustic, it may also contain metals which are undesirable.

Present pretreatment technology for residue milling wastewaters are settling, as discussed previously. The best practicable pretreatment technology is pH adjustment and ammonia stripping, if necessary. Use of an alkaline milling water largely prevents the generation of ammonia, but not completely. Stripping adds considerably to the cost of meeting the pretreatment standards for the secondary aluminum industry. If the nitride-containing residues are infrequently processed, so that high concentrations of ammonia are only occasionally present, it may be possible to employ equalization of the residue milling wastewater and thereby meet the concentration limitation.

(b) Secondary copper. Existing control technology, widely practiced by the industry for economic reasons, primarily consists of in-plant reuse and recycle of process waste waters. Of the forty-six currently operating secondary copper smelters, seventeen do not discharge process waste waters by virtue of this technology. Nearly all smelters, including the seventeen discharging to POTW, practice some degree of recycle and reuse of process wastewaters.

Seventeen plants in the industry discharge their wastewaters to municipal sewer systems. None of these plants had any end-of-pipe treatment facility that could be considered to be exemplary. Well-operated pH adjusting and settling facilities were identified elsewhere in the secondary copper industry and in other metals industries, which provided the basis for the best practicable pretreatment technology.

The best practicable pretreatment technology for waste water from contact metal cooling and quenching operations is adjusting the pH, if necessary, to between 8 and 10, and settling. This technology can be applied to the individual stream or it may be applied as part of the combined process waste water treatment. Periodic removal, dewatering, and disposal of sludge from settling basins or tanks will be necessary. If a charcoal cover is used, sludge removal requirements will be significantly increased.

The best practicable pretreatment technology for waste water from slag quenching and granulation is settling to reduce suspended solids. The pH should be adjusted, if necessary, to between 8 and 10 before solids removal. This technology can be applied to the specific stream or as part of the combined process waste water treatment before reuse or recycle. An alternative control method applicable to waste water from the quenching of copper-rich slag is to air cool the molten slag in pots and employ mechanical size reduction for handling and subsequent recovery of the contained metal content.

The best practicable pretreatment technology for waste water from furnace exhaust scrubbing is pH adjustment, if necessary,

to between 8 and 10 and the removal of solids by settling. This technology is usually applied to the specific stream and kept separate from the combined process waste waters, although this may be accomplished as part of combined process waste water treatment.

The best practicable pretreatment technology for waste water from electrolytic refining is the removal of copper by cementation with iron metal, followed by lime neutralization to a pH between 8 and 10 and settling of the waste stream to remove solids.

It is emphasized that in-plant measures to recycle and reuse process waste to minimize discharges to municipal treatment works are included as part of the recommended pretreatment technology.

Solid waste control must be considered. The best pretreatment technologies as known today, require disposal of the pollutants removed from waste waters in the form of solid wastes and liquid concentrates. In most cases these are nonhazardous substances requiring only minimal custodial care. However, some constituents may be hazardous and may require special consideration. In order to insure long-term protection of the environment from these hazardous or harmful constituents, special consideration of disposal sites must be made. All landfill sites where such hazardous wastes are disposed should be selected so as to prevent horizontal and vertical migration of these contaminants to ground or surface waters. In cases where geologic conditions may not reasonably ensure this, adequate legal and mechanical precautions (e.g. impervious liners) should be taken to ensure long term protection to the environment from hazardous materials. Where appropriate, the location of solid hazardous materials disposal sites should be permanently recorded in the appropriate office of legal jurisdiction.

(v) Cost estimates for control of waste water pollutants. Cost information was obtained directly from industry, engineering firms, equipment suppliers, government sources and available literature. Costs are based on actual industry installations or engineering estimates for projected facilities as supplied by contributing companies. In the absence of such information, cost estimates have been developed from either plant-supplied costs for similar waste treatment installations at plants making similar products or general cost estimates for treatment technology.

