ment on such proposed regulations. After con-
tersed persons an opportunity for written com-
considering such comments, he shall promulgate,
ards of performance for new sources within such
within one hundred and twenty days after publi-
standard for new sources. Standards of performance, or re-
and shall consider the type of process
veloped (including whether batch or contin-
ny and steel manufacturing;
nonferrous metals manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;
glass and asbestos manufacturing;
rubber processing; and
timber products processing.

(B) As soon as practicable, but in no case more
than one year, after a category of sources is in-
cluded in a list under subparagraph (A) of this
paragraph, the Administrator shall propose and
publish regulations establishing Federal stand-
ards of performance for new sources within such
category. The Administrator shall afford inter-
sected persons an opportunity for written com-
ment on such proposed regulations. After con-
sidering such comments, he shall promulgate,
within one hundred and twenty days after publi-
cation of such proposed regulations, such stan-
ards with such adjustments as he deems appro-
riate. The Administrator shall, from time to
time, as technology and alternatives change, re-
vise such standards following the procedure re-
quired by this subsection for promulgation of such
standards. Standards of performance, or re-
visions thereof, shall become effective upon pro-
mulgation. In establishing or revising Federal stan-
dards of performance for new sources under this
section, the Administrator shall take into
consideration the cost of achieving such effluent
reduction, and any non-water quality, environ-
mental impact and energy requirements.

(2) The Administrator may distinguish among
classes, types, and sizes within categories of new
sources for the purpose of establishing such
standards and shall consider the type of process
ployed (including whether batch or continu-
ous).

(3) The provisions of this section shall apply to
any new source owned or operated by the United
States.

(c) State enforcement of standards of perform-
ance
Each State may develop and submit to the Ad-
ministrator a procedure under State law for ap-
plying and enforcing standards of performance
for new sources located in such State. If the Ad-
ministrator finds that the procedure and the law
of any State require the application and enforce-
ment of standards of performance to at least the
same extent as required by this section, such
State is authorized to apply and enforce such
standards of performance (except with respect to
new sources owned or operated by the United
States).

(d) Protection from more stringent standards
Notwithstanding any other provision of this
chapter, any point source the construction of
which is commenced after October 18, 1972, and
which is so constructed as to meet all applicable
standards of performance shall not be subject to
any more stringent standard of performance
during a ten-year period beginning on the date
of completion of such construction or during the
period of depreciation or amortization of such
facility for the purposes of section 167 or 168 (or
both) of title 26 whichever period ends first.

(e) Illegal operation of new sources in viola-
tion of applicable standards of performance
After the effective date of standards of per-
formance promulgated under this section, it
shall be unlawful for any owner or operator of
any new source to operate such source in viola-
tion of any standard of performance applicable
to such source.

March 5, 1968, ch. 62, § 706, 82 Stat. 146; June
§ 504, 98 Stat. 1070; Pub. L. 100–690, title IV,
§ 412, 102 Stat. 3693; Pub. L. 101–549, title V,
§ 104(b), 104 Stat. 2371; Pub. L. 102–575, title I,
§ 302(a), 106 Stat. 5129; Pub. L. 103–412, title IV,
§ 401(a)(1), 108 Stat. 2147; Pub. L. 104–182, title II,
§ 105(c), 110 Stat. 2196; Pub. L. 105–330, title I,
§ 102(a), 112 Stat. 2786.

§ 1317. Toxic and pretreatment effluent stan-
dards

(a) Toxic pollutant list; revision; hearing; pro-
mulgation of standards; effective date; con-
sultation
(1) On and after December 27, 1977, the list of
toxic pollutants or combination of pollutants
subject to this paragraph shall consist of those
toxic pollutants listed in table 1 of Committee
Print Numbered 95–30 of the Committee on Pub-
lic Works and Transportation of the House of
Representatives, and the Administrator shall
publish, not later than the thirtieth day after
December 27, 1977, that list. From time to time
thereafter, the Administrator may revise such
list and the Administrator is authorized to add
to or remove from such list any pollutant. The
Administrator in publishing any revised list, in-
cluding the addition or removal of any pollutant
from such list, shall take into account toxicity of
the pollutant, its persistence, degradability,
the usual or potential presence of the affected
organisms in any waters, the importance of the
affected organisms, and the nature and extent of
the effect of the toxic pollutant on such organ-
isms. A determination of the Administrator
under this paragraph shall be final except that
if, on judicial review, such determination was
based on arbitrary and capricious action of the
Administrator, the Administrator shall make a
redetermination.
(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced to a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such pub-
licitly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) New sources of pollutants into publicly owned treatment works

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) Operation in violation of standards unlawful

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.

(e) Compliance date extension for innovative pretreatment systems

In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 1311(k) of this title, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—

(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)—

(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit

under section 1342 of this title or of section 1345 of this title or to contribute to such a violation, and

(B) concurs with the proposed extension.


AMENDMENTS


1977—Subsec. (a)(1). Pub. L. 95–217, §53(a), expanded provisions covering effluent limitations and the establishment of effluent standards (or prohibitions), introduced provisions relating to the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title, inserted provision that published effluent standards take into account the extent to which effective control is being or may be achieved under other regulatory authority, inserted provision for a sixty day minimum period following publication of proposed effluent standards for written comment, substituted two hundred and seventy days for six months as the period following publication of proposed standards during which period standards (or prohibitions) must be promulgated, and inserted provision for the effective date of effluent limitations (or prohibitions) except if, on judicial review, the standard was not based on substantial evidence.

Subsec. (a)(2). Pub. L. 95–217, §53(a), struck out proviso for the immediate promulgation of revised effluent standards (or prohibitions) for pollutants or combinations of pollutants if, after public hearings, the Administrator found that a modification of such prevailing effluent standards (or prohibitions) was justified. See subsec. (a)(2) of this section.

Subsec. (a)(3). Pub. L. 95–217, §53(a), inserted provision that if the Administrator determines that compliance with effluent standards (or prohibitions) within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for that category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

Subsec. (b)(1). Pub. L. 95–217, §54(a), inserted provision that if, in the case of any toxic pollutant under subsection (a) of this section introduced by applying an innovative system into a publicly owned treatment works, the treatment by the works removes all or any part of the toxic pollutant and the discharge from the works does not violate that effluent limitation or standard which would be applicable to the toxic pollutant if it were discharged by the source other than through a publicly
owned treatment works, and does not prevent sludge use or disposal by the works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging the toxic pollutant into the publicly owned treatment works may be revised by the owner or operator of the works to reflect the removal of the toxic pollutant by the works.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, the Congress.

INCREASE IN EPA EMPLOYEES

Section 309(b) of Pub. L. 100–4 provided that: “The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act [33 U.S.C. 1317].”

§1318. Records and reports; inspections

(a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such location or such interval, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Availability to public; trade secrets exception; penalty for disclosure of confidential information

Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(c) Application of State law

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(d) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.


AMENDMENTS


Subsec. (b)(B). Pub. L. 100–4, §310(a)(2), inserted “(including an authorized contractor acting as a representative of the Administrator)” after “representative”.

Subsec. (b). Pub. L. 100–4, §310(a)(1), substituted a period and “Any authorized representative of the Admin-