

tank will not be deemed to have satisfied this requirement.

Paint and asphalt coatings are not adequate for cathodic protection. Asphalt paints are soluble in a number of regulated substances that are normally stored in tanks, including solvents and hydrocarbons, such as gasoline. Applications of both asphalt paints and lead paints are thin, easily damaged during installation and easily worn away during use. They do not provide a complete seal for the tank, such paint or asphalt coatings do not provide corrosion resistance for the operational life of the tank and, therefore, do not comply with the interim prohibition.

Tanks that satisfy the requirement of section 9003(g)(1)(A) to prevent releases due to corrosion must still satisfy the requirements that they prevent releases due to "structural failure" and that the materials used in the construction of the tank be compatible with the substances to be stored. For example, a tank constructed of noncorrosive material that is subject to structural failure because of its design or installation would not satisfy the requirements of section 9003(g)(1). Similarly, a tank whose construction materials are not compatible with the product to be stored would not satisfy the requirements of section 9003(g)(1) because, although it satisfies the corrosion protection requirement of section 9003(g)(1)(A), it does not satisfy the compatibility requirement of section 9003(g)(1)(C).

Section 9003(g)(1) provides that "no person may install an underground storage tank" unless such tank satisfies the requirements of sections 9003(g)(1)(A), (B), and (C). EPA interprets the term "no person may install an underground storage tank" to encompass any persons responsible for having a tank installed, including among others owners, operators and installers. EPA also interprets section 9003(g) as applying to all new installations, including installation of previously used tanks and to any new installation of underground piping associated with underground

tanks subject to the prohibition. When the new installation is only piping, only the new piping would be subject to the standards in section 9003(g).

With respect to the exemption from corrosion protection requirements provided by section 9003(g)(2), EPA interprets this provision as permitting the installation of a tank without corrosion protection if a person, prior to installation, demonstrates by means of soil testing conducted in accordance with ASTM Standard G57-58 that the soil at the location where the tank is to be installed does not have a resistivity of less than 12,000 ohm-cm.

A tank exempted from corrosion protection requirements under this section, however, must still satisfy the requirement that the tank be designed, constructed, and installed to prevent releases due to the structural failure of the tank and that the materials used in the construction or lining of the tank be compatible with the substances to be stored in the tank. Thus, for example, a steel tank without any type of corrosion protection may be installed at a location where the soil continues to have a resistivity of 12,000 ohm-cm during the operational life of the tank. However, if the tank is constructed or installed so that it suffers structural failure or is not compatible with the stored product and releases its contents, the tank would not be in compliance with section 9003(g).

VI. Summary of Supporting Analyses

1. Executive Order 12291

Executive Order 12291 [46 FR 13193, February 9, 1981] requires that a regulatory agency determine whether a new regulation will be "major" regulation and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as regulation which is likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions;

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

This rule does not have any of the impacts listed above. The Agency did conduct an economic impact analysis of the interim prohibition as part of the Hazardous Waste Management System; Final Codification Rule published in the *Federal Register* July 15, 1985. The Regulatory Impact Analysis concludes that upper bound cost estimates for the Interim Prohibition are under \$10 million per year.

The interpretive rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

The Regulatory Impact Analysis for the Final Codification Rule also addresses the impact of the Interim Prohibition on small entities and concludes that the Interim Prohibition will not have a significant economic impact on a substantial number of small entities. This interpretive rule does not, therefore, require a regulatory flexibility analysis.

Dated: May 21, 1986.

Lee M. Thomas,
Administrator.

[FR Doc. 86-12002 Filed 6-3-86; 8:45 am]

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Federal Register

Wednesday
June 4, 1986

Part V

Department of Education

34 CFR Parts 682 and 690
Guaranteed Student Loan Program and
Pell Grant Program; Schedules of
Expected Family Contributions; Final
Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 690

Guaranteed Student Loan Program and Pell Grant Program; Schedules of Expected Family Contributions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the final regulations for the Schedule of Expected Family Contributions for the Guaranteed Student Loan (GSL) and Pell Grant programs. These amended regulations are required by section 16031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272. The expected family contribution schedules for these two programs are amended to exclude from family income the income realized from the proceeds of a sale of farm or business assets if the sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

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

When effective, for the GSL program, the regulations will apply to any loan made for a period of instruction which begins on or after July 1, 1985.

When effective, for the Pell Grant Program, the regulations will apply to a Pell Grant made for any award year which begins on or after July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW, [Regional Office Building 3, Room 4318] Washington, DC 20202. Telephone number (202) 472-4300.

SUPPLEMENTARY INFORMATION:**Background***Effect of Amendment on the Pell Grant and GSL Programs*

Section 16031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, requires the Secretary to amend the 1985-86 and 1986-87 Schedules of Expected Family Contributions for the GSL and Pell Grant programs to exclude from the computation of an expected family contribution (EFC) any income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

Additional Effect of Amendment on the GSL Program

Section 16031 does not affect the GSL requirement set forth in the GSL program regulations, 34 CFR 682.301, that an institution must calculate a student's EFC to determine whether the student is eligible for interest benefits if the student's adjusted gross family income (AGFI) exceeds \$30,000. In addition, section 16031 does not authorize the exclusion of such income when the institution determines whether a student's AGFI is over \$30,000.

If the institution uses Appendix B to the GSL program regulations to calculate the student's EFC, it must adjust the student's AGFI to exclude the taxable portion of the income realized from the proceeds of a sale of farm or business assets if the sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy. However, if that adjustment reduces the student's AGFI to \$30,000 or less, the institution may not use Appendix B to the GSL program regulations to calculate the student's EFC but must, instead, use a need analysis system approved by the Secretary under the campus-based programs.

