

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 420

[WH-FRL-2408-8]

**Iron and Steel Manufacturing Point
Source Category; Effluent Limitations
Guidelines, Pretreatment Standards,
and New Source Performance
Standards**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final and interim regulation.

SUMMARY: EPA is promulgating final and interim modifications to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in manufacturing steel. EPA agreed to promulgate these modifications in an agreement which settled the various lawsuits brought against EPA by the steel industry and the Natural Resources Defense Council, Inc., challenging the final steel industry regulation promulgated by EPA on May 27, 1982 (47 FR 23258).

In this notice, EPA is promulgating an interim rule regarding the calculation of mass-based pretreatment standards (establishing the maximum amount of a pollutant which may be discharged per 1,000 pounds of product) and a final rule regarding the compliance date for the steel industry categorical pretreatment standards.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on October 28, 1983. This final and interim regulation shall become effective November 27, 1983.

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

Comments on the interim rule § 420.04 must be submitted on or before November 14, 1983.

ADDRESSES: Send comments to: Mr. Ernst P. Hall, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention EGD

Docket Clerk, Iron and Steel Rules (WH-552).

The supporting information and all comments on this notice will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library). The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Gary Amendola, Senior Iron and Steel Industry Specialist, at (216) 835-5200.

SUPPLEMENTARY INFORMATION:

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I. Legal Authority

The regulation contained in this notice is promulgated under the authority of sections 301, 304, 306, 307, 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. 92-517).

II. Background
A. Prior Regulation

On January 7, 1981, EPA proposed best practicable control technology currently available (BPT), best available technology economically achievable (BAT), and best conventional pollutant control technology (BCT) effluent limitations, and, new source performance standards (NSPS), pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS) for the iron and steel manufacturing point source category (steel industry), 46 FR 1858. EPA published the final regulation on May 27, 1982, 47 FR 23258. The preamble to the final regulation describes the history of the rulemaking.

B. Challenges to the Prior Regulation

Certain members of the steel industry, the American Iron and Steel Institute, and the Natural Resources Defense Council, Inc. (NRDC) filed petitions to review the final steel industry

regulation. These challenges were consolidated into one lawsuit by the Third Circuit Court of Appeals. (*National Steel Corp. v. EPA*, No. 82-3225 and Consolidated Cases).

C. Settlement Agreement

On February 24, 1983, the parties in the consolidated lawsuits entered into a comprehensive Settlement Agreement which resolved all the issues raised by the petitioners. In the Settlement Agreement, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain modifications to the final steel industry regulation. In addition, EPA agreed to publish proposed additions to the preamble to the regulation. The petitioners agreed that if, after EPA has taken final action under the Settlement Agreement, each individual provision of the final steel industry regulation and each addition to the preamble is substantially the same as, and does not alter the meaning of, language set forth in the Settlement Agreement, then they will dismiss the various lawsuits challenging the final steel industry regulation. The notice of proposed rulemaking on proposed changes to the regulation is published elsewhere in today's *Federal Register*.

EPA also agreed to propose and take final action on an amendment to the general pretreatment regulations (40 CFR Part 403) which would allow non-contact cooling waters which are contaminated with significant quantities of pollutants to be reclassified from "dilute" to "unregulated" wastestreams for purposes of the combined wastestream formula contained in 40 CFR 403.6(e). The proposal to implement that part of the Settlement Agreement is included in the notice of proposed rulemaking referred to above.

Finally, EPA agreed to publish the final and interim modifications to the steel industry regulation discussed below.

III. Final and Interim Modifications to the Regulation
A. Calculation of Mass-Based Pretreatment Standards

The effluent limitations guidelines, new source performance standards and pretreatment standards for existing and new sources established in 40 CFR Part 420 (iron and steel manufacturing point source category) are "mass-based" limitations and standards. These mass-based limitations and standards establish the maximum amount of a pollutant which may be discharged per 1,000 pounds of product. The Agency's

NPDES permit regulations, 40 CFR 122.45(b)(2), establish a method for deriving the applicable product basis for applying the effluent limitations and standards for direct dischargers. However, neither the General Pretreatment Regulations (40 CFR Part 403) nor the steel industry pretreatment standards (40 CFR Part 420) presently contain a comparable method for deriving the production basis for those who discharge wastewaters to publicly owned treatment works (POTWs).

