(11) Knowingly filing, or causing to be filed, an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration.

* * * * *

Date: February 2, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-6223 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-16-M

federal register

Friday
March 17, 1989

Part IV

Environmental Protection Agency

40 CFR Part 471

Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 471]

[OW-FRL-3491-2]

Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is promulgating amendments to 40 CFR Part 471 which limits discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources in the nonferrous metals forming and metals powders point source category. Today's amendments only affect facilities that conduct tube reducing operations in the nickel-cobalt forming subcategory (Subpart C) and in the zirconium-hafnium forming subcategory (Subpart I). EPA agreed to propose these amendments in a settlement agreement with General Electric Company and INCO Alloys International. The agreement settles a dispute between these companies and EPA that was the subject of petitions for review of the final nonferrous metals forming regulation promulgated by EPA on August 23, 1985 (50 FR 34242). The proposed amendments were published in the **Federal Register** on July 11, 1988, (53 FR 21774). EPA is today finalizing the amendments as proposed, except for corrections of typographical errors.

The final amendments include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES).

ADDRESS: Address questions to Mr. George M. Jett, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Attention: Attention Nonferrous Metals Forming Rule (WH-552).

The basis for this amendment is detailed in the record. The record for the fnal rule will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, DC. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of this notice:

I. Legal Authority

The amendments described in this notice are promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217 as amended by the Water Quality Act of 1987 Pub. L. 100-4.).

II. Background

A. Rulemaking

On March 5, 1984, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines, New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals forming and metal powders (nonferrous metals forming) point source category (49 FR 8112). The final regulation for the nonferrous metals forming point source category was promulgated on August 23, 1985 (50 FR 34242) and established effluent limitations guidelines and standards to control specific toxic, nonconventional and conventional pollutants for ten subcategories in the nonferrous metals forming and metal powders point source category. Only two of these subcategories, the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I), are affected by today's promulgation.

The subcategories are comprised of various elements or building blocks which are used to calculate the final effluent limits for each discharger. Today's promulgation only affects the tube reducing building blocks in subparts C and I. Tube reducing is a forming operation which may combine amines and nitrates or nitrites in the coolant-lubricant with the high energy input of the process to generate nitrosamine compounds in the wastewater discharge. In sampling conducted by the Agency, nitrosamines have been found in tube reducing process wastewaters. Accordingly, in the final regulation the Agency required that there be no discharge of process wastewater pollutants from tube reducing operations in Subparts C and I. The Agency costed contract hauling as the model treatment technology for these subcategories.

B. Settlement Agreement for Nonferrous Metals Forming

After publication of the nonferrous metals forming regulation, Inco Alloys International, General Electric Co., Oregon Metallurgical Corporation, Teledyne WaChang, AMAX Inc. and Westinghouse Corp. filed petitions for review of the regulation.

Oregon Metallurgical Corp., Westinghouse and Teledyne WaChang subsequently dismissed their petitions for review of the regulation. AMAX Inc. entered into a settlement agreement with EPA on June 29, 1987. That agreement is not the subject of this promulgation. The two remaining petitioners, INCO Alloys International and General Electric Company entered into a settlement agreement with the Agency on November 5, 1986, which resolved all issues raised by these petitioners. That agreement, which is the subject of this rulemaking, only affects the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I). Copies of the Settlement Agreement have been sent to all EPA Regional Offices and to applicable State permitting authorities.

As part of this Settlement Agreement, on November 5, 1986 the parties jointly requested the United States Court of Appeals for the Sixth Circuit to stay the effectiveness of those portions of 40 CFR Part 471 which EPA proposed to amend, pending final action by EPA on the proposed amendments. On February 17, 1987, the Court entered an order staying the following sections of the regulation promulgated on August 23, 1985: 40 CFR 471.31(d); 471.32(d); 471.33(d); 471.34(d); 471.35(d); 471.91(g); 471.92(g); 471.93(g); 471.94(g); and 471.95(g). All limitations and standards contained in the final nonferrous metals forming regulation published on August 23, 1985, which are not specifically listed in today's amendments are not affected by today's rulemaking and are unchanged.

The Agency proposed the amendments based on the settlement agreement on July 11, 1988, (53 FR 21774). EPA is now finalizing those amendments as proposed (except typographical corrections). Under the settlement agreement, the petitioners have the obligation to seek voluntary dismissal of their petitions for review. The petitioners have also agreed not to seek judicial review of any of these amendments as they are consistent with the Settlement Agreement.