If the institution calculates the student's EFC using a system of need analysis approved by the Secretary for use in the campus-based programs, (National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant), the EFC calculated for that student under that system must be adjusted to exclude from family income the taxable and nontaxable income realized from the proceeds of the sale of farm or business assets as described above.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary of offer interested parties the opportunity to comment on proposed regulations. However, section 16031 of Pub. L. 99-272 requires the Secretary to publish regulations to exclude, in the computation of an expected family contribution for the GSL program and Pell Grant program, the income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a

proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

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

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations revise the schedules of expected family contributions for the GSL and Pell Grant programs and do not affect small entities.

Assessment of Educational Impact

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

List of Subjects*34 CFR Part 682*

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education and Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.032, Guaranteed Student Loan Program and 84.063, Pell Grant Program)

Dated: May 30, 1986.

William J. Bennett,
Secretary of Education.

The Secretary amends Parts 682 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN PROGRAM

1. The authority for Part 682 is revised to read as follows:

Authority: 20 U.S.C. 1071-1087-2, unless otherwise noted.

2. In § 682.301, paragraph (f)(2)(ii) is revised and paragraph (g) is added to read as follows:

§ 682.301 Eligibility for interest benefits on a GSLP loan.

* * * * *
(f) * * *
(2) * * *

(ii) The tables found in Appendix B if the adjusted gross income of the student and his or her family, after taking the provisions of paragraph (g) of this section into account, is more than \$30,000 and less than \$75,000.

(g) In calculating a student's expected family contribution under paragraph (f) of this section—

(1) The institution shall exclude any taxable and nontaxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses a need analysis system approved by the Secretary for the campus-based programs to calculate the student's expected family contribution; and

(2) The institution shall exclude any taxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses the tables set forth in Appendix B to calculate the student's expected family contribution. (20 U.S.C. 1078, 1082, and 1089)

PART 690—PELL GRANT PROGRAM

1. The authority for Part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

2. In § 690.33, paragraph (g) is revised to read as follows:

§ 690.33 Effective family income.

* * * * *

(g) The annual adjusted family income does not include any—

(1) Student financial assistance except those veteran's benefits cited in paragraph (b)(2) of this section; and

(2) Income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

(Sec. 5 of Pub. L. 97-301 as amended by Sec. 4 of Pub. L. 98-79 and Sec. 707 of Pub. L. 98-511; and 20 U.S.C. 1089)

3. In § 690.43, paragraph (e) is revised to read as follows:

§ 690.43 Effective family income.

* * * * *

(e) The annual adjusted family income does not include any—

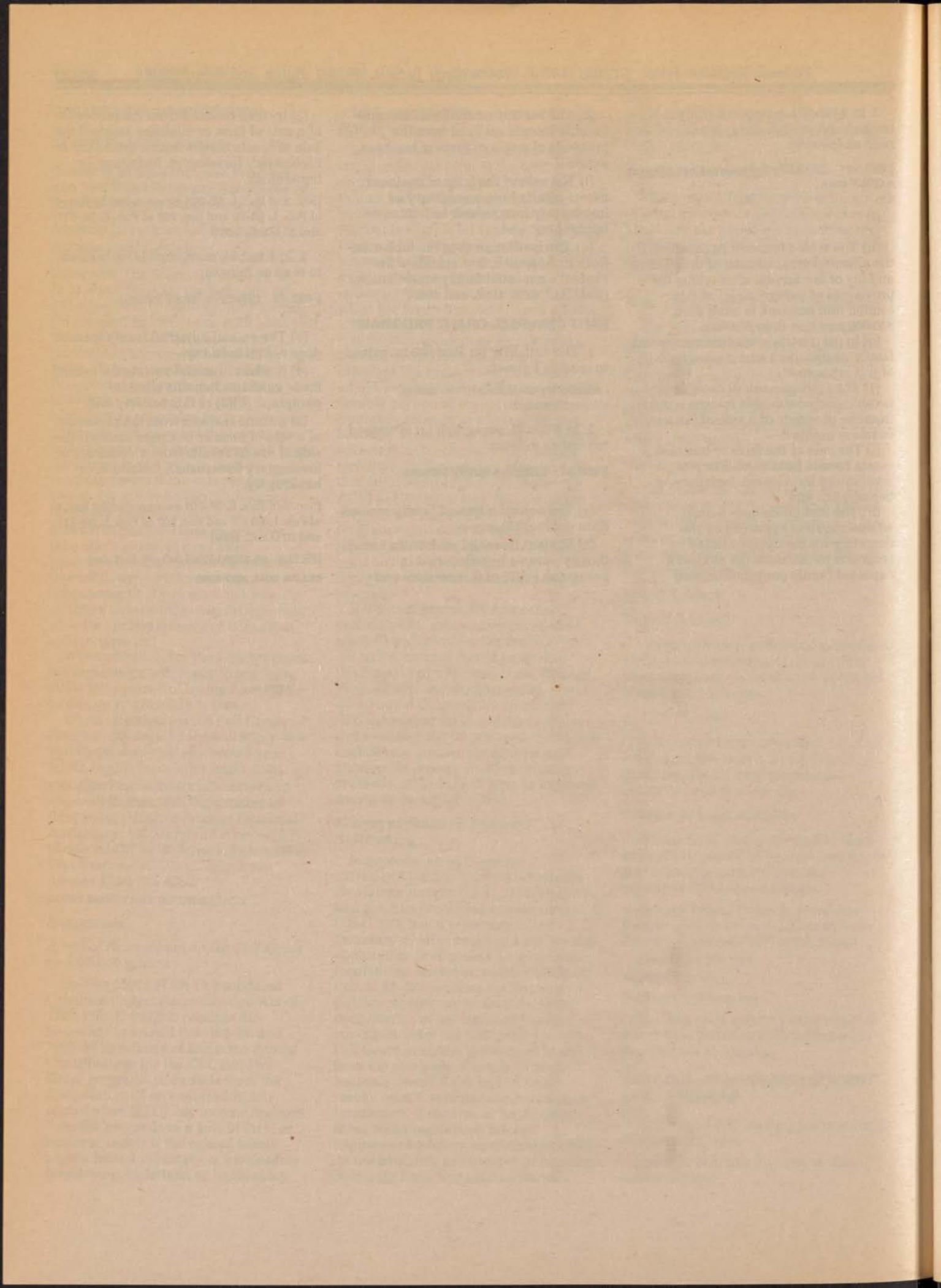
(1) Student financial assistance except those veteran's benefits cited in paragraph (b)(2) of this section; and

(2) Income realized from the proceeds of a sale of farm or business assets if the sale of assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.

