

NEW JERSEY—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
New York-N. New Jersey-Long Island Area:				
Bergen .....	October 22, 2002 .....	Attainment.		
Essex County .....	.....do .....	Attainment.		
Hudson County .....	.....do .....	Attainment.		
Passaic County (part)				
City of Clifton .....	.....do .....	Attainment.		
City of Paterson .....	.....do .....	Attainment.		
City of Passaic .....	.....do .....	Attainment.		
Union County .....	.....do .....	Attainment.		
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<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

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 [FR Doc. 05-55500 Filed 1-31-05; 8:45 am]  
 BILLING CODE 1505-01-D

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 442**

[OW-2004-11; FRL-7866-7]

RIN 2040-AE65

**Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to correct a typographical error in the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category. The regulatory language of the Pretreatment Standards for New Sources in the existing regulation refers to “any existing source” when it should say “any new source.” EPA is amending the language to correct this error.

**DATES:** This rule is effective on May 2, 2005 without further notice, unless EPA receives adverse comment by April 4, 2005. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OW-2004-11, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- Hand Delivery: Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. OW-2004-11. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.epa.gov/regulations.gov), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.epa.gov/regulations.gov) Web sites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.epa.gov/regulations.gov), your e-mail address will be automatically

captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 to 4:30, Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jesse W. Pritts, Engineering and Analysis Division, Office of Water (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (202) 566-1038; fax number: (202) 566-1053; e-mail address: pritts.jesse@epa.gov.

**General Information**

*A. What Entities Are Potentially Affected by This Final Rule?*

Entities potentially affected by this action include facilities that discharge

wastewater from transportation equipment cleaning activities and include the following types:

**SUPPLEMENTARY INFORMATION:**

Category	Examples of regulated entities	Examples of common North American Industry Classification System (NAICS) codes
Industry .....	Facilities that generate wastewater from cleaning the interior of tank trucks, rail tank cars, intermodal tank containers, tank barges, or ocean/sea tankers used to transport materials or cargos that come into direct contact with tank or container interior, except where such tank cleanings are performed in conjunction with other industrial, commercial, or POTW operations.	311613, 311711, 311712, 311222, 311223, 311225, 484121, 484122, 484210, 484230, 488390, 488490.

EPA does not intend the preceding table to be exhaustive, but rather it provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria listed at 40 CFR 442.1. If you still have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What Process Governs Judicial Review for Today's Final Rule?*

In accordance with 40 CFR 23.2, today's rule is considered promulgated for the purposes of judicial review as of 1 p.m. Eastern Daylight Time, February 15, 2005. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**I. Legal Authority**

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361 and under authority of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13101 *et seq.*, Public Law 101-508, November 5, 1990.

**II. Summary of Direct Final Rule**

On August 14, 2000 (65 FR 49666), EPA published effluent limitations and standards for the transportation equipment cleaning point source category. The rule contained a typographical error. The regulatory language of the Pretreatment Standards for New Sources in 40 CFR 442.16(b) refers to "any existing source" when it should say "any new source." In correcting this error, EPA is not substantively altering the final rule or expanding any regulatory requirement. Section 442.16(b) clearly applies to pretreatment standards for new sources, and therefore the use of the word "existing" instead of "new" in this paragraph was simply a typographical error.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial correction and anticipate no adverse comment. This rule is noncontroversial because it does not change the requirements of the rule, but merely corrects a typographical error. We would expect no adverse comment on today's action. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to revise the Transportation Equipment Cleaning Effluent Limitations Guidelines if adverse comments are filed. This rule will be effective on May 2, 2005 without further notice unless we receive adverse comment by April 4, 2005. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule.

**III. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (see 58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
  - (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
  - (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
  - (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.
- It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule merely corrects technology-based discharge limitations and standards. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (see 40 CFR 422 (August 14, 2000))

under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040-0235, EPA ICR number 2018.01. The information collection requirements are unchanged by today's action. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed at 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business according to the regulations of the Small Business Administration (SBA) at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's action only corrects a typographical error in the Pretreatment Standards for New Sources and does not change the existing regulations.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. EPA is required by UMRA section 203 to develop a small government agency plan before it establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Since this action only corrects a typographical error in an existing regulation, there are no costs associated with this action. Thus,

today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Today's action does not establish any new regulatory requirements, but merely corrects a typographical error in the existing effluent limitations guidelines. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule corrects a typographical error to existing effluent limitations guidelines for the transportation equipment cleaning industry. Thus, Executive Order 13132 does not apply to this rule.

#### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (see 59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This rule does not establish any new regulatory requirements, but merely

corrects a typographical error to the existing transportation equipment cleaning effluent limitations guidelines. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (see 62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (see 66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 requires that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not exclude persons (including populations) from participation in, deny persons (including populations) the benefits of, or subject persons (including populations) to discrimination under, such programs, policies, and activities because of their race, color, or national origin.

Since this action does not establish any new regulatory requirements but merely corrects a typographical error to the existing transportation equipment cleaning effluent guidelines, there are no environmental justice implications of today's action.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on May 2, 2005.

**List of Subjects in 40 CFR Part 442**

Environmental protection, Barge cleaning, Rail tank cleaning, Tank cleaning, Transportation equipment cleaning, Waste treatment and disposal, Water pollution control.

Dated: January 26, 2005.

**Stephen L. Johnson,**  
*Deputy Administrator.*

■ 40 CFR part 442 is amended as follows:

**PART 442—AMENDED**

■ 1. The authority citation for part 442 continues to read as follows:

**Authority:** 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

■ 2. Section 442.16 is amended by revising paragraph (b) introductory text to read as follows:

**§ 442.16 Pretreatment standards for new sources (PSNS).**

\* \* \* \* \*

(b) As an alternative to achieving PSNS as defined in paragraph (a) of this section, any new source subject to paragraph (a) of this section may have a pollution prevention allowable discharge of wastewater pollutants, as defined in § 442.2, if the source agrees to a control mechanism with the control authority as follows:

\* \* \* \* \*

[FR Doc. 05-1862 Filed 1-31-05; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 001005281-0369-02; I.D. 012105B]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective 6 a.m., local time, Friday, January 28, 2005, through 6 a.m., January 17, 2006.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, telephone: 727-570-5305, fax: 727-570-5583, e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).