

transmission as First-Class Mail are closed against inspection. Hard copy versions of electronic documents, while being prepared for entry as First-Class Mail, also are closed against postal inspection. The USPS may open mail other than First-Class Mail or Express Mail to determine whether the proper rate of postage is paid. Material wrapped or packaged so that it cannot be examined easily or cannot be examined without destruction or serious damage is closed against postal inspection and is charged the appropriate First-Class Mail or Express Mail rate.

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4.0 FEES

4.1 Presort Mailing

[Revise 4.1 to remove references to Mailing Online mailers to read as follows:]

A First-Class Mail presort mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at automation or Presorted First-Class Mail rates. Payment of one fee allows a mailer to enter mail at all those rates. Persons or organizations paying this fee may enter clients' mail as well as their own mail. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment.

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E140 Automation Rates

1.0 BASIC STANDARDS

[Revise 1.1b by removing reference to Mailing Online in G093 to read as follows:]

1.1 All Pieces

All pieces in a First-Class Mail automation rate mailing must:

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b. Be part of a single mailing of at least 500 pieces of automation rate First-Class Mail, subject to 1.2.

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E611 All Standard Mail

1.0 BASIC INFORMATION

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1.2 Postal Inspection

[Revise 1.2 by removing reference to documents created in electronic form by means of Mailing Online to read as follows:]

Standard Mail is not sealed against postal inspection except for electronic documents retained by the Postal

Service, which are sealed against postal inspection. Regardless of physical closure, the mailing of articles at Standard Mail rates constitutes consent by the mailer to postal inspection of the contents.

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E612 Additional Standards for Standard Mail (A)

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4.0 BULK RATES

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4.7 Annual Fees

[Revise 4.7 by removing reference to fees in G093 to read as follows:]

Standard Mail (A) is subject to an annual mailing fee once each 12-month period. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment. Each mailer who enters mail at Standard Mail (A) rates paid with a meter or precanceled stamps must pay an annual mailing fee at each post office of mailing; a mailer paying this fee may enter clients' mail as well as the mailer's own. The mailer whose permit imprint appears on pieces in a mailing paid with a permit imprint must show that permit number on the postage statement and must pay the annual mailing fee for that permit; this fee is in addition to the fee for an application to use permit imprints.

* * * * *

4.9 Preparation

[Revise 4.9b by removing reference to Mailing Online in G093 to read as follows:]

Each Standard Mail (A) mailing is subject to these general standards:

* * * * *

b. Each mailing must contain at least 200 pieces or 50 pounds. See E620 for volume requirement eligibility unique to Presorted Standard rate mailings. Other volume standards can also apply, based on the rate claimed.

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G General Information

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[Remove G093, Mailing Online, and remove the preceding headings G000 and G090.]

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P040 Permit Imprints

5.0 MAILINGS

5.1 Minimum Quantity

[Remove 5.1d, which provided for Mailing Online permit imprint mailings.]

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These revisions will be incorporated into the pages of the Domestic Mail Manual. An appropriate amendment to 39 CFR 111.3 will be published in the Federal Register to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99-27906 Filed 10-25-99; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6462-7]

RIN 2060-AF26

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing publicly owned treatment works (POTW). The primary hazardous air pollutants (HAP) emitted by these sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

Each of these HAP can cause adverse health effects provided sufficient exposure. For example, exposure to methylene chloride can adversely affect the central nervous system and has been shown to cause liver and lung cancers in animals, while benzene is known to cause cancer in humans.

With this final rule, the EPA is requiring air pollution controls on a new or reconstructed treatment plant at a POTW that is a major source of HAP. The standards also require that new and existing POTW treating regulated waste streams from an industrial user, for the purpose of allowing that industrial user to comply with another NESHAP, meet the treatment and control requirements of the other relevant NESHAP.

EFFECTIVE DATE: October 26, 1999.

ADDRESSES: Docket. Docket No. A-96-46, containing information considered

by the EPA in development of the promulgated standards, is available for public inspection from 8 a.m. to 5:30 p.m., Monday through Friday, at the following address in room M-1500, Waterside Mall (ground floor): US Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 260-7548. A reasonable fee may be charged for copying docket materials.

Responses to Comments Document. The responses to comments document for the promulgated standards may be obtained from the EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777, or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 605-6000 or (800) 553-6847 or via the Internet at www.fedworld.gov/ntis/ntishome/html. Please refer to "National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works—Background Information for Final Standards: Summary of Public Comments and Responses" (EPA-453/R-99-008, October 1999).

The document contains the following: (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, and (2) a summary of the changes made to the standards since proposal. This document is also available for downloading from the Technology Transfer Network (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule or the analyses performed in developing this rule, contact Mr. Robert Lucas,

Waste and Chemical Processes Group, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0884, facsimile number (919) 541-0246, electronic mail address "lucas.bob@epa.gov". For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA regional representatives. For a listing of EPA Regional contacts, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Electronic Access. These final standards and all other information considered by the EPA in the development of the final standards are available in Docket Number A-96-46 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). Electronic versions of documents from the Office of Air and Radiation (OAR) are available through the EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web location at the following address: "http://www.epa.gov/ttn". Electronic versions of this preamble and rule are located under the OAR Policy and Guidance Information Web site, at "http://www.epa.gov/ttn/oarpg/", under the **Federal Register** notices section. If more information on the TTNWeb is needed,

contact the Systems Operator at (919) 541-5384.

EPA Regional Offices

- Director, Office of Environmental Stewardship, Attn: Air Compliance Clerk
U.S. EPA Region I, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114-2023, (617) 918-1740
- Umesh Dholakia
U.S. EPA Region II, 290 Broadway Street, New York, NY 10007-1866, (212) 637-4023
- Dianne Walker
U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-3297
- Lee Page
U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303-3104, (404) 562-9131
- Bruce Varner
U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604-3507, (312) 886-6793
- Jim Yang (6EN-AT)
U.S. EPA Region VI, First Interstate Bank Tower, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, (214) 665-7578
- Gary Schlicht
U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551-7097
- Tami Thomas-Burton
U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202, (303) 312-6581
- Ken Bigos
U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1200
- Dan Meyer
U.S. EPA Region X, 1200 Sixth Street, Seattle, WA 98101, (206) 553-4150

Regulated Entities. Entities potentially regulated by this action are publicly owned treatment works. Regulated categories and entities include:

Category	Standard Industrial Classification (SIC) codes	North American Industrial Classification System (NAICS) codes	Examples of potentially regulated entities
Industry (3) Not affected			
Federal Government	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal governments	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly owned treatment works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this promulgated action, you should carefully examine

the applicability criteria in section III. A of this document and in 40 CFR 63.1580. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. National emission standards for hazardous air pollutants from POTW were proposed in the **Federal Register** on December 1, 1998

(63 FR 66084). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Only an objection to this action which was raised with reasonable

specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading the preamble to the final rule.