(Sec. 5 of Pub. L. 97-301 as amended by Sec. 4 of Pub. L. 98-79 and Sec. 707 of Pub. L. 98-511; and 20 U.S.C. 1089)

[FR Doc. 86-12593 Filed 6-3-86; 8:45 am]

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federal register

**Wednesday
June 4, 1986**

Part VI

Environmental Protection Agency

40 CFR Parts 122 and 403

**Water Pollution; General Pretreatment
Regulations for Existing and New
Sources; Final Rule**

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Parts 122 and 403

[FRL-3025-8]

**Water Pollution; General Pretreatment
Regulations for Existing and New
Sources**
AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is making technical amendments to 40 CFR Part 403. This action is necessary to correct typographical errors, erroneous cross-references, and inadvertent omissions in the General Pretreatment Regulations. This final rule also makes several other minor revisions that clarify the regulations, remove inconsistencies, and update certain provisions in response to developments that have occurred since their promulgation.

DATE: The effective date of this regulation is July 7, 1986.

In accordance with 40 CFR Part 23, these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on June 18, 1986.

Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the CWA, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Hans I.E. Bjornson, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475-9530.

ADDRESS: The supporting information for this rule will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: EPA promulgated the General Pretreatment Regulations on June 26, 1978 (40 CFR Part 403; 43 FR 27736). These regulations established mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly owned treatment works (POTWs). On January 28, 1981, the Agency promulgated amendments to the regulations pursuant

to a settlement agreement with parties that had challenged the regulations in Federal court (46 FR 9404). The Agency has subsequently made several other amendments to the regulations, including revisions to the removal credits provision (40 CFR 403.7) on August 3, 1984 (49 FR 31212). (The revised removal credits provision was recently struck down by the United States Court of Appeals for the Third Circuit in *Natural Resources Defense Council, Inc. v. EPA*, No. 85-3012 (3d Cir. 1986). EPA is reviewing this decision to determine the appropriate response.) Today's notice corrects inadvertent omissions, erroneous internal cross-references, and typographical errors in the regulations. The Agency is also revising cross-references to the NPDES permit regulations to account for the deconsolidation of, and other changes to, those regulations (see 48 FR 14146, April 1, 1983; 47 FR 53666, November 26, 1982). Several other minor revisions are being made to clarify the regulations, remove inconsistencies, and update certain provisions to account for developments that have occurred since their promulgation.

Today's final rule has not been the subject of a previous notice of proposed rulemaking. Under the Administrative Procedure Act (APA), the requirement of providing prior notice and an opportunity for comment does not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). By this exception, "Congress has recognized that there is no need for giving the public an opportunity to participate in minor amendments to rules. . . ." *Texaco, Inc. v. Federal Power Commission*, 412 F.2d 740, 743 (3d Cir. 1969), quoting *Administrative Procedure Act: Analysis Of Its Requirements As To Rule-Making*, 33 A.B.A.J. 315, 318 (1947). "Unnecessary" means "unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved." S. Doc. No. 248, 79th Cong., 2d Sess. at 200, 258 (1946). See also, *National Nutritional Foods Association v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978); U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 31 (1947). Because today's action consists only of technical corrections or other minor amendments that conform the General Pretreatment Regulations to other actions already taken, and because of the reasons stated

below, EPA finds that prior notice and opportunity for comment are not necessary.

Final Regulations

1. *Definition of POTW Pretreatment Program.* Section 403.3(d), which defines the term "POTW Pretreatment Program," states that a POTW program must meet the criteria of §§ 403.3 and 403.9 of the pretreatment regulations. However, § 403.3 does not contain criteria for local programs. These are contained in § 403.8, which delineates the specific substantive requirements for an approvable local POTW Pretreatment Program, and § 403.9, which sets out approval procedures and submission requirements. Therefore, § 403.3(d) is revised to remove the reference to § 403.3 and substitute § 403.8 in its place.

2. *Definition of NPDES State.* The definition of "NPDES State" in § 403.3(m) references the definition of "State" in the NPDES regulations at 40 CFR 122.3. However, as a result of deconsolidation of the permit regulations, § 122.3 was redesignated as § 122.2 (48 FR 14146, April 1, 1983). Section 403.3(m) of the pretreatment regulations is revised to reflect this change.

3. *Change from "Enforcement Division Director" to "Water Management Division Director."* At several places in the General Pretreatment Regulations, reference is made to the "Enforcement Division Director." As a result of an internal Agency reorganization, this position no longer exists; its pretreatment program responsibilities have been assumed by the Water Management Division Director. Accordingly, EPA is replacing all references to "Enforcement Division Director" with "Water Management Division Director," and is also replacing the definition of the former term in § 403.3(e) with a new definition of the latter.

4. *Category Determination Request.* Section 403.6(a)(1) requires new sources to request a category determination prior to commencement of discharge. However, the existing regulation does not specifically address the parallel situation in which a category determination is requested by an existing industrial user that adds a new process or changes an operation such that it might be included under a different subcategory. (Many of these changes might result in a new source and are thus already covered under the current requirement for new sources.) Consistent with § 403.6(a)(1), EPA is today clarifying that an existing

industrial user who wishes to receive a category determination on an added or changed process must submit a category determination request prior to commencing its discharge from the added or changed process.