(vi) Energy requirements and nonwater quality environmental impacts. The major nonwater quality consideration which may be associated with the recommended pretreatment technologies is the generation of metals-bearing solid wastes from pH adjustment and settling facilities. In some cases these wastes can be reprocessed to recover metals values, but in most cases these wastes will be landfilled.

Other nonwater quality aspects, including energy, noise, and air pollution, will not be perceptibly affected with one exception. In secondary aluminum plants where residue milling is performed, use of the recommended pretreatment technology of ammonia stripping may cause some air quality deterioration in the immediate area. However, because of the small quantities treated and removed, this is expected to be insignificant. Equipment associated with in-process or end-of-pipe control systems would have minimal impact on the non-water quality aspects.

(vii) Economic impact analysis. This section summarizes the economic and inflationary impacts of the pretreatment standards for the secondary copper and aluminum subcategories of nonferrous metals manufacturing point source category.

Executive Order 11821 (November 27, 1974) requires that major proposals for legislation and promulgation of regulations and rules by Agencies of the executive branch be accompanied by a statement certifying that the inflationary impact of the proposal has been evaluated. The Administrator has directed that all regulatory actions which are likely to exceed any of the following four criteria will require certification.

1. Additional national annualized costs of compliance, including capital charges (interest and depreciation), will total \$100 million within any calendar year by the attainment date, if applicable, or within five years of implementation.

2. Total additional cost of production of any major product is more than 5 percent of the selling price of the product.

3. Net national energy consumption will be increased by the equivalent of 25,000 barrels of oil a day (equal to 50 trillion BTU per year or 5 billion kilowatt-hours per year).

4. Additional annual demands are created or annual supply is decreased by more than 3 percent for any of the following materials by the attainment date, if applicable, or within five years of implementation: plate steel, tubular steel, stainless steel, scrap steel, aluminum, copper, manganese, magnesium, zinc, ethylene, ethylene glycol, liquefied petroleum gases, ammonia, urea, plastics, synthetic rubber, or pulp.

The following table presents the costs of complying with the pretreatment standards.

Estimated pretreatment costs¹

Subcategory	Total investment ²	Total annual costs ³	Percent of selling price ⁴
Secondary aluminum.....	878	253	0.00-0.71
Secondary copper.....	1,061	507	.03-1.3
Total.....	1,939	860	0.00-1.3

¹ Represents the additional investment and annual costs required to meet the pretreatment standards for dischargers to publicly owned treatment works.

² All costs are in 4th quarter 1975 dollars.

³ Total annual costs are a sum of operation and maintenance costs plus a capital cost based on a 10-year depreciation and a 10-per cent interest rate.

⁴ Represents the annual costs per unit of production as a percent of selling price for each of the plants in the subcategory.

SOURCE: "Supplemental for Pretreatment to the Development Document for the Secondary Aluminum Segment of the Nonferrous Metals Manufacturing Point Source Category," "Supplemental for Pretreatment to the Development Document for the Secondary Copper Segment of the Nonferrous Metals Manufacturing Point Source Category" and "Economic Impact Analysis of Proposed Pretreatment Standards for the Nonferrous Metals Processing Industry, Secondary Aluminum and Copper."

As can be seen above, total national annualized costs of compliance for both of the pretreatment standards are well below \$100 million per year. In addition, the increase in cost of production is less than 5 percent of the selling price. Energy consumption will be increased by a nominal amount. Finally, the projected increase in demand or decrease in supply for any of the above materials is nominal. Thus an inflationary impact statement is not necessary.

The Agency has considered the economic impact of the internal and external costs of the effluent limitations guidelines. Internal costs (see table above) are defined as investment and annual cost, where annual cost is composed of operating costs, maintenance costs, the cost of capital and depreciation. External cost deals with the assessment of the economic impact of the internal costs in terms of price increases, production curtailments, plant closures, resultant unemployment, community and regional impacts, international trade, and industry growth.

The impact of these regulations is expected to be small for the secondary aluminum industry. No price increase is projected as the regulation impacts such a small portion of the total aluminum market. No production curtailment or plant closures are projected for the secondary aluminum subcategory since the imposition of the pretreatment standards has a negligible effect on the profitability of the secondary aluminum plants. Based on this analysis the effects on employment, industry growth and international trade are expected to be minimal.