- I. Background
 - A. Source Category Description
 - B. Overview of HAP Emissions from POTW
- II. Summary of Considerations Made in Developing This Standard
 - A. Source of Authority
 - B. Stakeholder and Public Participation
- III. Summary of Promulgated Standards
 - A. Affected Sources and Applicability
 - B. Requirements
- IV. Summary of Impacts
- V. Significant Comments and Changes to the Proposed Standards
 - A. Major Source Determination
 - B. Co-location With Other Sources of HAP Emissions
 - C. Control Requirements
 - D. Federally Owned Treatment Works
- VI. Administrative Requirements
 - A. Executive Order 12866
 - B. Executive Order 13045
 - C. Paperwork Reduction Act
 - D. Regulatory Flexibility Act
 - E. Unfunded Mandates
 - F. Executive Order 12875
 - G. Executive Order 13084
 - H. National Technology Transfer and Advancement Act
 - I. Congressional Review Act
 - J. Executive Order 12612

I. Background

A. Source Category Description

The EPA's initial list of categories of major sources of HAP emissions, established under section 112(c)(1) of the Act, included POTW. This list was published on July 16, 1992 (57 FR 31576). The POTW source category is defined in the supporting documentation for the initial source category list. The POTW source category "includes emissions from wastewaters which are treated at a POTW."

These wastewaters are produced by industrial, commercial, and domestic sources. Emissions from these wastewaters can occur within the collection system (sewers) as well as during treatment at the POTW. Control options include, but are not limited to, reduction of HAP's at the source before they enter the collection system, add-on emission controls on the collection system and at the POTW, and/or treatment process modifications/substitutions. (Documentation for Developing the Initial Source Category List, EPA-450/3-91-030, July 1992)

Section 112(e)(5) of the Act defines POTW by referring to the definition of treatment works in title II of the Federal

Water Pollution Control Act, commonly referred to as the Clean Water Act. As set forth in section 212(2), 33 U.S.C. 1292(2), treatment works include the wastewater treatment units themselves, as well as intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. Any of these devices which are publicly owned may be a POTW. The wastewater collected, transmitted, and treated by such POTW may be generated by industrial, commercial, and/or domestic sources.

B. Overview of HAP Emissions From POTW

The HAP emitted by POTW originate in wastewater streams discharged by industrial, commercial, and other facilities. Since POTW can receive any HAP constituent, potentially, POTW can have emissions of any HAP. Currently, the primary HAP constituents associated with POTW sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

Each of these HAP can cause adverse health effects provided sufficient exposure. For example, exposure to methylene chloride can adversely affect the central nervous system and has been shown to cause liver and lung cancers in animals, while benzene is known to cause cancer in humans.

Hazardous air pollutants present in wastewater entering POTW treatment plants can biodegrade, adhere to sewage sludge, volatilize to the air, or pass through (remain in the discharge) to receiving waters. Within the POTW source category, wastewater treatment units are the most likely source for HAP emissions, but wastewater collection systems (including transport systems) and other devices may also have emissions.

II. Summary of Considerations Made in Developing This Standard

A. Source of Authority

Section 112 of the Act addresses stationary sources of HAP. Section 112(b) of the Act, as amended, lists 188 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emissions of HAP from stationary sources by establishing national emission standards.

The statute requires the EPA to establish standards to reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT) to major sources.

Section 112(a)(1) of the Act defines a major source as:

* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

Section 112(d)(3) prescribes a minimum level of control for major sources of HAP, referred to as the MACT floor.

Section 112(e)(5) of the Act required the EPA to promulgate a MACT standard for publicly owned treatment works by November 15, 1995. Under section 112(j)(2) (the "MACT hammer"), if the EPA failed to promulgate a POTW MACT standard by November 15, 1997, major sources in the POTW category would be required to submit, within 18 months (by May 15, 1999), an application for a permit which would impose MACT requirements on a case-by-case basis. Although the EPA was unable to meet this deadline, on May 14, 1999, the EPA promulgated a rule (64 FR 26311) which extended the section 112(j) permit application deadline for this source category until December 15, 1999. The obligation for facilities to file a permit application under section 112(j)(2) is eliminated by the promulgation of these final standards.

B. Stakeholder and Public Participation

As prescribed in section 112(n)(3) of the Act:

The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions.

During the development of these final standards, representatives of POTW and sanitation districts were extensively consulted. The EPA worked closely with a trade association known as the Association of Metropolitan Sewerage Agencies (AMSA) for approximately 7 years.

A database comprising information supplied by the AMSA was used in the evaluation of HAP emissions and emissions control for POTW. Estimates of organic HAP emissions from model

sources were developed by the EPA based on information supplied by the AMSA, including most of the modeling inputs used for the EPA WATER8 emissions estimation model.

III. Summary of Promulgated Standards

This section provides a summary of the final standards contained in 40 CFR part 63, subpart VVV. The full regulatory text is printed in today's document and is also available in Docket No. A-96-46, directly from the EPA, or from the Technology Transfer Network (TTN) on the EPA's electronic bulletin board. More information on how to obtain a copy of the final regulation is provided in the SUPPLEMENTARY INFORMATION section of this document.

A. Affected Sources and Applicability

The wastewater treatment plant at a POTW is the affected source for this subpart. The subpart is applicable only to POTW that are located at facilities which are major sources of HAP emissions. In addition, the final rule exempts facilities which are not required to develop a pretreatment program under 40 CFR part 403.

B. Requirements

The final standards for POTW do not require any additional controls for existing non-industrial POTW treatment plants. New or reconstructed non-industrial POTW treatment plants must reduce their HAP emissions. This is accomplished by using covers and control devices on the POTW treatment units up to, but not including, the secondary treatment units.

In response to comments that the control requirements for new or reconstructed non-industrial POTW were too prescriptive and did not account for the differences between POTW treatment plants, the final standards include an alternative compliance option. Using the available HAP data provided by the trade association, the EPA calculated a fraction emitted value equivalent to applying covers and control devices on treatment units up to, but not including, the secondary treatment units. Under this option, each month, facilities calculate the fraction emitted by dividing the sum total of HAP emissions by the sum total of HAP loading to the wastewater treatment plant. Facilities must demonstrate that the annual rolling average of the fraction emitted does not exceed 0.014. Facilities can use any combination of pretreatment, wastewater treatment plant

modifications, and control devices to meet the fraction emitted limit.