Section 403.6(a)(2)(ii) requires that the statement in a category determination application "contain an oath stating that the facts contained therein are true on the basis of the applicant's personal knowledge or to the best of his information and belief." That section also previously required that "[t]he oath shall be that set forth in § 403.7(b)(2)(ii), except that the phrase '§ 403.7(d)' shall be replaced with '§ 403.6(a)'. " When the removal credits provisions in § 403.7 were amended on August 3, 1984 (49 FR 31212), the certification in § 403.7(b)(2)(ii) was removed and the reference to § 403.7(b)(2)(ii) was removed from § 403.6(a)(2)(ii). No substitute oath was provided for category determinations. However, in making these revisions, EPA did not intend to leave § 403.6(a)(2)(ii) without a reference to specific certification language, but merely to change the removal credits provisions. Therefore, the Agency is today correcting § 403.6(a)(2)(ii) by reinserting the original certification statement.

5. Compliance Deadline for Categorical Standards. Section 307(b) of the Clean Water Act states that each categorical Pretreatment Standard "shall specify a time for compliance not to exceed three years from the date of promulgation [of such Standard]. . . ." The pretreatment regulations (§ 403.6(b)) require existing sources to comply with categorical Pretreatment Standards "within 3 years of the date the standard is effective unless a shorter compliance time is specified in the appropriate [Standard] but in no case later than July 1, 1984." (emphasis added). This outside deadline of July 1, 1984 was added to the regulations in 1981 to reflect provisions in the EPA-NRDC Consent Decree. The Consent Decree between EPA and several environmental groups was originally entered in 1976, in the case of *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976). The Consent Decree required EPA to, among other things, promulgate effluent limitation guidelines and standards (including pretreatment standards for indirect dischargers) for 21 industrial categories, with special emphasis on 65 toxic pollutants, by prescribed dates. Paragraph 10(b) of the Decree provided that the Agency would require compliance with pretreatment standards by June 30, 1983. This date was later changed to June 30, 1984. *Natural*

Resources Defense Council, Inc. v. Costle, 12 ERC 1833, 1843 (D.D.C. 1979). However, on August 2, 1983, the United States District Court for the District of Columbia modified paragraph 10(b) of the decree at EPA's request, and with the consent of NRDC, to give the Agency greater flexibility in establishing compliance deadlines for pretreatment standards consistent with section 307(b) of the Act. Consistent with this order, EPA has been routinely establishing compliance deadlines for recently promulgated pretreatment standards beyond July 1, 1984. See, e.g., 48 FR 49149 (October 24, 1983) (Aluminum Forming); 49 FR 9134 (March 9, 1984) (Battery Manufacturing). Moreover, EPA has modified certain categorical pretreatment standards to reflect the change in the consent decree (49 FR 41409, September 15, 1983).

Consistent with the above developments, EPA is modifying § 403.6(b) to delete the reference to the July 1, 1984 deadline. That section now states that compliance will be required within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N.

6. Combined Wastestream Formula. In its present form, the combined wastestream formula (§ 403.6(e)) requires calculation of both "an alternative daily maximum value using the daily maximum value specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the long-term average value(s) specified in the appropriate categorical Pretreatment Standard(s)" (emphasis added). Categorical pretreatment standards are expressed in terms of daily maximum, and monthly or 30-day average values. The term "long-term average value(s)" refers to these latter values. To avoid confusion, the Agency is changing the language of § 403.6(e), replacing "long-term average value(s)" with the more accurate term "monthly average value(s)." This revision will not affect the electroplating regulations, 40 CFR Part 413. Electroplating pretreatment standards are expressed as daily maximum and 4-day average values. However, § 413.04 of those regulations requires that 30-day values, rather than 4-day values, be used in calculating alternative pretreatment standards for a combined wastestream if one of the non-electroplating streams, with which an electroplating stream is combined, is regulated by 30-day average values. Section 413.04 includes

a table that converts the 4-day number to a 30-day number.

7. Deadline for Program Approval. Section 403.8(b) requires all POTWs whose permits are modified pursuant to section 301(h) of the Clean Water Act to receive approval of local pretreatment programs within 3 years, as provided in 40 CFR Part 125, Subpart G (citing the 1979 regulation). EPA promulgated final regulations to administer section 301(h) on November 26, 1982 (47 FR 53666). Therefore, the reference to the 301(h) regulations in § 403.8(b) is amended to reference the current version of the Subpart G regulations.

8. POTW NPDES Permit Modifications. When a POTW pretreatment program is approved, the POTW's NPDES permit is reissued or modified to incorporate the approved program conditions as enforceable conditions of the permit. See § 403.8(c). Modifications to NPDES permits are normally processed in accordance with the procedures in 40 CFR Part 124, including public notice and comment. Section 122.63 sets out the exceptions to this rule by identifying certain types of modifications to NPDES permits as "minor." Minor modifications do not require public notice and comment.

The Part 124 public participation requirements currently used to modify NPDES permits are very similar to those EPA and States must follow in approving local pretreatment programs (§ 403.11). The public notice at the permit modification stage is thus duplicative since there is ample opportunity for public participation during the program approval process. In many cases, approval authorities avoid the unnecessary second notice by processing the two actions together, thus combining the public notice. Because two notice and comment periods are equally unnecessary where the approval and permit modification are not processed together, EPA is revising §§ 122.62, 122.63, and 403.8(c) to allow the insertion of enforceable conditions establishing an approved pretreatment program into a POTW's NPDES permit to be processed as a minor modification. The minor modification can only be used where the local program was approved in accordance with the public participation procedures in § 403.11. This provides all interested parties opportunity to comment on whether the program should be approved, making the second notice and comment unnecessary.