III. Amendments to the Nonferrous Metals Forming and Metal Powders Regulation

The regulation promulgated in 1985 stated that there shall be no discharge of process wastewater pollutants from tube reducing spent lubricants. Because EPA found a nitrosamine compound (N-nitrosodiphenylamine) in a sample taken from a tube reducing spent lubricant used at one facility at a concentration of 28.2 mg/1, EPA established a zero discharge requirement to prevent the release of nitrosamine compounds into the environment from tube reducing spent lubricant wastewater. GE and Inco expressed concern that this regulation would require contract hauling of the process waste stream even in cases where there are no measurable amounts of nitrosamines. EPA is amending the regulation to allow the discharge of tube reducing spent lubricant in the nickel-cobalt and zirconium-hafnium forming subcategories, as an alternative limitation, provided that the spent lubricant process wastewater is analyzed once per month and found not to contain concentrations of three nitrosamines in excess of the method detection limits established for EPA's approved test method 1625 (40 CFR Part 136). These nitrosamines and corresponding limits of 0.050 mg/1 of N-nitrosodimethylamine, 0.020 mg/1 of N/nitrosodiphenylamine, and 0.020 mg/1 of N-nitrosodi-n-propylamine. These three nitrosamines are members of the family of nitrosamine compounds that are referenced in Section 307(a) of the Clean Water Act of 1977. The Agency believes that demonstrating the presence or absence of these three nitrosamine compounds should indicate the presence or absence of the other nitrosamine compounds because they all are formed from the same precursors, i.e., nitrates or nitrites and amines. If, after six months of sampling, none of the samples of the tube reducing lubricant wastewater is found to contain nitrosamines above the concentrations stated above, the frequency of sampling may be reduced to once per quarter. Under the alternative limitation there is no mass allowance for any pollutant discharged.

Nitrosamines can be formed in the presence of precursors under the conditions created by the tube reducing process. If nitrosamines are found in tube reducing spent lubricant, the best method to remove them is to change the tube reducing lubricant to a new formulation in which the precursors are not present; if the precursors are absent, then nitrosamines are not likely to be formed. The Agency believes this control method is technically feasible and should not result in any economic impact beyond that expected under the original regulation. The cost of the new tube reducing lubricant should not be significantly more than the cost of the old tube reducing lubricant. In any case, the facility retains the option of complying with the current regulation (i.e., no discharge of process wastewater pollutants), which as stated earlier, is based on contract hauling. EPA determined that this technology was economically achievable during the initial nonferrous metals forming rulemaking. For all these reasons, EPA finds that this amendment is economically achievable. This alternative limitation should result in similar effluent reduction benefits as the previously promulgated limitation because plants will be prevented from discharging measurable amounts of nitrosamines. The amendment has the additional advantage of creating an incentive to avoid the formation of nitrosamine compounds in the tube reducing process. All other relevant findings made in the original rulemaking are incorporated by reference into this amendment.

Subparagraph (5) of the amendment specifies that the concentration limits for the three nitrosamine compounds listed in subparagraph (2) apply at the point of discharge from the tube reducing process. This provision is intended to make clear that the discharge limits of subparagraph (2), which are expressed in terms of concentration, are not to be met merely by means of dilution. It does not mean, however, that the wastewater must be *sampled* at the point of discharge from the tube reducing process. Nor does it imply that the wastewater must be sampled before being treated or commingled with other wastewater.

To the contrary, because of difficulties in analyzing for nitrosamines at very low concentration levels in an oily matrix, it may very well be necessary to treat the tube reducing spent lubricant wastewater before sampling to determine compliance with subparagraph (2). And, in order to treat the wastewater in an economical manner, it may very well be necessary to commingle it with other wastewater before treatment. Subparagraph (5) allows commingling or treatment of the tube reducing spent lubricant wastewater before sampling. However, if commingling occurs before sampling, any dilution caused by the other wastewater must be taken into account in determining compliance with the concentration limits of subparagraph (2). This would mean that the concentrations of the three nitrosamine compounds in the commingled wastewater would have to be sufficiently lower than the discharge concentrations specified in subparagraph (2), so that, after back-calculating to account for the dilution, it can be determined that the concentrations of the three nitrosamine compounds at the point of discharge from the tube reducing process did not exceed the concentration limits set forth in subparagraph (2). Subparagraph (5) provides that, where sampling occurs after commingling, the analytical method used must be sensitive enough to measure the three nitrosamine compounds at levels sufficiently low as to permit a back-calculation to account for the dilution.