The POTW which provide treatment and control for a waste stream regulated by an industrial MACT are defined as industrial POTW treatment plants. Under the industrial discharger's MACT, the POTW provides air pollution control, generally under a contractual agreement. Today's POTW standard makes these controls directly enforceable on the POTW. An owner or operator of a new or reconstructed industrial POTW treatment plant must comply with the existing source MACT or the new or reconstructed MACT for non-industrial POTW, whichever is more stringent.

IV. Summary of Impacts

There are approximately 16,000 POTW nationwide that receive and treat approximately 113.6 million cubic meters per day (30 billion gallons per day) of domestic, commercial, and industrial wastewater. It was not possible to survey each facility and make a major source determination. Although only six major sources have been identified, the EPA knows that additional major sources will be subject to these standards. Based on discussions with POTW representatives, the EPA believes that these additional major sources do not have different emission sources or controls than the six identified facilities. Today's final rule does not add new requirements for these existing facilities.

Several POTW have been identified as possible industrial POTW. In addition, as more industrial NESHAP are promulgated, the EPA believes that more POTW could be used by industries to comply with the requirements of their industrial NESHAP. Today's final rule does not require any additional control, but it does make the industrial NESHAP control requirements directly enforceable on the POTW.

Current information from POTW representatives projects no new or reconstructed major POTW for the next 5 years. Thus, the EPA does not expect that any facilities will be required to apply the emission controls included in today's final rule, and the EPA projects minimal impacts from today's action.

V. Significant Comments and Changes to the Proposed Standards

Nineteen comment letters were received on the proposed rule. The commenters included State and local air pollution agencies, owners and operators of POTW, trade organizations, representatives of academia, and private citizens. A detailed discussion of these comments and responses can be found

in the Background Information Document for the Final Standards (EPA-453/R-99-008).

The EPA's review of the significant issues raised by the commenters resulted in several changes to the proposed rule. This section summarizes the significant comments and provides the EPA's response to those comments.

A. Major Source Determination

The EPA developed a methodology which included a number of ways by which a POTW could determine if their treatment plant was a major source of HAP emissions. The methods developed were presented in a tiered approach to provide maximum flexibility and were primarily intended to assist the thousands of POTW treatment plants that are not major sources. Several comments were received that opposed including any methodology for major source determination.

Due to title V, part 70 determinations, a POTW and its local air pollution regulatory authorities should have agreement on the methods by which the POTW estimates emissions from wastewater treatment operations. Therefore, the EPA has removed procedures for major source determination, and has referred to 40 CFR part 63, Subpart A—General Provisions, for the definition of a major source.

The procedures that were removed from the standards, along with additional guidance, will be included in a future document on estimating emissions from POTW. The EPA will continue to provide assistance on the use of the WATER8 model. Requests for guidance on emissions estimation for the purpose of major source determination will be addressed on an "as-needed" basis, and may be obtained by consulting the person listed in the FOR FURTHER INFORMATION CONTACT section of today's final rule.

B. Co-Location With Other Sources of HAP Emissions

Several commenters believed that if a POTW treatment plant is not a major source, then it should not be considered a major source if it is co-located with another major source. These commenters recommended that the emissions should be based on actual emissions from the wastewater treatment portion of the POTW and should not include emissions from co-located sources (e.g., portable internal combustion engines).

The term "major source" is defined in 40 CFR part 63, Subpart A—General Provisions, and includes the requirement for considering emissions

and the potential for emissions from co-located sources when determining major source status. Therefore, the major source determination must be based on facility-wide emissions.

C. Control Requirements

Several commenters believed that it was inappropriate to require POTW to be subject to §§ 63.693 through 63.697 of 40 CFR part 63, Subpart DD—National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations. The commenters stated that the best-controlled facility, on which the EPA based its MACT floor for new and reconstructed facilities, does not comply with these standards.

In response to the comments, the EPA has removed requirements from §§ 63.693 through 63.697 of 40 CFR part 63 which are not appropriate for POTW. In particular, the final rule does not require the use of an organic vapor analyzer to check for leaks in either the closed-vent system or the covers on tanks.

In addition, the EPA has added an alternative compliance option based on a modeling study of the control requirements. This alternative compliance option allows a new or reconstructed source to comply by demonstrating, for units up to, but not including the secondary treatment, that the weighted fraction emitted does not exceed 0.014 based on an annual average. Facilities calculate the weighted fraction emitted by dividing the sum total of HAP emissions by the sum total of HAP loading to the wastewater treatment plant.

A POTW may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard. Facilities can determine the appropriate control efficiency for a particular control device. However, the POTW must document these calculations and demonstrate continuous compliance to the Administrator's satisfaction. In this context, continuous compliance refers to an annual rolling average of the fraction of the HAPs in the wastewater treated by the POTW which are emitted to the air.

D. Federally Owned Treatment Works

One commenter questioned whether Federally Owned Treatment Works (FOTW) should be subject to this rulemaking. The commenter suggested that FOTW should be excluded from the POTW source category because the term "publicly owned treated works" has been used more narrowly in other statutory contexts.

The EPA notes that many treatment works owned and operated by municipalities, States, and intermunicipal or interstate agencies are essentially the same in design, in operation, and in the types of wastewater that are treated as treatment works operated by the Federal government. Regulations developed under the Clean Water Act generally require that both types of facilities meet the same control requirements. EPA does not believe that it would be a constructive use of governmental resources to promulgate a separate MACT standard for FOTW. In addition, EPA believes that the inclusion of FOTW within the POTW source category is consistent with the intent of the Federal Facility Compliance Act of 1992.

EPA understands the confusion which could be caused by differences in the meaning of the term "publicly owned treatment works" in differing regulatory contexts. By including treatment works owned by the Federal government in the POTW source category, EPA does not intend to alter in any way the manner in which the term "publicly owned treatment works" has been interpreted or applied under any other statute or in any other regulation. Accordingly, EPA has revised the definition of POTW in this rule both to recognize this distinction and to confirm the intent of EPA to include FOTW in this source category.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to 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 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 or 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.

The OMB has deemed this regulatory action significant and requested review of this final rulemaking package. Therefore, the EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (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 the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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 EPA.

This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1891.02), and a copy may be obtained from Sandy Farmer by mail at the OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

Generally, respondents are required to submit one-time reports of (1) start of construction for new facilities, and (2) anticipated and actual start-up dates for new facilities. For sources constructed or reconstructed after the effective date of the relevant standard, the regulation requires that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control that will be used for each potential HAP emission point.