EPA believes it is appropriate to make this change as part of today's final rulemaking for several reasons. First, the change will not have any substantive

effect on the interested public's opportunity to participate in the pretreatment program approval process. Interested parties have a full opportunity to comment on the program when it is approved. Second, it is in the public interest to incorporate approved programs into the POTW's permit as early as possible; the sooner the program is incorporated into the permit, the sooner any failure to implement the program can be enforced as a permit violation against the POTW. Finally, further delay in making this change would render it moot. Of the approximately 1460 required POTW pretreatment programs, about 100 have yet to be approved. The Agency anticipates that these remaining programs will be approved (or referred for judicial action) by the end of the current fiscal year. Today's revision is thus necessary to avoid the delay and duplication of effort that would result if, after approval, these programs were required to undergo a second round of public notice and comment before being incorporated into the POTW's permit.

9. *Development and Submission of NPDES State Pretreatment Programs.* Several provisions in § 403.10 cross-reference various sections of the NPDES State Program regulations in 40 CFR Part 123. These references are to the May 19, 1980 version of Part 123 (Consolidated Permit Regulations). However, the Agency "deconsolidated" those regulations on April 1, 1983 (48 FR 14146), so that all the cross-referenced sections were renumbered in the NPDES permit regulations. Section 403.10 is being amended to reflect these changes.

10. *Removal Credit Approval Procedures.* In § 403.11(a) and (b), reference is made to § 403.7(d) which specified the contents for a removal credits application. As a result of the revisions to the removal credit provision, published on August 3, 1984 (49 FR 31212), the required contents of a removal credit application are now found in § 403.7(e). Therefore, EPA is deleting the references to § 403.7(d) and replacing them with "§ 403.7(e)."

11. *Self-Monitoring Requirements.* Section 403.12(g) states that monitoring frequency requirements for industrial users are found in the appropriate categorical pretreatment standards and that all users must monitor in accordance with such frequencies. In fact, the categorical standards do not specify monitoring requirements. Therefore, we are revising § 403.12(g) to delete this reference. (EPA will soon be publishing in the Federal Register a proposal to amend § 403.12(g) to clarify that the bi-annual reports submitted by

industrial users in accordance with § 403.12(e) must be based on representative sampling and analysis data for the reporting period.)

12. *Reporting Requirements.* Paragraphs (j) and (k) of § 403.12 contain references to paragraph (i) and (j) of that section. However, on August 3, 1984 (49 FR 31212), EPA deleted paragraphs (i) and (j) and redesignated paragraphs (k)-(n) as (i)-(l). Accordingly, the references to paragraphs (i) and (j) in § 403.12 (j) and (k) are deleted.

13. *Net/Gross.* In 1981, EPA promulgated § 403.15, which provides for net/gross decisions. The preamble to those regulations states that "several commenters objected to the 60-day deadline for requesting a net/gross credit, noting that the Consolidated Permit Regulations do not impose a similar constraint. These commenters pointed out that in many cases treatment technology would need to be installed before a user could satisfy the demonstrations needed to receive a credit. EPA agrees with this comment and accordingly has deleted the time limitation on applying for a net/gross credit." 46 FR 9437 (January 28, 1981). However, § 403.15(a) states that applications for credit for intake pollutants must be made within 60 days after the effective date of the applicable categorical pretreatment standard. To correct this inadvertent mistake, EPA is deleting the 60-day deadline from § 403.15(a).

14. *Appendices B and C.* The Pretreatment Implementation Review Task Force (PIRT), was established by the Administrator in February, 1984, to develop recommendations on how to improve implementation of the national pretreatment program. In its Final Report to the Administrator (1985), PIRT noted that Appendices B, C and D were out of date and recommended that they be updated. A proposed updated version of Appendix D was published in the Federal Register on May 9, 1985 (50 FR 19664). Today EPA is issuing final updated versions of Appendices B and C.

Appendix B lists the toxic pollutants designated pursuant to section 307(a)(1) of the Clean Water Act. This list also appears at 40 CFR 401.15. Since Appendix B was first published, EPA has deleted the following pollutants from the toxic pollutant list in 40 CFR 401.15: Dichlorofluoromethane and trichlorofluoromethane, 46 FR 79692 (January 8, 1981), and bis [chloromethyl] ether, 46 FR 10723 (February 4, 1981). The updated list issued today reflects these changes.

Appendix C is a list of the industrial categories for which national categorical pretreatment standards either have been or are planned to be issued. Several changes have been made to the previous categorization scheme since the list's initial publication:

(1) "Electroplating" (40 CFR Part 413) has been combined with the "Metal Finishing" category (40 CFR Part 433).

(Note.—Pretreatment standards are still in effect as previously identified under Part 413 for job shop electroplaters and printed circuit board manufacturers.)

(2) "Foundries" (40 CFR Part 464) is now the "Metal Molding and Casting" category.

(3) "Mechanical Products" is now covered by the "Metal Finishing" category (40 CFR Part 433) for those facilities containing one of the six core operations identified.

(4) "Organic Chemicals and Manufacturing" (40 CFR Part 414) has been combined with the "Plastics and Synthetics" category (40 CFR Part 416). The new category is called "Organic Chemicals and Plastics and Synthetic Fibers Manufacturing" (40 CFR Part 414).

(Note.—Pretreatment standards for new sources are still in effect as previously identified under 40 CFR Part 414, Subpart B.)

(5) "Paint and Ink Formulating" has been divided into two separate categories: "Paint Formulating" (40 CFR Part 446) and "Ink Formulating" (40 CFR Part 447).

(6) "Plastics Processing" is now the "Plastics Molding and Forming" category (40 CFR Part 463).