The impact of these regulations is expected to be small for the secondary copper industry. No price increase is projected as the regulation impacts such a small portion of the total copper market. One plant is listed as a potential plant closure based on the economic evaluation of the effects of the regulations on the profitability of all the plants. Based on this analysis the effects on employment, industry growth and international trade are expected to be minimal.

APPENDIX B—SUMMARY OF PUBLIC PARTICIPATION

Prior to this publication, copies of the draft documents were sent to industry trade groups, environmental interest groups, Federal agencies, state, local, and territorial pollution control agencies, and ESQWIAC (the Effluent Standards and Water Quality Information Advisory Committee established under Section 515 of the Act). In addition, copies were sent to each secondary copper or secondary aluminum producer discharging to a POTW. Each of these parties was given an opportunity to participate in the development of pretreatment standards by submitting written comments. In addition, a public meeting was held on September 22, 1976 at EPA headquarters in Washington, D.C. at which interested parties were invited to express their views publicly. Public comments were also solicited when pretreatment standards for these segments were proposed in the FEDERAL REGISTER on April 8, 1974 and February 27, 1975.

The following responded with comments: ESQWIAC; U.S. Department of Commerce; State of Ohio Environmental Protection Agency; Aluminum Recycling Association; Vulcan Materials Company; Aluminum Company of America; Reynolds Metals Company; Kaiser Aluminum and Chemical Corporation; and Olin Brass Company.

The primary issues raised by commenters during the development of the pretreatment regulations for the nonferrous metals industry are as follows:

1. Many commenters requested that aluminum be deleted as a pollutant parameter for secondary aluminum, citing lack of toxicity and its use as a coagulant in POTW as rationale.

Upon further examination and reflection, it is the opinion of the Agency that aluminum should not be limited. However, establishing a pH range will effectively limit this parameter in the dissolved form.

2. It was also requested that ammonia be deleted as a parameter for secondary aluminum. One commenter stated that it should be limited only for those smelters which discharge to POTW with nitrification-denitrification facilities, while another stated that ammonia concentrations within the required pH limits should be totally compatible with the treatment capabilities of any POTW.

Discussion during the public meeting indicated that ammonia may be significantly present in the discharge from the sole aluminum plant presently discharging residue milling water up to 10 percent of the time, whereas the data which was gathered in establishing effluent limitations for direct dischargers indicated that this plant was well within limits. Based on this new information,

a limitation on ammonia does appear to be needed, and costs were developed for a treatment technology which would effectively remove this parameter. Ammonia can be toxic at high concentrations to the bacteria in a biological treatment system. Excessive ammonia concentrations will adversely affect BOD removal, because the ammonia will create an additional oxygen demand. Ammonia also creates an additional chlorine demand. Ammonia is more prevalent at pH's above 7.0, as is the case in residue milling waters and this form is more toxic than the ammonium form.

3. The use of industry-wide pretreatment standards was protested, it being suggested that the pretreatment standards be established on a case-by-case basis, and not at industry-wide levels achievable by technology.

The Act requires that pretreatment standards be established at uniform national levels, although individual municipalities may establish stricter level than the national standards. The limits are set conservatively due to the toxicity of the regulated pollutants and to the tendency of these pollutants to pass through or interfere with the operation of POTW. They generally reflect the application of available technology as implied in Section 307(b)(2) of the Act, thus providing protection from the above potential hazards. Limitations on zinc and cadmium in the secondary aluminum industry are suggested as guidance for local authorities carrying out pretreatment programs, rather than establishing nationwide limits.

4. Inclusion of additional plant data was requested since some commenters believed that additional plant visits and data would change the conclusions which were drawn.

Additional plants were visited and samples gathered. Although zinc and cadmium were found at some secondary aluminum plants, only one plant had cadmium concentrations greater than 1.0 mg/l and zinc concentrations greater than 12.0. Therefore, no limitations are placed on these parameters, although POTW operators are cautioned that they may be present and a limit may be necessary at some plants. Specific guidance limitations are suggested for these parameters. No significant changes were necessary in the secondary copper subcategory as a result of additional plant visits.