For POTW facilities, the public reporting and recordkeeping burden is

estimated to average 41 hours per respondent per year. This estimate includes time for preparing and submitting notices, preparing and submitting demonstrations and applications, reporting releases, gathering information, and preparing and submitting reports. No capital costs are anticipated.

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 in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of certain proposed and final rules unless the agency certifies that the rule in question will not have a significant economic impact on a substantial number of small entities. The EPA's findings in this section are the result of the statutory requirements of the RFA as amended by the Small Business Regulatory Enforcement Fairness Act.

The EPA has determined that it is not necessary to prepare a regulatory

flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will impose no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants would be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case.

E. Unfunded Mandates

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 section 202 of the UMRA, the 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. 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.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100

million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

F. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule is required under section 112 (e)(5) of the Clean Air Act. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

In developing this rule, the EPA consulted with these governments to enable them to provide meaningful and timely input in the development of this rule. As discussed in section II.B of this document, consultation opportunities included presumptive MACT partnerships, stakeholder meetings, and participation on the internal working group that prepared these final standards. State and local regulatory agencies are expected to be in favor of this final rule. Prior to publication of the proposed rule, some representatives of local governments had expressed concerns about the emission models and testing used to determine area source status. The EPA worked with these representatives in developing this final rule, and their concerns should be resolved with the publication of this final rule.

G. Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is

not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This final rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule imposes no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants will be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case and would not be likely to be located in the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note), directs the 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the

EPA decides not to use available and applicable voluntary consensus standards.

This final rulemaking includes technical standards and requirements for taking measurements. Consequently, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods and tests required by this final rule, all of which are methods or tests previously promulgated. This final rule includes methods that measure: (1) Vapor leak detection (EPA Method 21); (2) volatile organic compound concentration in vented gas stream (EPA Method 18); (3) volumetric flow rate of the vented gas stream (EPA Methods 2, 2A, 2C, or 2D); and (4) sampling site location (Method 1 or 1A). These EPA methods are found in Appendix A to 40 CFR parts 60, 63, and 136.

Except for EPA Methods 2 and 2C (Appendix A to 40 CFR part 60), no other potentially equivalent methods for the methods and tests in the rule were found in the NSSN database search. The EPA identified one Chinese (Taiwanese) National Standard (CNS) which may potentially be an equivalent method to EPA Methods 2 and 2C. The CNS method is CNS K9019 for measuring velocity and flow rates in stack gases.

However, the EPA does not believe that CNS K9019 is a voluntary consensus method. It is unlikely that CNS K9019 was considered by industry groups or national standards setting organizations, because it was not developed in the U.S. and there is no available information about it in the U.S.

To confirm this, the EPA requested comments at proposal on whether any U.S. industry has adopted CNS K9019 as a voluntary consensus method. The EPA also requested comments on whether any potential voluntary consensus methods existed that could be allowed in addition to the methods in the proposed rule. No potential voluntary consensus methods were submitted with the public comments on the proposed version of this final rule. The EPA interprets this to mean that no applicable voluntary consensus standards are available for POTW.

I. 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. The 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 26, 1999.

J. Executive Order 12612

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255, August 10, 1999) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987) on federalism still applies. This rule will not have a substantial direct effect on 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 12612. This rule is not likely to have a substantial direct effect on States because it imposes no new control requirements on existing treatment works, and because the incremental cost of any required controls for new sources would not be significant in the context of the construction of new facilities. Moreover, since the authority to regulate any affected sources will be routinely delegated to State permitting authorities, this rule should have no substantial effect on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Pretreatment, Publicly owned treatment works, Reporting and recordkeeping requirements.

Dated: October 15, 1999.

Carol M. Browner,
Administrator.

For reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart VVV to read as follows:

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Sec.

Applicability

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63.1595 List of definitions.

Table 1 to Subpart VVV—Applicability of 40 CFR Part 63 General Provisions to Subpart VVV

Applicability

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a major source of hazardous air pollutant (HAP) emissions; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, state, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and

implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).

Note to paragraph (a)(2): See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) general provisions in subpart A of this part for a definition of major source.

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source.

(c) If an industrial major source complies with applicable NESHAP requirements by using the treatment and controls located at your POTW, your POTW is considered to be a major source regardless of whether you otherwise meet the applicable criteria.

(d) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW treatment plant, as defined in § 63.1595, apply.

§ 63.1581 Does the subpart distinguish between different types of POTW treatment plants?

Yes, POTW treatment plants are divided into two subcategories. A POTW treatment plant which does not meet the characteristics of an industrial POTW treatment plant belongs in the non-industrial POTW treatment plant subcategory as defined in § 63.1595.

Industrial POTW Treatment Plant Description and Requirements

§ 63.1582 What are the characteristics of an industrial POTW treatment plant?

(a) Your POTW is an industrial POTW treatment plant if an industrial discharger complies with its NESHAP by using the treatment and controls located at your POTW. Your POTW accepts the regulated waste stream and provides treatment and controls as an agent for the industrial discharger. Industrial POTW treatment plant is defined in § 63.1595.

(b) If, in the future, an industrial discharger begins complying with its NESHAP by using the treatment and controls at your POTW, then on the date that the industrial discharger certifies compliance, your POTW treatment plant will be considered an industrial POTW treatment plant.

(c) If your POTW treatment plant accepts one or more specific regulated industrial waste streams as part of compliance with one or more other NESHAP, then you are subject to all the

requirements of each appropriate NESHAP for each waste stream, as described in the following section. In the case of overlapping NESHAP requirements, the more stringent of the requirements will apply.

§ 63.1583 What are the emission points and control requirements for an industrial POTW treatment plant?

(a) The emission points and control requirements for an existing industrial POTW treatment plant are specified in the appropriate NESHAP(s) for the industrial user(s) (see § 63.1582). For example, an existing industrial POTW treatment plant that provides treatment for a facility subject to subpart FF of this part, the National Emission Standard for Benzene Waste Operations, must meet the treatment and control requirements specified in § 61.348(d)(4) of this chapter.

(b) The emission points and control requirements for a new or reconstructed industrial POTW treatment plant are either those specified by the particular NESHAP(s) which apply to the industrial user(s) who discharge their waste for treatment to the POTW, or those emission points and control requirements set forth in § 63.1586. The set of control requirements which applies to a particular new or reconstructed POTW is that set which requires the most stringent overall control of HAP emissions. If you are uncertain which set of requirements is more stringent, this determination should be made in consultation with the permitting authority. Reconstruction is defined in § 63.1595.