IV. Environmental Impact of the Amendments to the Nonferrous Metals Forming Regulation

The amendment described above may affect 58 facilities in the nickel-cobalt forming and zirconim-hafnium forming subcategories. Under this amendment, tube-reducing operations would be allowed to discharge wastewater under controlled conditions but would not be allowed to increase that mass of pollutants allowed to be discharged by the August 1985 regulation. Therefore, this regulation should not have any significant environmental impact.

V. Economic Impact of the Amendments

The amendments do not alter the model technologies for complying with the nonferrous metals forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 50 FR 34242). EPA concluded at that time that the regulation was economically achievable. Because today's amendments are based on the same model technologies, EPA's conclusions as to economic impact and achievability are unaffected.

VI. Public Participation and Response to Major Comments

Since proposal of these amendments two commenters have submitted comments on the proposal. These commenters are: General Electric Company and Inco International Alloys. The most significant of these comments are summarized below:

1. Both commenters generally supported the amendments proposed by the Agency and recommended that these amendments be promulgated.

2. Both commenters pointed out typographical errors in the proposal. The Agency has made these corrections.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 23, 1985 final nonferrous metals forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (49 FR 8775). for the reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these amendments, because the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 471

Metals, nonferrous metals forming, water pollution control, waste treatment and disposal.

Dated: March 9, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble EPA amends Title 40 CFR Part 471 as follows:

PART 471—NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY

1. The authority citation for Part 471 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendment of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

§ 471.31 [Amended]

2. Section 471.31 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—BPT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.32 [Amended]

* * * * *

3. Section 471.32 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—BAT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine

compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under subparagraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

§ 471.33 [Amended]

4. Section 471.33 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—NSPS.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodimethylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

§ 471.34 [Amended]

5. Section 471.34 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—PSES.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodimethylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it

has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.35 [Amended]

* * * * *

6. Section 471.35 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—PSNS.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under subparagraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section (2); or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in subparagraph (2) above and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.91 [Amended]

* * * * *

7. Section 471.91 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—BPT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under subparagraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (g)(2) of this section, the actions described in paragraph (g)(4), of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.92 [Amended]

* * * * *

8. Section 471.92 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—BAT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.93 [Amended]

* * * * *

9. Section 471.93 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—NSPS:

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

§ 471.94 [Amended]

10. Section 471.94 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—PSES.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under subparagraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.95 [Amended]

* * * * *

11. Section 471.95 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—PSNS.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under subparagraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

[FR Doc. 89-6308 Filed 3-16-89; 8:45 am]

BILLING CODE 6560-50-M

Friday
March 17, 1989

Part V

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and Student Assistance Provisions; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions regulations. The proposed regulations would implement the Secretary's initiative to improve the monitoring and accountability of the student financial assistance programs authorized under Title IV of the HEA (Title IV, HEA programs). The purpose of the proposed regulations is to reduce the potential for abuse in the Title IV, HEA programs by strengthening the means of enforcing the Title IV, HEA program requirements.

DATE: Comments must be received on or before May 1, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Carney McCullough, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, Regional Office Building 3, 7th and D Streets SW.), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. John De Cleene, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, Regional Office Building 3, 7th and D Streets SW.), Washington, DC 20202, telephone number (202) 732–4888.

SUPPLEMENTARY INFORMATION: The regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended (34 CFR Part 600), apply to all postsecondary educational institutions that seek to participate in programs administered under the HEA (HEA programs) by the Department of Education. The Student Assistance General Provisions regulations (34 CFR Part 668) apply to all institutions that seek to participate in the Title IV, HEA programs.

The proposed changes in these regulations result from a review of current policies and procedures. The review identified possible legislative, regulatory, and administrative changes necessary to protect, enhance, and improve the integrity of the Title IV, HEA programs. A summary of the significant proposed regulatory changes follows:

Section 600.30 Institutional changes requiring review by the Secretary

The Secretary proposes to add a requirement to paragraph (a)(4) that an institution report to the Secretary any change in the institution's ownership that results in an individual acquiring or increasing his or her stock holdings to at least 25% of the stock of the institution or its parent corporation. The requirement enables the Secretary to evaluate compliance with the proposed new factor of financial responsibility (see the discussion on § 668.13). The requirement allows an evaluation of an institution's compliance with the new factor of financial responsibility at the time of the ownership change.

Section 600.32 Eligibility of additional locations

The Secretary proposes to add a section to clarify the special conditions governing the eligibility of additional locations that were not included in an institution's original eligibility determination. This section codifies the existing Department practice, which is based on the concept that the addition of a location to an already existing institution is similar to that institution's addition of new educational programs. In general, that practice allows an additional location to qualify for eligibility by meeting the applicable institutional eligibility requirements of this part except the requirement to have been in existence for two years.