5. Some commenters believed that the oil and grease limitations were too low, while others stated that the limitation should be applied only to oil and grease of a non-animal or non-vegetable nature.

The level for oil and grease has been revised, in that the 30 day average has been deleted and the daily maximum left at 100 mg/l. This was established based on the maximum level which a POTW is capable of treating on a slug basis. However, the limitation has been set without any differentiation between oil of a mineral origin and oil of an animal or vegetable origin. This is because of the extreme difficulty in analyzing for the different types of oil and the potential that both types may be present in a single stream.

6. It was suggested that phenols be limited in the wastewater from ingot or metal casting operations from secondary aluminum facilities.

A review of the data base indicates that phenol, while present in concentrations up to 0.26 mg/l, is generally present at considerably lower levels. Therefore, it was determined that phenol is inappropriate as a pollutant parameter at this time.

7. The primary aluminum manufacturers expressed concern as to whether aluminum remelting, casting and shaping facilities and fabricating are included within the scope of these limitations.

On October 15, 1975, on page 48348 of the FEDERAL REGISTER, EPA amended the applicability of the secondary aluminum smelting subcategory in settlement of a lawsuit with Reynolds Metals Company. It reads: "The provisions of this subpart are applicable to discharges of fume-scrubbing wastewaters where aluminum fluoride or chlorine is used in the magnesium removal process and to wet residue milling and remelting of aluminum scrap to produce metallic aluminum alloys." Shaping and fabricating operations are not included within this scope.

8. Another commenter suggested that the 30 day pretreatment standards for copper and cadmium in the secondary copper subcategory should be relaxed, asserting that the draft pretreatment standards reflected the best operation of pH adjustment and settling technology and concluding that no treatment system can reasonably be expected to average its optimum performance.

Additional data on the performance of pH adjustment and settling operations was collected and evaluated and other pertinent information was reviewed. On the basis of this information, it was concluded that the 30 day pretreatment standard for copper was overly stringent. Available data indicates that a 30 day limit of 0.50 mg/l is routinely attainable for copper (rather than the 0.25 mg/l limit contained in the draft document).

This review also indicated that the draft limit for cadmium was not stringent enough. 0.1 mg/l is achieved at Plants R and V, and data from the primary copper smelting industry and from the electroplating industry revealed that many plants routinely achieve concentrations of 0.1 mg/l or less of cadmium with pH adjustment and settling treatment. One well-operated electroplating plant routinely achieves 0.2 mg/l with this technology, and this limit was selected as a thirty day average, with the daily maximum set at 0.4 mg/l to allow for fluctuations. The standards promulgated herein reflect these changes.

§ 421.30 [Amended]

1. Section 421.30 is amended by inserting the phrase "and to the introduction of pollutants into treatment works which are publicly owned" after the word "discharges".

2. Subpart C is amended by adding section 421.34 as follows:

§ 421.34 Pretreatment Standards for Existing Sources.

For the purpose of establishing pretreatment standards under Section 307 (b) of the Act for a source within the secondary aluminum smelting subcategory, the provisions of 40 CFR Part 128 shall not apply. The pretreatment standards for an existing source within the secondary aluminum smelting subcategory are set forth below.

(a) No pollutant (or pollutant property) introduced into a publicly owned treatment works shall interfere with the operation or performance of the works.

Specifically the following wastes shall not be introduced into the publicly owned treatment works:

(1) Pollutants which create a fire or explosion hazard in the publicly owned treatment works.

(2) Pollutants which will cause corrosive structural damage to treatment works, but in no case pollutants with a pH lower than 5.0, unless the works is designed to accommodate such pollutants.

(3) Solid or viscous pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(4) Pollutants at a flow rate and/or pollutant discharge rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(b) In addition to the general prohibitions set forth in paragraph (a) of this section the following pretreatment standard establishes the quality or quantity of pollutants or pollutant properties controlled by this section which may be introduced into a publicly owned treatment works by a source subject to the provisions of this subpart.