Two additional categories originally listed in Appendix C do not have pretreatment standards because there are no known existing indirect dischargers within these categories, and, to the Agency's knowledge, none are planned for the future. These are:

Coal Mining (40 CFR Part 434)
Ore Mining (40 CFR Part 440).

Six other categories have also been removed from the previous list since they have been exempted from national categorical pretreatment standards under provisions of Paragraph 8 of the NRDC-EPA Consent Decree, as modified. These are:

Adhesives and Sealants (40 CFR Part 456),
Auto and Other Laundries (40 CFR Part 444),
Explosives (40 CFR Part 457),
Gum and Wood Manufacturing (40 CFR Part 454),
Photographic Equipment and Supplies (40 CFR Part 459),

§ 403.8 POTW Pretreatment programs: development by POTW.

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. If (1) the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with § 403.10, or (2) the POTW is located in a State which does not have an approved permit program under section 402 of the Act, the POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit. If the POTW is located in an NPDES State which does not have an approved State Pretreatment program, the approved POTW Pretreatment Program shall be incorporated into the POTW's NPDES Permit as provided for in § 403.10(d). The modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedures in § 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

§ 403.8 [Amended]

15. In the first sentence of § 403.8(a), the first "of" is changed to read "or".

16. In the second sentence of § 403.8(c), "NPDES State" is changed to read "NPDES State".

17. In the second sentence of § 403.8(f)(1)(vi)(A), "injunctive" is changed to read "injunctive".

18. In § 403.8(f)(2)(vii), § 403.8(f)(1)(iv)(B) is changed to read "§ 403.8(f)(1)(vi)(B)."

§ 403.10 [Amended]

19. Section 403.10 is amended by revising the reference to "40 CFR 123.9" in paragraph (f)(1) to read "40 CFR 123.27", by revising the reference to "40 CFR 123.6" in paragraph (g)(3) to read "40 CFR 123.24", and by revising the reference to "40 CFR 123.13" in paragraph (h)(2) to read "40 CFR 123.62".

20. In § 403.10(f)(1)(iii), "incorporated" is changed to read "incorporated".

21. In § 403.10(g)(3), "Memorandum" is changed to read "Memorandum".

§ 403.11 [Amended]

22. Section 403.11 is amended by revising the references to "§ 403.7(d)" in

paragraphs (a) and (b) to read "§ 403.7(e)".

§ 403.12 [Amended]

23. Section 403.12 is amended by removing from paragraph (g) the following sentence: "The frequency of monitoring shall be prescribed in the applicable Pretreatment Standard."

24. Section 403.12 is amended by revising paragraphs (j) and (k) to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

(j) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (h) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(k) *Provisions governing fraud and false statements.* The reports required by paragraphs (b), (d), (e) and (h) of this section are subject to the provisions of 18 U.S.C. 1001 relating to fraud and false statements and the provisions of section 309(c)(2) of the Act governing false statements, representations or certifications in reports required under the Act.

§ 403.15 [Amended]

23. Section 403.15 is amended by revising the introductory paragraph of paragraph (a) to read as follows:

§ 403.15 Net/Gross calculation.

(a) *Application deadline and contents.* Any Industrial User wishing to obtain a credit for intake pollutants must make application therefor to the appropriate Water Management Division Director. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the intake water, if the User demonstrates that:

26. Part 403 is amended by revising Appendix B to read as follows:

Appendix B—65 Toxic Pollutants

Acenaphthene
Acrolein
Acrylonitrile
Aldrin/Dieldrin
Antimony and compounds
Arsenic and compounds
Asbestos
Benzene
Benzidine
Beryllium and compounds
Cadmium and compounds
Carbon tetrachloride

Chlordane (technical mixture and metabolites)
Chlorinated benzenes (other than dichlorobenzenes)
Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
Chloroalkyl ethers (chloroethyl and mixed ethers)
Chlorinated naphthalene
Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
Chloroform
2-chlorophenol
Chromium and compounds
Copper and compounds
Cyanides
DDT and metabolites
Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
Dichlorobenzidine
Dichloroethylenes (1,1- and 1,2-dichloroethylene)
2,4-dichlorophenol
Dichloropropane and dichloropropene 2,4-dimethylphenol
Dinitrotoluene
Diphenylhydrazine
Endosulfan and metabolites
Endrin and metabolites
Ethylbenzene
Fluoranthene
Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis-(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
Heptachlor and metabolites
Hexachlorobutadiene
Hexachlorocyclohexane
Hexachlorocyclopentadiene
Isophorone
Lead and compounds
Mercury and compounds
Naphthalene
Nickel and compounds
Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
Nitrosamines
Pentachlorophenol
Phenol
Phthalate esters
Polychlorinated biphenyls (PCBs)
Polynuclear aromatic hydrocarbons (including benzantracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds.

27. Part 403 is amended by revising Appendix C to read as follows:

Printing and Publishing (40 CFR Part 448).

(Note.—Portions of these exempted categories may be regulated in the future as technical studies update information on discharges from facilities in these industries.)

The updated Appendix C published today reflects these changes.

15. *Typographical Errors.* EPA today is also correcting various typographical errors in the general pretreatment regulations.

Executive Order 12291

This regulation is not major because it will not result in an annual effect on the economy of \$100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely makes several technical corrections and other minor changes to the General Pretreatment Regulations.

Regulatory Flexibility Act

Today's promulgation makes technical corrections and other minor changes to the General Pretreatment Regulations.

Accordingly, I hereby certify that this regulation will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122 and 403

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

Dated: May 27, 1986.

Lee M. Thomas,
Administrator.

Accordingly, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

**PART 403—GENERAL
PRETREATMENT REGULATIONS FOR
EXISTING AND NEW SOURCES**

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

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

2. Part 403 is amended by removing the term "Enforcement Division Director" each place it appears and inserting in lieu thereof the term "Water Management Division Director."