To address a serious abuse of HEA program funds, the Secretary also proposes an exception to this treatment for one particular category of new location. Currently, an eligible institution that owes a liability on misspent or unspent HEA program funds or has an agreement with the Secretary to repay that liability, can close or cease to provide educational programs without repaying that liability or honoring that agreement. The owner of the institution can sell its assets or the assets of any of its campuses to the owner of another eligible institution. Ordinarily, under the provisions of § 600.31 governing changes of ownership resulting in a change of control, an acquisition of the assets of an institution that was previously eligible requires the new owner to assume sole responsibility, or joint responsibility with the previous owner, for any liabilities on HEA program funds incurred by the institution that was previously eligible. The new owner's refusal to assume that responsibility would delay the participation of the newly acquired institution in the HEA programs for at least two years, except in the case of certain public or private nonprofit institutions.

However, because the requirement to be in existence for at least two years does not generally apply to additional locations established by a currently eligible institution, the new owner in the above situation can avoid both responsibility for previous liabilities of the acquired institution and the two-year delay if he or she also owns a currently eligible institution. The new owner need only convert the newly acquired institution into an additional campus of the currently eligible institution. In fact, this tactic is becoming a more common occurrence among institutions that close while owing large liabilities to the Department of Education. In three recent cases, major chains of business and technical schools misused HEA funds to the extent that tens of millions of dollars in liabilities are owed to the Department of Education. In each case the owners of the chain closed their schools and thereby attempted to abandon their responsibility for those misused funds. Those owners also sold the closed schools to owners of chains of currently eligible business and technical schools. In each case, the new owners, by acquiring the assets (but not the liabilities) of the closed schools and converting them into additional campuses of the schools that were already eligible, substantially enlarged their own operations, and were able to fund that expansion with an increased flow of Department of Education funds.

The exception in this section would apply all the eligibility requirements, including the "two-year-in-existence" requirement, where relevant, to an additional location acquired from a closed institution, unless the owner of the acquiring institution agrees to be liable for all misspent or unspent HEA program funds received by the institution that was previously eligible. The Secretary believes that the purchaser of the closed institution is facilitating the previous owner's ability to escape responsibility for any liabilities incurred while he or she owned the institution. The Secretary also believes that, like any other purchaser of an institution that is or was eligible, a purchaser in this situation should assume the liabilities as well as the assets of the closed institution.

Section 668.7 Eligible student

The Secretary proposes to add a new criterion to the definition of *eligible student*. A new paragraph (a)(11) would require a student, at the time that he or she is about to receive cash from the Title IV, HEA programs for the first time, to present credible identification to the institution at which he or she is enrolled or accepted for enrollment. Through impersonation, ineligible individuals sometimes obtain Title IV, HEA program funds. This provision is designed to discourage those individuals. The proposed requirement would apply only to a student who will receive cash from the Title IV, HEA programs, not to a student whose Title IV, HEA program aid is credited entirely to his or her institutional account. In addition, the proposed requirement would be a one-time requirement, in that it would apply only the first time that a student is about to receive cash from the Title IV, HEA programs for attendance at the student's institution. The provision would not require a student, for example, to present credible identification for the first receipt of cash in each academic year, or for the first receipt of cash from each Title IV, HEA program. The proposed requirement also includes examples of documents that constitute credible identification. An institution must document that an applicant for Title IV, HEA program assistance has presented the required identification.

Section 668.12 Institutional participation agreement

The Secretary proposes to amend paragraph (a) to require that in order for an institution to begin participation in a Title IV, HEA program, both (1) the institution's chief administrator or, except for a for-profit institution, another administrative official designated by the chief administrator, and (2) the designated individual who will be responsible for administering that Title IV, HEA program at that institution must complete Title IV, HEA program training offered by the Secretary. This proposed change would apply to any institution applying for participation in a Title IV, HEA program for the first time. For example, if a for-profit institution that currently participates only in the Pell Grant Program wishes to participate in the College Work-Study Program, the institution must send both its chief administrator and financial aid administrator to the Title IV, HEA program training provided by the Secretary before the institution can participate in the College Work-Study Program. The Secretary is concerned that many individuals at institutions that have not previously participated in a specific Title IV, HEA program may lack experience and adequate knowledge concerning the administration of that program.