In accordance with the Settlement Agreement, the Agency is promulgating an interim regulation which establishes the method for calculating the applicable mass-based pretreatment standard. This regulation, in large measure, mirrors the existing regulation by which mass-based effluent limitations for direct dischargers are calculated.

The Agency solicits comments on the interim regulation.

B. Pretreatment Standards Compliance Date

In the Settlement Agreement, all parties agreed that July 10, 1985 (3 years after the effective date of the iron and steel pretreatment standards) was the appropriate deadline for compliance with those standards. The Agency stated in the preamble to the final steel industry regulation that July 10, 1985 was the applicable compliance deadline but had not promulgated a regulation which specifically established that deadline. In the Settlement Agreement, the Agency agreed to add the following language to this preamble: The final compliance date for the categorical pretreatment standards set forth in 40 CFR Part 420 is July 10, 1985, unless otherwise extended.

IV. Promulgation Without Formal Notice and Comment

The Administrator has determined that there is a good cause to promulgate these two modifications to the iron and steel category regulation on an interim and final basis, respectively. For the reasons set out below, the Administrator believes that it is appropriate to promulgate these modifications as a final regulation because, under the circumstances, it is not necessary to seek comment.

With respect to 40 CFR 420.05 (pretreatment standards compliance date), the Agency previously stated in the preamble to the May 27, 1982 final steel industry regulation that July 10, 1985 was the compliance deadline for the pretreatment standards for existing sources established in the regulation (47 FR 24554; June 7, 1982). The addition of 40 CFR 420.05 merely codifies the

Agency's previously stated intent and therefore constitutes an interpretive regulation. Moreover, all parties which challenged the final iron and steel industry regulation have agreed that the Agency would promulgate this modification as a final regulation.

With respect to 40 CFR 420.03, (calculation of mass-based pretreatment standards) this addition to the regulation simply establishes the basis for indirect dischargers to calculate the mass-based pretreatment standards applicable to their facility. This provision is substantially the same as the existing provision applicable to direct dischargers. In the Settlement Agreement, the parties agreed that the Agency would publish this regulation on an interim basis.

V. Solicitation of Comments

EPA requests comments on the interim rule 40 CFR 420.04 set out in this notice.

VI. Regulatory Impact Analysis and Regulatory Flexibility Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency previously prepared such an analysis regarding the May 27, 1982 final steel industry regulation. This regulation is not major because it simply clarifies the effective date for pretreatment standards and the manner in which mass-based pretreatment standards are calculated.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact or a substantial number of small entities. In the preamble to the May 27, 1982 final steel industry regulation, the Agency concluded that there would not be a significant impact on any segment of the regulated population large or small. For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to this regulation. The Agency is not, therefore, preparing a formal analysis for this regulation.

VII. 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, S.W., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding Federal holidays.

VIII. List of Subjects in 40 CFR Part 420

Iron, Steel, Water pollution control, Wastewater treatment and disposal.

Dated: September 27, 1983.

William D. Ruckelshaus,
Administrator.

For the reasons set out in the preamble 40 CFR Part 420 is amended as shown:

PART 420—IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for part 420 reads as follows:

Authority: Sec. 301; 304 (b), (c), (e), and (g); 306 (b) and (c); 307; 308 and 501, Clean Water Act (the Federal Water Pollution Control Act Amendments 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); 1317; 1318; and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567; Pub. L. 95-217.

2. EPA amends the General Provisions by adding §§ 420.04 and 420.05 to read as follows:

§ 420.04 Calculation of Pretreatment Standards.

(a) Pretreatment standards shall be calculated for each operation using the applicable average rate of production reported by the owner or operator of the facility to the Control Authority in accordance with 40 CFR 403.12(b)(3).

(b) The average rate of production reported by the owner or operator in accordance with 40 CFR 403.12(b)(3) shall be based not upon the design production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years. For new sources or new dischargers, actual production shall be estimated using projected production.

(c) If, due to a change of circumstances, the average rate of production for an operation reported by the owner or operator of the facility to the Control Authority in accordance with 40 CFR 403.12(b)(3) does not represent a reasonable measure of actual production of that operation, the owner or operator must submit to the Control Authority a modified average rate production.

§ 420.05 Pretreatment Standards Compliance Date.

The final compliance date for the categorical pretreatment standards set forth in 40 CFR Part 420 is July 10, 1985.

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