(1) Metal cooling:

Pollutant or pollutant property	Pretreatment standard (milligrams per liter)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Oil and grease...	100	

(2) Demagging fume scrubbers:

Pollutant or pollutant property	Pretreatment standard (milligrams per liter)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
pH.....	Within the range 5 to 10.	

(3) Residue milling:

Pollutant or pollutant property	Pretreatment standard (milligrams per liter)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Ammonia-N....	100	50

§ 421.60 [Amendment]

3. § 421.60 is amended by inserting the phrase "and to the introduction of pollutants into treatment works which are

publicly owned" after the word "discharges".

4. Subpart F is amended by adding § 421.64 as follows:

§ 421.64 Pretreatment standards for existing sources.

For the purpose of establishing pretreatment standards under section 307 (b) of the Act for a source within the secondary copper subcategory, the provisions of 40 CFR Part 128 shall not apply. The pretreatment standards for an existing source within the secondary copper subcategory are set forth below.

(a) No pollutant (or pollutant property) introduced into a publicly owned treatment works shall interfere with the operation or performance of the works. Specifically the following wastes shall not be introduced into the publicly owned treatment works:

(1) Pollutants which create a fire or explosion hazard in the publicly owned treatment works.

(2) Pollutants which will cause corrosive structural damage to treatment works, but in no case pollutants with a pH lower than 5.0, unless the works is designed to accommodate such pollutants.

(3) Solid or viscous pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(4) Pollutants at a flow rate and/or pollutant discharge rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(b) In addition to the general prohibitions set forth in paragraph (a) of this section the following pretreatment standard establishes the quality or quantity of pollutants or pollutant properties controlled by this section which may be introduced into a publicly owned treatment works by a source subject to the provisions of this subpart.

Pollutant or pollutant property	Pretreatment standard (milligrams per liter)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Oil and grease...	100.0	
Copper.....	1.0	0.5
Cadmium.....	.4	.2

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federal register

WEDNESDAY, DECEMBER 15, 1976



PART IV:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary
for Housing—Federal Housing
Commissioner

■

NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

Housing Assistance Payment Program;
Proposed Rules

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—
Federal Housing Commissioner

[24 CFR Part 880]

[Docket No. R-76-380]

HOUSING ASSISTANCE PAYMENTS PROGRAM

New Construction; Notice of Proposed Rulemaking

On April 26, 1976, the Department published in the *FEDERAL REGISTER* (41 FR 17468) and made effective final regulations for the Section 8 Housing Assistance Payments Program—New Construction, 24 CFR Part 880, under section 8 of the United States Housing Act of 1937. Several miscellaneous amendments were published September 29, 1976 (FR 42951).

Notice is hereby given that the Department is proposing to amend Part 880 by adding a new paragraph (d) to § 880.107 and redesignating the present paragraph (d) as paragraph (e).

The purpose of the proposed amendment is to implement Section 2(d) of the Housing Authorization Act of 1976, which revised Section 8(c) (4) of the U.S. Housing Act of 1937 and states:

And subject to the provisions of the following sentence, such payments [with respect to unoccupied units] may be made, in the case of a newly constructed or substantially rehabilitated project, after such 60-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such 60-day period (i) if the unoccupied unit is in a project insured under the National Housing Act, except pursuant to section 244 of such Act, or (ii) if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

Section 2(d) authorizes the Department to make Section 8 payments under certain limitations with respect to vacant units beyond the currently authorized 60-day period but for not more than a total of 12 additional months, in the amount of the debt service attributable to the unit.

Accordingly, a new § 880.107(d) would be added to effectuate the purpose stated above. This amendment to the regulations is proposed to apply only to projects for which the permanent financing has not been secured as of the effective date of the amendment.

The method for computing debt service will be addressed in the Handbook. We welcome comments on the most appropriate method for relating debt service to different types of units.