Section 668.13 Factors of financial responsibility

The Secretary proposes to amend this section to provide that an institution is not considered to be financially responsible if the institution undergoes a change in its ownership that allows an individual to own at least 25% of the stock of the institution or its parent corporation and all of the following conditions apply:

1. The individual previously did not own at least 25% of the stock of the institution or its parent corporation.
2. The individual previously owned at least 25% of the stock of a defunct institution (defined for purposes of this section as one which closed or stopped providing educational programs) or defunct institution's parent corporation when the defunct institution became defunct.
3. The individual, the defunct institution, or the defunct institution's parent corporation owes a liability to the Secretary on misspent or unspent Title IV, HEA funds received by the defunct institution.
4. The liable party is in default on an agreement to repay that liability, if such an agreement exists.
5. The institution cannot show that the individual lacks the ability to affect substantially its actions or lacked the ability to affect substantially the actions of the defunct institution.
6. The individual has not repaid a portion of the subject liability proportionate to his or her ownership in the defunct institution.

Under current regulations, the owner of a defunct institution is able, even if he or she owes or has agreed to pay the Secretary a liability for misspent or unspent Title IV, HEA program funds received by that institution, to purchase part or all of another eligible institution without satisfying any part of the defunct institution's preexisting liability. Further, an individual who owns enough stock to control or to affect substantially the actions of a defunct institution or its parent corporation may not be held personally responsible for any misspent or unspent Title IV, HEA program funds received by that institution. An individual in this second circumstance is protected by the corporate structure of the defunct institution. Thus, that individual can also purchase part or all of another eligible institution and continue to participate in Title IV, HEA programs without helping to pay any portion of the liability owed by the defunct institution. The proposed regulations would prevent individuals closely associated with past mishandling of Title IV, HEA program funds from exerting an influence over the activities of currently participating institutions.

Clearly, the ownership of more than 50% of an institution or its parent corporation confers an ability to affect, and even control, the actions of that institution. However, these proposed regulations reflect the fact that the Secretary also considers the ownership of at least 25% of the stock of an institution or its parent corporation generally to constitute ability to affect substantially the actions of the institution. An institution will be considered financially responsible under these provisions if it can show that its new major stockholder who previously was a major stockholder of a defunct institution or parent corporation does not have the ability to affect substantially the actions of the currently participating institution or did not have the ability to affect substantially the defunct institution's actions.

Section 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

The Secretary proposes to amend this section to require that, to be eligible for Title IV, HEA program assistance, remedial coursework must be provided at least at the secondary school level. The determination of whether the remedial coursework is at least secondary is left to the institution offering the coursework, unless, if applicable, the institution's nationally recognized accrediting agency or association or State legally authorizing or approval agency has procedures for making that determination. Even though Title IV, HEA program funds are intended for students receiving postsecondary education, some students have received aid to pay for remedial courses taught at a level as low as fourth grade. The HEA permits a certain amount of remedial coursework to be eligible for Title IV, HEA program assistance. However, the Secretary does not believe that postsecondary educational assistance is intended for individuals who have not achieved a level of ability to pursue remedial coursework at the secondary level.

Section 668.23 Audits, records and examination.

The Secretary proposes to amend paragraph (b) of this section to clarify that a participating institution must give the Secretary, the Inspector General of the Department of Education, and the Comptroller General, or their authorized representatives timely access to the institution's financial aid-related records and access to institutional personnel involved with the administration of Title IV, HEA program funds. Recently, some institutions have denied the Office of Inspector General (OIG) the right to copy documents related to their participation in the Title IV, HEA programs. Some institutions have also inordinately delayed providing records to the OIG. This proposal clarifies the Secretary's existing policy, which appears to have been subject to misinterpretation by some institutions.

Section 668.90 Initial and final decisions—Appeals

The Secretary proposes to amend this section to provide for the termination of an institution's participation in the Title IV, HEA programs if the institution fails to submit the audit report required under § 668.23 by the applicable statutory or regulatory deadline and either fails to respond in the manner required under § 668.84 to the notices from the designated department official proposing fines or has a history of missing the deadlines over a period of four years. In addition, an administrative law judge would have to uphold a termination action taken against an institution for these reasons.

These audits are critical to the enforcement of Title IV, HEA program requirements, yet many schools have not submitted the audits, some for as many as six years. The Department of Education recently developed a computer system to track the submission of required biennial non-Federal audits. This system had identified over 1,500 schools with overdue audit reports for the award years 1981–85. Notices requiring submission of the reports, requesting explanations, and proposing fines, have been sent to the schools under the procedures in § 668.84. In response, 418 audit reports have been submitted, fines totalling $423,000 have been proposed, and $120,000 in fines has been collected.