§ 63.1584 When do I have to comply?

(a) *Existing industrial POTW treatment plant.* If you have an existing industrial POTW treatment plant, the appropriate NESHAP(s) for the industrial user(s) sets the compliance date, or the compliance date is 60 days after October 26, 1999, whichever is later.

(b) *New industrial POTW treatment plant.* If you have a new industrial POTW treatment plant, you must be in compliance as soon as you begin accepting the waste stream(s) for treatment. If you begin accepting a specific regulated industrial waste stream(s) for treatment, you must be in compliance by the time specified in the appropriate NESHAP(s) for the industrial user(s).

§ 63.1585 How does an industrial POTW treatment plant demonstrate compliance?

(a) An existing industrial POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all

requirements specified in the appropriate industrial NESHAP(s). Requirements may include performance tests, routine monitoring, recordkeeping, and reporting.

(b) If you have a new or reconstructed industrial POTW plant, you must first determine whether the control requirements set forth in the applicable industrial NESHAP(s) or the control requirements applicable to a new or reconstructed nonindustrial POTW under § 63.1586 would require more stringent overall control of HAP emissions. You must then meet whichever set of requirements is more stringent. If you determine that the controls required by the applicable industrial NESHAP(s) are more stringent, you demonstrate compliance by operating treatment and control devices which meet all requirements specified in those industrial NESHAP(s). If you determine that the controls required for a new or reconstructed nonindustrial POTW are more stringent, you demonstrate compliance by meeting all requirements in §§ 63.1586 through 63.1590.

Non-industrial POTW Treatment Plant Requirements

§ 63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. The control requirements for a new or reconstructed non-industrial POTW treatment plant are as follows:

(a) Covers on the emission points up to, but not including, the secondary influent pumping station or the secondary treatment units. These emission points are treatment units that include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except primary clarifiers, must have the air in the headspace ducted to a control device in accordance with the standards for closed-vent systems and control devices in § 63.693 of subpart DD of this part, except you may substitute visual inspections for leak checks rather than Method 21 of Appendix A of part 60 of this chapter. Reconstructed is defined in § 63.1595.

(1) Covers must be tightly fitted and designed and operated to minimize exposure of the wastewater to the atmosphere. This includes, but is not limited to, the absence of visible cracks, holes, or gaps in the roof sections or

between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) If wastewater is in a treatment unit, each opening must be maintained in a closed, sealed position, unless plant personnel are present and conducting wastewater or sludge sampling, or equipment inspection, maintenance, or repair.

(b) As an alternative to the requirements in paragraph (a) of this section, you may comply by demonstrating, for all units up to the secondary influent pumping station or the secondary treatment units, that the fraction emitted does not exceed 0.014. You must demonstrate that for your POTW, the sum of all HAP emissions from those units divided by the sum of all HAP mass loadings results in a annual rolling average of the fraction emitted no greater than 0.014. You may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard; however, you must demonstrate, to the Administrator's satisfaction that:

(1) You have accurately determined your POTW's annual HAP mass loadings and your POTW's annual HAP emissions as of the date of start-up;

(2) Your POTW meets the fraction emitted standard of 0.014 or less; and

(3) Your POTW has established procedures to demonstrate continuous compliance which are consistent with the criteria set forth in § 63.1588(c)(4).

§ 63.1587 When do I have to comply?

If your POTW treatment plant began construction on or after December 1, 1998, you must comply with all provisions of this subpart either immediately upon startup, or by six months after October 26, 1999, whichever date is later.

§ 63.1588 What inspections must I conduct?

(a) If your treatment units are required to have covers, you must conduct the following inspections:

(1) You must visually check the cover and its closure devices for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) You must perform an initial visual inspection with follow-up inspections at least once per year.

(3) In the event that you find a defect on a treatment unit in use, you must repair the defect within 45 days. If you cannot repair within 45 days, you must notify the EPA or the designated State authority immediately and report the reason for the delay and the date you expect to complete the repair. If you find a defect on a treatment unit that is not in service, you must repair the defect prior to putting the treatment unit back in wastewater service.

(b) If you own or operate a control device used to meet the requirements for § 63.1586, you must comply with the inspection and monitoring requirements of § 63.695(c) of subpart DD of this part.

(c) To comply with the performance standard specified in § 63.1586(b), you must develop an inspection and monitoring plan. This inspection and monitoring plan must include, at a minimum, the following:

(1) A method to determine, to the satisfaction of the Administrator, the influent HAP mass loading, *i.e.*, the annual mass quantity for each HAP entering the wastewater treatment plant.

(2) A method to determine, to the satisfaction of the Administrator, your POTW's annual HAP emissions for all units up to and including the secondary influent pumping station or up to and not including the secondary treatment units as of October 26, 1999. The method you use to determine your HAP emissions, such as modeling or direct source measurement, must:

(i) Be approved by your EPA Regional Office, State, or local regulatory agency for use at your POTW;

(ii) Account for all factors affecting emissions from your plant including, but not limited to, emissions from wastewater treatment units; emissions resulting from inspection, maintenance, and repair activities; fluctuations (*e.g.*, daily, monthly, annual, seasonal) in your influent wastewater HAP concentrations; annual industrial loading; performance of control devices; or any other factors that could affect your annual HAP emissions; and

(iii) Include documentation that the values and sources of all data, operating conditions, assumptions, etc., used in your method result in an accurate estimation of annual emissions from your plant.

(3) Documentation, to the satisfaction of the Administrator, that your POTW meets the fraction emitted standard of 0.014 or less, *i.e.*, the sum of all HAP emissions from paragraph (c)(2) of this section divided by the sum of all HAP mass loadings from paragraph (c)(1) of

this section results in a fraction emitted of 0.014 or less as described in paragraph (c)(4) of this section.