§ 403.3 [Amended]

3. Section 403.3 is amended by revising the reference to "§ 403.3" in paragraph (d) to read "§ 403.8", revising paragraph (e) to read as follows, and revising the reference to "40 CFR 122.3" in paragraph (a) to read "40 CFR 122.2":

§ 403.3 Definitions.

(e) The term "Water Management Division Director" means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

§ 403.5 [Amended]

6. In the first sentence of § 403.5(a), "an" is changed to read "a".
7. In § 403.5(b)(1), "creat" is changed to read "create".
8. In § 403.5(c)(2), "Facilities" is changed to read "facilities".

§ 403.6 [Amended]

9. Section 403.6 is amended by revising paragraphs (a)(1), (a)(2) and (b), to read as follows:

§ 403.6 National Pretreatment Standards: Categorical standards.

(a) *Category Determination Request*
(1) *Application Deadline.* Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Director, as appropriate, within 30 days of notification.

(2) *Contents of Application.* Each request shall contain a statement:
(i) Describing which subcategories might be applicable; and
(ii) Citing evidence and reasons why a particular subcategory is applicable and

why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of § 403.6(a). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) *Deadline for Compliance With Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct Dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set forth in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). Compliance with categorical Pretreatment Standards for New Sources will be required upon promulgation.

10. Section 403.6 is amended by removing the words "long-term average value(s)" from paragraph (e) each place they appear and inserting, in their place, the words "average monthly value(s)."

§ 403.7 [Amended]

11. In the second sentence of § 403.7(d)(1), "additional" is changed to read "additional".

12. In § 403.7(d)(2), "in not case later than July 1, 1983" is corrected to read "in no case later than July 1, 1983".

§ 403.8 [Amended]

13. Section 403.8 is amended by revising the reference to "(44 FR 34783 (1979))" in paragraph (b) to read "(47 FR 53666 (November 26, 1982))".

14. Section 403.8 is amended by revising paragraph (c) to read as follows:

Appendix C—Industrial Categories Subject to National Categorical Pretreatment Standards

Aluminum Forming
 Asbestos Manufacturing
 Battery Manufacturing
 Builder's Paper
 Carbon Black
 Cement Manufacturing
 Coil Coating
 Copper Forming
 Dairy Products Processing
 Electrical and Electronic Components
 Electroplating
 Feedlots
 Ferroalloy Manufacturing
 Fertilizer Manufacturing
 Fruits and Vegetables Processing
 Manufacturing
 Glass Manufacturing
 Grain Mills Manufacturing
 Ink Formulating
 Inorganic Chemicals
 Iron and Steel Manufacturing
 Leather Tanning and Finishing
 Meat Processing
 Metal Finishing
 Metal Molding and Casting
 Nonferrous Metals Forming
 Nonferrous Metals Manufacturing
 Paint Formulating
 Paving and Roofing (Tars and Asphalt)
 Pesticides

Petroleum Refining
 Pharmaceuticals
 Phosphate Manufacturing
 Porcelain Enameling
 Pulp and Paper
 Rubber Processing
 Seafood Processing
 Soaps and Detergents Manufacturing
 Steam Electric
 Sugar Processing
 Timber Products Manufacturing
 Plastics Molding and Forming
 Textile Mills.

PART 122—[AMENDED]

28. The authority citation for Part 122 continues to read as follows:

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

29. 40 CFR 122.62 is amended by revising paragraph (a)(7) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(7) *Reopener*. When required by the "reopener" conditions in a permit, which

are established in the permit under § 122.44(b) (for CWA toxic effluent limitations) or 40 CFR 403.10(d) (pretreatment program), except that when a modification clause established under 40 CFR 403.10(d) relates to the incorporation in a POTW's permit of a pretreatment program approved in accordance with the procedures in 40 CFR 403.11, such modification shall be deemed a minor modification subject to the procedures in § 122.63.

* * * * *

30. 40 CFR 122.63 is amended by adding a new paragraph (g) to read as follows:

§ 122.63 Minor modifications of permits.