The procedures used by the Department allow schools to provide explanations for their failure to meet the audit report deadlines, permit extensions for those schools whose failure is found to be based on sufficiently mitigating circumstances, and propose fines for the late submission of audit reports where those fines are considered appropriate. The Secretary believes that an institution that fails to meet the audit report deadlines and fails to provide the responses required by regulations to the subsequent notices from the designated department official or an institution that has a record of consistently failing to submit its audit reports by the applicable deadlines should be subject to termination from participation in the Title IV, HEA programs.

The Secretary also proposes to amend this section to require the administrative law judge to uphold a termination action against an institution based on the grounds that the institution is not financially responsible under the changes proposed in § 668.13, unless the institution can show that the liable individual has paid the applicable portion of the liability or is not able to affect substantially the actions of the institution whose termination is being considered.

Executive Order 12291

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations will impose certain additional restrictions and requirements on those few small postsecondary educational institutions participating in HEA programs that engage in the sort of abuses that these proposed regulations are aimed at discouraging.

Paperwork Reduction Act of 1980

Sections 600.30 and 668.7 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary especially invites comment on the need for the changes proposed in § 600.32 concerning the eligibility of additional locations of institutions and whether those changes would significantly increase burden on eligible institutions. The Secretary also especially invites comments on the potential effectiveness of the proposed changes in § 668.90 concerning the termination of participation of institutions with a history of failure to submit audit reports within applicable deadlines.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building, 3, Seventh and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would 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 600

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

4 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: March 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Income Contingent Loan Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.185 Robert C. Byrd Honors Scholarship Program)

The Secretary proposes to amend Parts 600 and 668 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1094(c)(3), and 1141, unless otherwise noted.

2. In § 600.30, paragraph (a)(4) is revised to read as follows:

§ 600.30 Institutional changes requiring review by the Secretary.

(a) * * *

(4) Its ownership, if that ownership change results in—

(i) A change in control of the institution; or

(ii) The ownership of at least 25% of the stock of the institution or the institution's parent corporation by an individual who previously did not own at least 25% of the stock of the institution or the institution's parent corporation.

* * * * *

§ 600.33 [Redesignated from § 600.32]

3. Section 600.32 is redesignated as § 600.33, and a new § 600.32 is added to read as follows:

§ 600.32 Eligibility of additional locations.

(a) If an eligible institution seeks to establish eligibility for an additional location, the institution shall apply under § 600.20 for a determination of whether the additional location qualifies for eligibility.

(b) Except as provided in paragraphs (c) and (e) of this section, to qualify for eligibility, an additional location must satisfy the applicable requirements of §§ 600.4 through 600.7.

(c) Except as provided in paragraph (d) of this section, an additional location is not required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7 (a)(5)(i) and (b) to have been in existence for at least two years.

(d) An additional location is required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7 (a)(5)(i) and (b) to have been in existence for at least two years if—

(1) The location is the site of any location of—

(i) A closed institution that was previously an eligible institution; or

(ii) An institution that was previously an eligible institution that has ceased to provide educational programs (except during normal vacation periods);

(2) The assets at the location were transferred, either directly or through an intermediary, from the institution described in paragraph (d)(1) (i) or (ii) of this section to the applicant institution; and

(3) The institution that previously owned the location—

(i) Owes a liability on improperly expended or unspent HEA program funds; and

(ii) Is in default on an agreement with the Secretary to repay that liability, if the institution has entered into such an agreement.

(e) Notwithstanding paragraph (d) of this section, an additional location is not required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7 (a)(5)(i) and (b) to have been in existence for two years if the owner of the applicant institution agrees to be liable for all improperly expended or unspent HEA program funds received by the institution that was previously eligible.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

4. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

5. Section 668.7 is amended by redesignating paragraph (a)(11) as paragraph (a)(12), amending paragraph (a)(10) to remove the word "and", and adding a new paragraph (a)(11) to read as follows:

§ 668.7 Eligible student.

(a) * * *

(11) Provides credible identification to the institution at which he or she is enrolled or accepted for enrollment the first time that he or she is about to receive a cash disbursement of Title IV, HEA program funds, or, in the case of the GSL and SLS programs, a direct delivery of loan proceeds. Credible identification includes, but is not limited to—

(i) A birth certificate;

(ii) A driver's license;

(iii) A student identification card that contains a photograph; or

(iv) A social security card; and

* * * * *

6. Section 668.12 is amended by revising paragraph (a) to read as follows:

§ 668.12 Institutional participation agreement.