(4) A method to demonstrate, to the satisfaction of the Administrator, that your POTW is in continuous compliance with the requirements of § 63.1586(b). Continuous compliance means that your emissions, when averaged over the course of a year, do not exceed the level of emissions that allows your POTW to comply with § 63.1586(b). For example, you may identify a parameter(s) that you can monitor that assures your emissions, when averaged over the entire year, will meet the requirements in § 63.1586(b). Some example parameters that may be considered for monitoring include your wastewater influent HAP concentration and flow, industrial loading from your permitted industrial dischargers, and your control device performance criteria. Where emission reductions are due to proper operation of equipment, work practices, or other operational procedures, your demonstration must specify the frequency of inspections and the number of days to completion of repairs. You must, at a minimum, perform the following each month to demonstrate that your annual rolling average of the fraction emitted is 0.014 or less:

(i) Determine the average daily flow of the wastewater entering your POTW treatment plant for the month;

(ii) Determine the flow-weighted monthly concentration of each HAP in your influent listed in Table 1 to subpart DD of this part;

(iii) Using the current month's information in paragraphs (c)(4)(i) and (ii) of this section, determine a total annual loading (Mg/year) of each HAP entering your POTW treatment plant;

(iv) Sum up the values in paragraph (c)(4)(iii) of this section and determine a total annual loading value (Mg/year) for all HAP entering your POTW treatment plant for the current month;

(v) Based on the current month's information in paragraph (c)(4)(iii) of this section along with source testing and emission modeling, for each HAP, determine annual emissions (Mg/year) from all wastewater units up to, but not including, secondary treatment units;

(vi) Sum up the values in paragraph (c)(4)(v) of this section and determine the total annual emissions value for the month for all HAP from all wastewater units up to, but not including, secondary treatment units;

(vii) Calculate the fraction emitted value for the month by dividing the total annual HAP emissions value from paragraph (c)(4)(vi) of this section by the

total annual loading from paragraph (c)(4)(iv) of this section; and

(viii) Average the fraction emitted value for the month determined in paragraph (c)(4)(vii) of this section, with the values determined for the previous 11 months, to calculate an annual rolling average of the fraction HAP emitted.

§ 63.1589 What records must I keep?

(a) To comply with the equipment standard specified in § 63.1586(b), you must prepare and maintain the following records:

(1) A record for each treatment unit inspection required by § 63.1588(a). You must include a treatment unit identification number (or other unique identification description as selected by you) and the date of inspection.

(2) For each defect detected during inspections required by § 63.1588(a), you must record the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date the repair to correct the defect is completed.

(3) In the event that repair of the defect is delayed, in accordance with the provisions of § 63.1588(a), you must also record the reason for the delay and the date you expect to complete the repair.

(4) If you own or operate a control device used to meet the requirements for § 63.1586, you must comply with the recordkeeping requirements of § 63.696(a), (b), (g), and (h).

(b) To comply with the performance standard specified in § 63.1586(b), you must prepare and maintain the following records:

(1) A record of the methods and data used to determine your POTW's annual HAP emissions as determined in § 63.1588(c);

(2) A record of the methods and data used to determine that your POTW meets the fraction emitted standard of 0.014 or less, as determined in § 63.1588(c); and

(3) A record of the methods and data that demonstrates that your POTW is in continuous compliance with the requirements of § 63.1588(c).

§ 63.1590 What reports must I submit?

(a)(1) If you have an existing nonindustrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed nonindustrial POTW treatment plant, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether

your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

(i) The methods that were used to determine compliance;

(ii) The results of any monitoring procedures or methods that were conducted;

(iii) The methods that will be used for determining continuing compliance;

(iv) The type and quantity of HAP emitted by your POTW treatment plant;

(v) A description of the air pollution control equipment (or method) for each emission point; and

(vi) Your statement that your POTW treatment plant has complied with this subpart.

(2) You must send this notification before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in this subpart.

(b) After you have been issued a title V permit, you must comply with all requirements for compliance status reports contained in your title V permit, including reports required under this subpart. After you have been issued a title V permit, and each time a notification of compliance status is required under this subpart, you must submit the notification of compliance status to the appropriate permitting authority, as described in § 63.1580(d), following completion of the relevant compliance demonstration activity specified in this subpart.

(c) You must comply with the delay of repair reporting required in § 63.1588(a).

(d) If your State has not been delegated authority, you must submit reports to your EPA Regional Office. If your State has been delegated authority, you must submit reports to your delegated State authority, and you must send a copy of each report submitted to the State to your EPA Regional Office. Your EPA Regional Office, at its discretion, may waive this requirement for any reports.

(e) You may apply to the Administrator for a waiver of recordkeeping and reporting requirements by complying with the requirements of § 63.10(f) of subpart A of this part.

(f) If you own or operate a control device used to meet the requirements of § 63.1586(a), you must submit the reports required by § 63.697(b) of subpart DD of this part, including a notification of performance tests; a performance test report; a startup,

shutdown, and malfunction report; and a summary report.

(g) To comply with the performance standard specified in § 63.1586(b), you must submit, for approval by the Administrator, an initial report explaining your compliance approach 90 days prior to beginning operation of your new or reconstructed POTW. You must also submit a startup, shutdown, and malfunction report.

General Requirements

§ 63.1591 What are my notification requirements?

(a) If you are subject to this subpart, and your State has not been delegated authority, you must submit notifications to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

(b) You must notify the Administrator in writing no later than 120 calendar days after the effective date of this subpart (or within 120 calendar days after your POTW treatment plant becomes subject to the relevant standard), and you must provide the following information:

(1) Your name and address;
 (2) The address (*i.e.*, physical location) of your POTW treatment plant;
 (3) An identification of these standards as the basis of the notification and your POTW treatment plant's compliance date; and

(4) A brief description of the nature, size, design, and method of operation of your POTW treatment plant, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP.

(c) You must notify the Administrator if your data show that you are no longer in continuous compliance.

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which apply to POTW treatment plants.

§ 63.1593 How will the EPA determine if I am in compliance with this subpart?

(a) The Administrator will determine compliance with this subpart by reviewing your reports and records or by inspecting your POTW treatment plant.

(b) If you fail to comply with any or all of the provisions of this subpart, you

will be considered in violation of this subpart. For example, failure to perform any or all of the following, specified in § 63.1588, would be a violation: failure to visually inspect the cover on your treatment unit, failure to repair a defect on a treatment unit in use within the specified time period, failure to report a delay in repair, failure to determine your POTW's annual HAP emissions when your new or reconstructed POTW becomes subject to this subpart, failure to demonstrate that your POTW achieves an HAP fraction emitted of 0.014, or failure to demonstrate that your POTW is in continuous compliance with the requirements of § 63.1586(b).

(c) Your POTW treatment plant may be exempted from compliance with this subpart if the President determines that the technology to implement these standards is not available, and that it is in the national security interests of the United States to do so. This exemption may last for up to 2 years at a time and may be extended for additional periods of up to 2 years each.

§ 63.1594 Who enforces this subpart?

If the Administrator has delegated authority to your State, then the State enforces this subpart. If the Administrator has not delegated authority to your State, then the EPA Regional Office enforces this subpart.

§ 63.1595 List of definitions.

Affected source means the group of all equipment that comprise the POTW treatment plant.