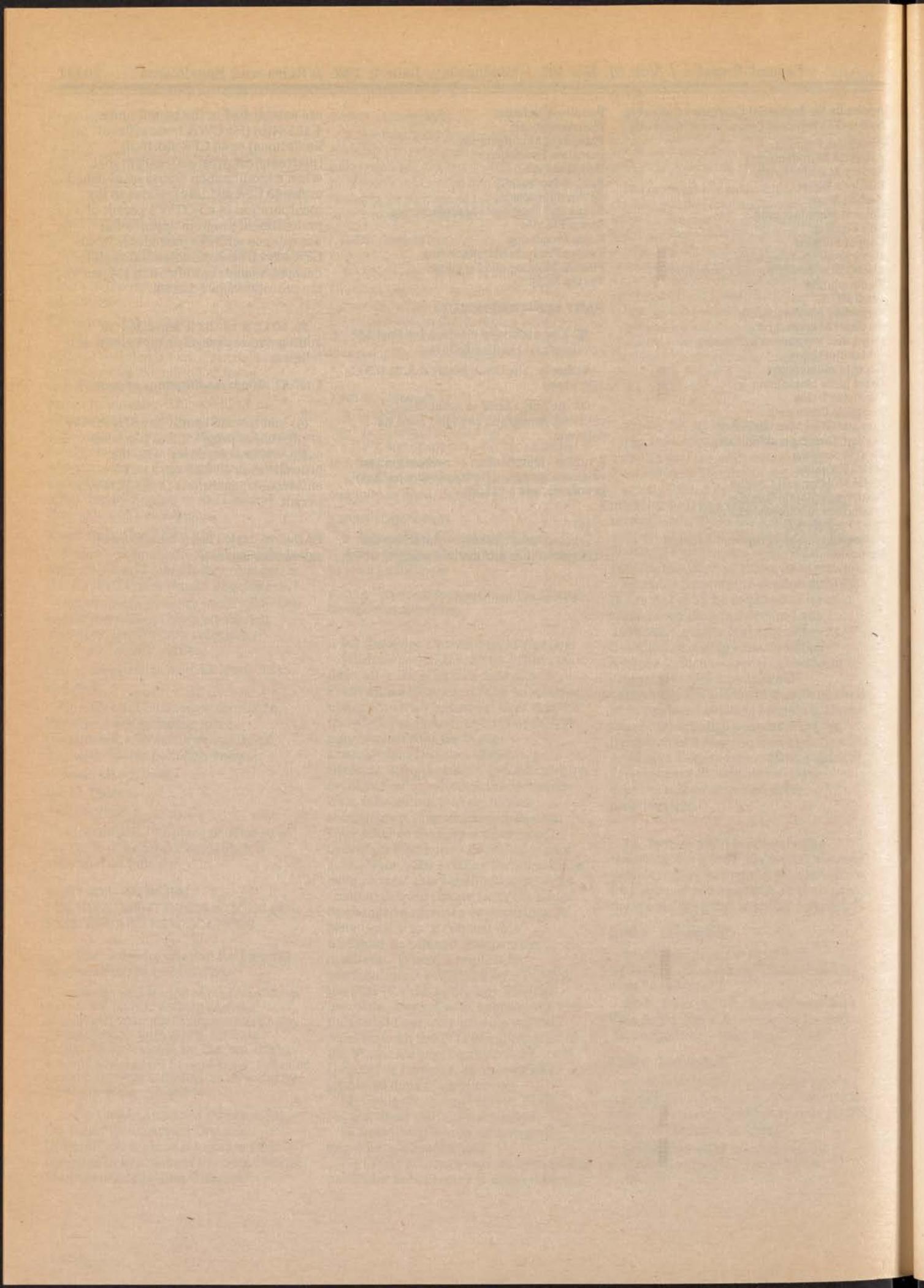
* * * * *

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 as enforceable conditions of the POTW's permit.

* * * * *

FR Doc. 86-12540 Filed 6-3-86; 8:45 am]

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Federal Register

Wednesday
June 4, 1986

Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Changes to the
Inpatient Hospital Prospective Payment
System and FY 1987 Rates; Correction
of Proposed Rule

Washington
June 1, 1953

Part VII

Department of
Health and Human
Services

Health Care Financing Administration

42 CFR Part 412 and 413
Medicaid Program Changes to the
Regional Hospital Prospective Payment
System and FY 1953 Rates
of Federal Aid

Washington
June 1, 1953

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-353-CN]

**Medicare Program; Changes to the
Inpatient Hospital Prospective
Payment System and FY 1987 Rates;
Correction**

AGENCY: Health Care Financing
Administration (HCFA), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects the proposed rule, published on June 3, 1986, that would amend the Medicare regulations governing the inpatient hospital prospective payment system (51 FR 19970). We inadvertently failed to discuss in the preamble of the proposed rule an option concerning treatment of capital payments under the prospective payment system.

FOR FURTHER INFORMATION CONTACT:
Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION: We are making this correction to add an option that we inadvertently failed to include in our proposals for payment of capital-related costs under the prospective payment system as described in the preamble to the June 3, 1986 notice of proposed rulemaking (NPRM). In section II.C. of that document, we discuss our proposed changes for the phase-in of payment of capital under the prospective payment system. In determining the capital-related hospital-specific rate, we proposed to update that

rate by the prospective payment update factor, that is, the applicable percentage change under section 42 CFR 412.63(e) of the regulations.

In section II.D. of the preamble to the June 3, 1986 NPRM, we listed for public consideration a number of options for treatment of capital payments under the prospective payment system, in addition to our specific proposal. We listed these options because we wish to ensure that the capital payment method we use is fair and appropriate. We recognize that the capital payment transition period will be a critical time for hospitals to adjust their operations and plans in preparation for a single comprehensive payment mechanism.

However, in this section, we inadvertently omitted an important option which had been discussed in our March 14, 1986 Report to Congress ("Hospital Capital Expenses: A Medicare Payment Strategy for the Future"). Therefore, in the June 3, 1986 proposed rule (the public comment period for which ends on July 3, 1986, as specified in that rule) Federal Register Doc. 86-12287, make the following addition. Following section II.D.6. of the preamble, add section II.D.7. as follows:

*II.D.7. Update of the Capital-Related
Hospital-Specific Rate*

Rather than updating the capital-related hospital-specific rate by the overall prospective payment update factor (Section 412.63(e)), we would alternatively update that rate by the amount of change in the capital component of the hospital market basket. The capital component of the hospital market basket represents the

change from year to year of hospitals' cost of making capital investments.

This option has the advantage of using an inflation factor that is associated specifically with hospital investment. If the costs of capital investments increase, the capital component of the hospital market basket would increase in a similar fashion. Likewise, if the capital cost of investments decreases, the capital component of the hospital market basket would decrease.

If this option is adopted in the final rule, we would expect to forecast the changes in the capital component of the hospital market basket by hospital cost reporting period. We would provide for corrections for forecast errors in the capital component of the hospital market basket.

We note that this option could not be used in conjunction with the rolling base-year option, because the rolling base-year option would use actual capital costs for each year rather than updating a fixed base-year amount.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Authority: Secs. 1102, 1122, 1871, and 1896 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a-1(d), 1395hh, and 1395ww).

Dated: June 2, 1986.

William L. Roper,
*Administrator, Health Care Financing
Administration.*

Approved: June 3, 1986.

Otis R. Bowen, M.D.,
Secretary.

[FR Doc. 86-12708 Filed 6-3-86; 11:19 am]

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