(a) An institution may participate in any Title IV, HEA program, other than the SSIG Program, only if—

(1) The Secretary determines that the institutions meets the standards established in this subpart;

(2) In the case of an institution seeking to participate for the first time in any Title IV, HEA program, the institution requires the following individuals to complete Title IV, HEA program training provided by the Secretary:

(i) The chief administrator of the institution, or, except for a for-profit institution, another administrative official of the institution designated by the chief administrator; and

(ii) The individual designated by the institution under § 668.14(a); and

(3) The institution enters into a written participation agreement with the Secretary, on a form approved by the Secretary.

* * * * *

7. Section 668.13 is amended by amending paragraph (c)(3) to remove the word "or" after the semicolon, amending paragraph (c)(4) to remove the period and add, in its place, the term "; or", and adding new paragraphs (c)(5) and (d) (3) and (4) to read as follows:

§ 668.13 Factors of financial responsibility.

* * * * *

(c) * * *

(5)(i) The institution undergoes a change of ownership that results in the ownership by an individual of at least 25% of the stock of the institution or its parent corporation;

(ii) The individual previously did not own at least 25% of the stock of the institution or its parent corporation;

(iii) The individual previously owned at least 25% of the stock of a defunct institution or the defunct institution's parent corporation;

(iv) The individual owned the stock referred to in paragraph (c)(5)(iii) of this section on the date that the defunct institution became defunct;

(v) The institution cannot show that the individual lacked the ability to affect substantially the actions of the defunct institution on the date that that institution became defunct; and

(vi) The individual, the defunct institution, or the parent corporation of the defunct institution—

(A) Owes a liability on improperly expended or unspent Title IV, HEA program funds; and

(B) Has defaulted on an agreement with the Secretary to repay that liability, if the individual, the defunct institution, or the parent corporation of the defunct institution has in effect such an agreement.

(d) * * *

(3) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(5) of this section if—

(i) The institution notifies the Secretary of the change in its ownership in accordance with 34 CFR 600.30; and

(ii)(A) The individual repays to the Secretary a portion of the liability described in paragraph (c)(5)(vi) of this section, unless an agreement with the Secretary to repay that liability exists, the liable party is not in default on that agreement, and the portion repaid equals or exceeds the percentage of that individual's ownership in the defunct institution or the parent corporation of the defunct institution; or

(B) The institution demonstrates that the individual lacks the ability to affect substantially the institution's actions.

(4) For purposes of this section, a "defunct institution" is an institution that permanently closed or ceased to provide educational programs (except during normal vacation periods).

* * * * *

8. Section 668.20 is amended by amending paragraph (c)(1) to remove the word "or" after the semicolon, amending paragraph (c)(2) to remove the period and add, in its place, the term "; or", and revising the section heading and adding a new paragraph (c)(3) to read as follows:

§ 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

* * * * *

(c) * * *

(3) The educational level of instruction provided in that course is below the secondary level, as determined by—

(i) The institution;

(ii) The State agency that legally authorized the institution to provide postsecondary education, if that agency has procedures for making that determination; or

(iii)(A) In the case of an accredited or preaccredited institution, the nationally recognized accrediting agency or association that accredits or preaccredits the institution, if that agency or association has procedures for making that determination; or

(B) In the case of a public postsecondary vocational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, the State agency recognized for the approval of public postsecondary vocational education that approves the institution, if that agency has procedures for making that determination.

* * * * *

9. In § 668.23, paragraph (b) is revised to read as follows:

§ 668.23 Audits, records, and examination.

* * * * *

(b) An institution that participates in any Title IV, HEA program shall cooperate with the Secretary, the Education Department's Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by the applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent of relevant information to be supplied.

(ii) Requiring the presence of institutional representatives during personnel interviews.

(iii) Requiring that personnel interviews be tape recorded, for the records of the institution.

* * * * *

10. Section 668.90, as proposed to be revised in a Notice of Proposed Rulemaking published on September 16, 1988 (53 FR 36215), is further amended by removing the word "or" after the semicolon in paragraph (a)(3)(i), removing the period at the end of paragraph (a)(3)(ii), and adding, in its place, a semicolon, removing the period at the end of paragraph (a)(3)(iii) and adding, in its place, a semicolon, and adding new paragraphs (a)(3) (iv) and (v) to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a) * * *

(3) * * *

(iv) In a termination action against an institution, based on the grounds that the institution has not met an applicable deadline for filing of the institution's audit report under § 668.23(c)(4) or the Single Audit Act (Chapter 75 of Title 31, United States Code), the administrative law judge must find that the termination is warranted if the institution—

(A) Failed either to request a hearing or to submit written material indicating why a fine should not be imposed in response to the notice sent under § 668.84(b)(1) by the designated department official informing the institution of the Secretary's intent to fine the institution for not meeting that deadline; or

(B) Failed, during the four years prior to that deadline, to meet at least one of the previous applicable deadlines for submission of its audit report under § 668.23(c)(4) or the Single Audit Act; or

(v) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.13(c)(5), the administrative law judge must find that the termination is warranted unless the institution demonstrates that—

(A) The individual described in § 668.13(c)(5) has met the conditions described in § 668.13(d)(3); or

(B) The individual described in § 668.13(c)(5) lacks the ability to affect substantially the institution's actions.