Area source means any stationary source of HAP that is not a major source.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the waste material managed in a treatment unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the treatment unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the treatment unit, or a cover may be formed by structural features permanently integrated into the design of the treatment unit. The cover and its closure devices must be made of suitable materials that will minimize exposure of the waste material to the atmosphere, to the extent practical, and will maintain the integrity of the cover and its closure devices throughout its intended service life.

Fraction emitted means the fraction of the mass of HAP entering the POTW

wastewater treatment plant which is emitted prior to secondary treatment. The value is calculated using the following steps:

(1) Determine mass emissions from all equipment up to but not including secondary treatment for each HAP listed in Table 1 to subpart DD of this part;

(2) Sum the HAP emissions (ΣE);

(3) sum the HAP mass loadings (ΣL) in the influent to the POTW wastewater treatment plant; and

(4) Calculate the fraction emitted ($f_{c,monthly}$) using $f_{c,monthly} = \Sigma E / \Sigma L$.

HAP means hazardous air pollutant(s).

Industrial POTW means a POTW that accepts a waste stream regulated by an industrial NESHAP and provides treatment and controls as an agent for the industrial discharger. The industrial discharger complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, Subpart FF—National Emission Standard for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.

Industrial user means a nondomestic source introducing any pollutant or combination of pollutants into a POTW. Industrial users can be commercial or industrial facilities whose wastes enter local sewers.

Non-industrial POTW means a POTW that does not meet the definition of an industrial POTW as defined above.

Publicly owned treatment works (POTW) means a treatment works, as that term is defined by section 112(e)(5) of the Clean Air Act, which is owned by a municipality (as defined by section 502(4) of the Clean Water Act), a State, an intermunicipal or interstate agency, or any department, agency, or instrumentality of the Federal Government. This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources. As used in this regulation, the term POTW refers to both any publicly owned treatment works which is owned by a State, municipality, or intermunicipal or interstate agency and therefore eligible to receive grant assistance under the Subchapter II of the Clean Water Act, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act.

POTW treatment plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source such that:

- (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of HAP from that source.

Secondary treatment means treatment processes, typically biological, designed

to reduce the concentrations of dissolved and colloidal organic matter in wastewater.

Waste and wastewater means a material, or spent or used water or waste, generated from residential, industrial, commercial, mining, or agricultural operations or from community activities that contain dissolved or suspended matter, and that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated in a publicly owned treatment works.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.1	APPLICABILITY.
§ 63.1(a)(1)	Yes	Terms defined in CAAA.
§ 63.1(a)(2)	Yes	General applicability explanation.
§ 63.1(a)(3)	Yes	Cannot diminish a stricter NESHAP.
§ 63.1(a)(4)	Yes	Not repetitive. Doesn't apply to section 112(r).
§ 63.1(a)(5)	Yes	Section reserved.
§ 63.1(a)(6)–(8)	Yes	Contacts and authorities.
§ 63.1(a)(9)	Yes	Section reserved.
§ 63.1(a)(10)	Yes	Time period definition.
§ 63.1(a)(11)	Yes	Postmark explanation.
§ 63.1(a)(12)–(14)	Yes	Time period changes. Regulation conflict. Force and effect of subpart A.
§ 63.1(b)(1)	Yes	Initial applicability determination of subpart A.
§ 63.1(b)(2)	Yes	Operating permits by States.
§ 63.1(b)(3)	No	Subpart VVV specifies recordkeeping of records of applicability determination.
§ 63.1(c)(1)	Yes	Requires compliance with both subpart A and subpart VVV.
§ 63.1(c)(2)(i)	Yes	State options regarding title V permit.
§ 63.1(c)(2)(ii)–(iii)	No	State options regarding title V permit.
§ 63.1(c)(3)	Yes	Section reserved.
§ 63.1(c)(4)	Yes	Extension of compliance.
§ 63.1(c)(5)	No	Subpart VVV addresses area sources becoming major due to increase in emissions.
§ 63.1(d)	Yes	Section reserved.
§ 63.1(e)	Yes	Title V permit before a relevant standard is established.
§ 63.2	Yes	DEFINITIONS.
§ 63.3	Yes	UNITS AND ABBREVIATIONS.
§ 63.4	PROHIBITED ACTIVITIES AND CIRCUMVENTION.
§ 63.4(a)(1)–(3)	Yes	Prohibits operation in violation of subpart A.
§ 63.4(a)(4)	Yes	Section reserved.
§ 63.4(a)(5)	Yes	Compliance dates.
§ 63.4(b)	Yes	Circumvention.
§ 63.4(c)	Yes	Severability.
§ 63.5	CONSTRUCTION AND RECONSTRUCTION.
§ 63.5(a)(1)	Yes	Construction and reconstruction.
§ 63.5(a)(2)	Yes	New source—effective dates.
§ 63.5(b)(1)	Yes	New sources subject to relevant standards.
§ 63.5(b)(2)	Yes	Section reserved.
§ 63.5(b)(3)	Yes	No new major sources w/out Administrator approval.
§ 63.5(b)(4)	Yes	New major source notification.
§ 63.5(b)(5)	Yes	New major sources must comply.
§ 63.5(b)(6)	Yes	New equipment added considered part of major source.
§ 63.5(c)	Yes	Section reserved.
§ 63.5(d)(1)	Yes	Implementation of section 112(l)(2)—application of approval of new source construction.
§ 63.5(d)(2)	Yes	Application for approval of construction for new sources listing and describing planned air pollution control system.
§ 63.5(d)(3)	Yes	Application for reconstruction.
§ 63.5(d)(4)	Yes	Administrator may request additional information.
§ 63.5(e)	Yes	Approval of reconstruction.
§ 63.5(f)(1)	Yes	Approval based on State review.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.5(f)(2)	Yes	Application deadline.
§ 63.6	Yes	COMPLIANCE WITH STANDARDS AND MAINTENANCE REQUIREMENTS.
§ 63.6(a)	Yes	Applicability of compliance with standards and maintenance requirements.
§ 63.6(b)	Yes	Compliance dates for new and reconstructed sources.
§ 63.6(c)	Yes	Compliance dates for existing sources apply to existing industrial POTW treatment plants.
§ 63.6(d)	Yes	Section reserved.
§ 63.6(e)	Yes	Operation and maintenance requirements apply to new sources.
§ 63.6(f)	Yes	Compliance with non-opacity emission standards applies to new sources.
§ 63.6(g)	Yes	Use of alternative non-opacity emission standards applies to new sources.
§ 63.6(h)	No	POTW treatment plants do not typically have visible emissions.
§ 63.6(i)	Yes	Extension of compliance with emission standards applies to new sources.
§ 63.6(j)	Yes	Presidential exemption from compliance with emission standards.
§ 63.7	Yes	PERFORMANCE TESTING REQUIREMENTS.
§ 63.7(a)	Yes	Performance testing is required for new sources.
§ 63.7(b)	Yes	New sources must notify the Administrator of intention to conduct performance testing.
§ 63.7(c)	Yes	New sources must comply with quality assurance program requirements.
§ 63.7(d)	Yes	New sources must provide performance testing facilities at the request of the Administrator.
§ 63.7(e)	Yes	Requirements for conducting performance tests apply to new sources.
§ 63.7(f)	Yes	New sources may use an alternative test method.
§ 63.7(g)	Yes	Requirements for data analysis, recordkeeping, and reporting associated with performance testing apply to new sources.
§ 63.7(h)	Yes	New sources may request a waiver of performance tests.
§ 63.8	Yes	MONITORING REQUIREMENTS.
§ 63.8(a)	Yes	Applicability of monitoring requirements.
§ 63.8(b)	Yes	Monitoring shall be conducted by new sources.
§ 63.8(c)	Yes	New sources shall operate and maintain continuous monitoring systems (CMS).
§ 63.8(d)	Yes	New sources must develop and implement a CMS quality control program.
§ 63.8(e)	Yes	New sources may be required to conduct a performance evaluation of CMS.
§ 63.8(f)	Yes	New sources may use an alternative monitoring method.
§ 63.8(g)	Yes	Requirements for reduction of monitoring data.
§ 63.9	Yes	NOTIFICATION REQUIREMENTS.
§ 63.9(a)	Yes	Applicability of notification requirements.
§ 63.9(b)	Yes	Initial notification requirements.
§ 63.9(c)	Yes	Request for extension of compliance with subpart VVV.
§ 63.9(d)	Yes	Notification that source is subject to special compliance requirements as specified in § 63.6(b)(3) and (4).
§ 63.9(e)	Yes	Notification of performance test.
§ 63.9(f)	No	POTW treatment plants do not typically have visible emissions.
§ 63.9(g)	Yes	Additional notification requirements for sources with continuous emission monitoring systems.
§ 63.9(h)	Yes	Notification of compliance status when the source becomes subject to subpart VVV.
§ 63.9(i)	Yes	Adjustments to time periods or postmark deadlines or submittal and review of required communications.
§ 63.9(j)	Yes	Change of information already provided to the Administrator.
§ 63.10	Yes	RECORDKEEPING AND REPORTING REQUIREMENTS.
§ 63.10(a)	Yes	Applicability of notification and reporting requirements.
§ 63.10(b)(1)–(2)	Yes	General recordkeeping requirements.
§ 63.10(b)(3)	No	Recording requirement for applicability determination.
§ 63.10(c)	Yes	Additional recordkeeping requirements for sources with continuous monitoring systems.
§ 63.10(d)	Yes	General reporting requirements.
§ 63.10(e)	Yes	Additional reporting requirements for sources with continuous monitoring systems.
§ 63.10(f)	Yes	Waiver of recordkeeping and reporting requirements.
§ 63.11	Yes	FLARES AS A CONTROL DEVICE.
§ 63.11(a) and (b)	Yes	If a new source uses flares to comply with the requirements of subpart VVV, the requirements of § 63.11 apply.
§ 63.12	Yes	STATE AUTHORITY AND DESIGNATION.
§ 63.13	Yes	ADDRESSES OF STATE AIR POLLUTION CONTROL AGENCIES AND EPA REGIONAL OFFICES.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.14	Yes	INCORPORATION BY REFERENCE.
§ 63.15	Yes	AVAILABILITY OF INFORMATION AND CONFIDENTIALITY.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 99-176]