Sec. 880.107(d), Prohibition of double compensation for vacancies, would be redesignated § 880.107(e).

Interested persons are invited to comment on the proposed amendment by submitting written data, views and arguments. Communications should be identified

by docket number, date, and title and be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant material received on or before January 14, 1977, will be considered before adoption of the final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of the finding of inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, at the address specified above.

24 CFR Part 880 is proposed to be amended as follows:

1. Section 880.107 is amended by redesignating present paragraph (d) as paragraph (e) and by adding a new paragraph (d) as follows:

§ 880.107 Housing assistance payments to owners.

(d) *Debt service payments.* If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the Owner shall be entitled to receive additional housing assistance payments with respect to such vacant unit in an amount equal to the principal and interest payments amortizing the debt service attributable to that unit, whether such vacancy commenced during rent-up or after rent-up; *Provided, however,* That such additional payments with respect to any or all vacancy periods for any given unit during the entire term of the Contract shall not be for more than an aggregate of 12 months; *And provided further,* That no such additional payments shall be made if (1) The unit is not in decent, safe, and sanitary condition, (2) The unit is in a project insured under the National Housing Act except pursuant to Section 244 of that Act, (3) The unit is in a project which HUD has determined is providing the Owner with revenues exceeding the costs incurred by the Owner with respect to the project, (4) The unit is in a project which cannot reasonably be expected to achieve financial soundness at the end of any period covered by such additional payments, or (5) The Owner has failed to take actions specified in paragraphs (b) (1), (2), and (3) or paragraphs (c) (1) (i), and (ii) and (c) (2) of this section, as appropriate. This paragraph shall be applicable to any project eligible for payments under this paragraph for which the permanent financing has not been secured as of the effective date of this paragraph.

(Sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)); sec. 5(b) of the United States Housing Act of 1937, (42 U.S.C. 1437e (b)); sec. 8 of the United States Housing Act of 1937, (42 U.S.C. 1437f.))

NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A-107.

Issued at Washington, D.C., December 8, 1976.

JOHN T. HOWLEY,
Deputy Assistant Secretary for
Housing, Federal Housing
Commissioner.

[FR Doc. 76-36668 Filed 12-14-76; 8:45 am]

[24 CFR Part 881]

[Docket No. R-76-387]

HOUSING ASSISTANCE PAYMENTS PROGRAM

Substantial Rehabilitation; Notice of Proposed Rulemaking

On April 26, 1976, the Department published in the *FEDERAL REGISTER* (41 FR 17488) and made effective final regulations for the Section 8 Housing Assistance Payments Program—Substantial Rehabilitation, 24 CFR Part 881, under Section 8 of the United States Housing Act of 1937. The adoption of the Final Rule was published on October 14, 1976.

Notice is hereby given that the Department is proposing to amend Part 881 by adding a new paragraph (b) to § 881.107 and redesignating the present paragraph (d) as paragraph (e).

The purpose of the proposed amendment is to implement Section 2(d) of the Housing Authorization Act of 1976, which revised Section 8(c) (4) of the U.S. Housing Act of 1937 and states:

And subject to the provisions of the following sentence, such payments [with respect to unoccupied units] may be made, in the case of a newly constructed or substantially rehabilitated project, after such 60-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such 60-day period (i) if the unoccupied unit is in a project insured under the National Housing Act, except pursuant to section 244 of such Act, or (ii) if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

Section 2(d) authorizes the Department to make Section 8 payments under certain limitations with respect to vacant units beyond the currently authorized 60-day period but for not more than a total of 12 additional months, in the amount of the debt service attributable to the unit.

Accordingly, a new § 881.107(d) would be added to effectuate the purpose stated above. This amendment to the regulations is proposed to apply only to projects for which the permanent financing has not been secured as of the effective date of the amendment.

The method for computing debt service will be addressed in the Handbook. We welcome comments on the most appropriate method for relating debt service to different types of units.

Sec. 881.107(d), Prohibition of double compensation for vacancies, would be redesignated § 881.107(e).

Interested persons are invited to comment on the proposed amendment by