* * * * *

[FR Doc. 89-6383 Filed 3-16-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
March 17, 1989

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Meeting of the Supplemental Health Insurance Panel; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-085-N]

Medicare Program; Meeting of the Supplemental Health Insurance Panel

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Supplemental Health Insurance Panel for the purpose of reviewing State Medicare supplemental health insurance programs. The Panel will determine whether such programs meet the minimum standards contained in Section 1882 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) and the Medicare Catastrophic Coverage Act of 1988 (MCCA). The meeting will be open to the public. Due to room size, however, seating is limited. Attendees will be seated on a first come, first served basis.

DATE: The meeting will be held on March 21, 1989 from 1:00 to 3:30 p.m., CST.

ADDRESS: The meeting will be held at the Excelsior Hotel, Little Rock, Arkansas. Room location will be posted at the hotel.

FOR FURTHER INFORMATION CONTACT: Theresa DeGrange, (301) 966-7449.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Supplemental Health Insurance Panel (Panel) was established in 1980 by section 507 of the Social Security Disability Amendments of 1980, Pub. L. 96-265, which added section 1882 to Title XVIII of the Social Security Act (the Act). This law established minimum standards for Medicare supplemental health insurance or "Medigap" policies in order to protect Medicare beneficiaries from abuses found to be prevalent in the marketing of such policies. The Panel is comprised of four State Insurance Commissioners and a chairperson. The chairperson is the Director, Bureau of Program Operations, HCFA (by delegation of authority from the Secretary of the Department of Health and Human Services). Panel meetings are open to the public. Initially, under section 1882(b)(2)(A) of the Act, State Commissioners were appointed to the Panel by the President. However, section 221(f) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Pub. L. 100-360, authorizes the Secretary to make these appointments.

The primary responsibility of the Panel is to review the States' legislative and regulatory requirements for Medicare supplemental health insurance policies to determine whether the individual State standards are equal to or more stringent than certain Federal requirements described in section 1882(b)(1) of the Act. States with Panel-approved programs are not subject to the Federal Voluntary Certification Program (VCP) for Medigap policies. There are at present 49 jurisdictions, including 46 States, that are not subject to VCP for Medigap policies. Also as specified in section 1882 of the Act, the VCP allows individual insurers in States with programs not approved by the Panel to submit Medicare supplemental policies to the Secretary for review. Those policies found to meet or exceed the Federal minimum standards can be certified as such and bear a Federal emblem when marketed in a nonapproved State.

The initial identification of complying and noncomplying State programs was completed in 1982. Since that time the Panel's principal legal responsibility has been to assure that approved States continue to maintain programs meeting Federal standards and to review changes made by States.

Section 1882 of the Act requires the Panel to review all State Medicare supplemental health insurance regulatory programs to determine whether they meet the minimum standards contained in section 1882 of the Act as amended. The States have been asked to submit to the Panel: a description of the State's plan to incorporate the revised minimum standards under section 1882 of the Act, including timetables for both OBRA 87 and MCCA provisions; a copy of the State statute(s) to regulate health insurance policies designed to supplement Medicare; a copy of any State regulations that implement the statute(s); a copy of any material that interprets the State's statute(s) and regulations governing such policies; a copy of any pending legislation that affects such policies; and a copy of any draft State regulations that would affect this area together with an indication of the expected date of final publication of such regulation. The Panel will compare the States' submitted materials with the Federal law and the National Association of Insurance Commissioners (NAIC) Model Regulation for Medicare Supplements, formally adopted on September 20, 1988.

The Panel began making its determinations as to the status of individual State programs in a December 13, 1988 meeting. At that time 5 states were granted conditional approval.

II. Agenda

The major agenda item for the meeting is the review of State programs. Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.774; Medicare—Supplementary Medical Insurance)

Dated: March 8, 1989.

Terry Coleman,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-6515 Filed 3-16-89; 12:34 pm]

BILLING CODE 4120-03-M