Interception and Recording of Telephone Conversations by Commission Personnel

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules with respect to the interception and recording of telephone conversations by agency personnel. The rules are being amended because the current GSA regulations have been repealed. The amended rules no longer make reference to the GSA regulations and the rule amendments clarify that the Inspector General has authority to intercept or monitor telephone conversations without obtaining a written authorization from the General Counsel.

DATES: Effective October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon Diskin, Office of General Counsel, (202) 418-1720.

SUPPLEMENTARY INFORMATION:

Adopted: July 13, 1999.
Released: July 16, 1999.

1. Sections 0.41(l) and 0.251(f) of our rules, 47 CFR 0.41(l) and 0.251(f) govern the duties and responsibilities of the Office of General Counsel with respect to the interception and recording of telephone conversations by agency personnel. The rules currently in effect refer to and reflect General Service Administration (GSA) regulations regarding the interception of telephone conversations. These GSA regulations have been repealed. Because GSA regulations no longer contain any specific provisions regarding the manner in which government agencies monitor the interception and recording of telephone conversations by agency personnel, we are amending our rule to delete reference to these regulations. The authority of the Office of the

General Counsel to issue any necessary written determinations with respect to these matters remains generally unchanged. However, because the Office of the Inspector General may deem it necessary to intercept or monitor telephone conversations in the conduct of audits or investigations, the rule amendments clarify that the Inspector General has such authority to do so without obtaining a written authorization from the Office of General Counsel.

2. Because these rule changes involve rules of agency organization, procedure or practice, prior notice and public comment procedures are not required. See 5 U.S.C. 553 (b)(3)(A).

3. Pursuant to sections 4(i), 4(j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 155(c) and 303(r), it is *hereby ordered* that Part 0 of the Commission's Rules is amended and effective October 26, 1999.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies), Privacy. Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225 unless otherwise noted.

2. Section 0.41(k) is revised to read as follows:

§ 0.41 Functions of the Office.

* * * * *

(k) To issue determinations on matters regarding the interception and recording of telephone conversations by Commission personnel. Nothing in this paragraph, however, shall affect the authority of the Inspector General to intercept or record telephone

conversations as necessary in the conduct of investigations or audits.

* * * * *

3. Section 0.251(f) is revised to read as follows:

§ 0.251 Authority delegated.

* * * * *

(f) The General Counsel is delegated authority to issue written determinations on matters regarding the interception of telephone conversations. Nothing in this paragraph, however, shall affect the authority of the Inspector General to intercept or record telephone conversations as necessary in the conduct of investigations or audits.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 102099B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

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

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS projects that the initial portion of the annual commercial quota for red snapper will be reached on November 5, 1999. This closure is necessary to protect the red snapper resource.

DATES: Effective noon, local time, November 5, 1999, until noon, local time, February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, 727-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery