

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR PART 403**

[FRL-6377-6]

RIN 2040-AC58

**Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution**

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

**ACTION:** Proposed rule.

**SUMMARY:** Today, EPA is proposing to revise several provisions of the General Pretreatment Regulations that address restrictions on and oversight of industrial users who introduce pollutants into publicly owned treatment works (POTWs). EPA is also proposing changes to certain program requirements to be consistent with National Pollutant Discharge Elimination System (NPDES) requirements. The proposals would reduce the regulatory burden on both industrial users and State and POTW Control Authorities without affecting environmental protection.

**DATES:** Written comments on this proposed rule must be submitted on or before September 20, 1999. Comments provided electronically will be

considered timely if they are submitted by 11:59 P.M. (Eastern time) September 20, 1999.

**ADDRESSES:** Commenters are requested to submit an original and two copies of their comments and enclosures (including references) to the Comments Clerk for Pretreatment Program Streamlining, Water Docket (MC-4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Commenters who would like acknowledgment of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W-97-09, and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

This document has also been placed on the Internet for public review and downloading from the Office of Wastewater Management home page at the following location: "www.epa.gov/owm."

The public may inspect the administrative record for the proposed rulemaking at EPA's Water Docket, Room EB-57 (East Tower Basement), 401 M Street, S.W., Washington, D.C. 20460. The record for this rulemaking has been established under docket number W-97-09, and includes supporting documentation. The public may inspect the administrative record between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. For access to these docket materials, please call (202) 260-3027 to schedule an appointment. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying any material in the docket.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey B. Smith, U. S. EPA, Office of Wastewater Management (OWM), Permits Division (4203), 401 M Street, S.W., Washington, D.C. 20460, (202) 260-5586.

**SUPPLEMENTARY INFORMATION:**

**Affected Entities**

Entities potentially affected by this action are governmental entities responsible for implementation of the National Pretreatment Program and industrial facilities subject to Pretreatment Standards and requirements. These entities include:

Category	Examples of regulated entities
Local government .....	Publicly Owned Treatment Works. States and Tribes acting as Pretreatment Program Control Authorities or as Approval Authorities. Industrial Users of POTWs
State government .....	
Industry .....	

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 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 organization or facility is regulated by this action, you should carefully examine the applicability criteria in §§ 403.3, 403.5, 403.6, 403.7, 403.8, 403.12, and 403.15 of Part 403 of Title 40 of the Code of Federal Regulations. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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**I. Background**

*A. What Is the National Pretreatment Program?*

The National Pretreatment Program is part of the Clean Water Act (CWA)'s water pollution control program. The

program is a joint regulatory effort by local, State, and federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called "publicly owned treatment works" or "POTWs"). Control of pollutants prior to discharge of wastewater to the sewer minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

#### *B. What Regulation Is EPA Proposing To Revise?*

EPA is today proposing to streamline various provisions of the General Pretreatment Regulations for Existing and New Sources of Pollution codified at 40 CFR Part 403. The Clean Water Act directs EPA to develop regulations in order to control pollutants which may pass through or interfere with POTW treatment processes or contaminate sewage sludge. On June 26, 1978, EPA promulgated the General Pretreatment Regulations, which established standards and procedures for controlling the introduction of wastes into POTWs (43 FR 27736). There have been a number of revisions to the General Pretreatment Regulations. The last major revisions were to implement the Domestic Sewage Study (55 FR 30082, July 24, 1990).

The General Pretreatment Regulations require POTWs that meet certain criteria to develop pretreatment programs to control industrial discharges into their sewage collection systems. These programs must be approved by either EPA or the State acting as the pretreatment "Approval Authority." More than 1,500 POTWs have developed Approved Pretreatment Programs pursuant to the regulations in 40 CFR 403.8. These POTWs act as the pretreatment "Control Authority" with respect to the industrial users that discharge to their systems. In the absence of an approved POTW pretreatment program, the State or EPA Approval Authority serves as the Control Authority.

Industrial users of POTWs must comply with Pretreatment Standards prior to introducing pollutants into a POTW. POTWs are required to impose "local limits" to prevent pass through and interference from the pollutants discharged into their systems. The General Pretreatment Regulations also include general prohibitions that forbid industrial users from causing pass through and interference, and specific prohibitions against the discharge of

pollutants that cause problems at the POTW such as corrosion, fire or explosion, and danger to worker health and safety.

EPA has also developed national categorical Pretreatment Standards that apply numeric pollutant limits to industrial users in specific industrial categories. The General Pretreatment Regulations include reporting and other requirements necessary to implement these categorical standards (40 CFR 403.12 (b)).

#### *C. Why Is EPA Proposing To Revise The Regulation?*

EPA is working to improve the regulatory programs to protect public health and the environment, while maintaining or improving the programs' effectiveness. While adoption of the General Pretreatment Regulations has resulted in more consistent implementation of the pretreatment program on a national basis, many individual POTWs and industrial users have experienced problems implementing various requirements.

The President's Report on "Reinventing Environmental Regulations" (March 1995) pledged to provide "more common sense and fairness in our regulations." The goal of this initiative is to provide greater flexibility, reduce burden, and achieve greater environmental results at less cost. To this end, EPA is committed to streamlining the National Pretreatment Program to reduce the burden of technical and administrative requirements that affect industrial users and POTW and State Control Authorities.

#### *D. How Were Stakeholders Consulted in Developing Today's Proposal?*

Through various outreach efforts, EPA has identified a number of provisions of the General Pretreatment Regulations that could be revised in order to reduce regulatory burden without affecting environmental protection. These provisions are the subject of today's proposal.

In 1995, EPA's Office of Wastewater Management initiated an evaluation of all of the General Pretreatment Regulations in 40 CFR Part 403 in order to identify streamlining opportunities. Based on input from various stakeholders, EPA developed issue papers that summarized 11 areas in which the Pretreatment Regulations might be streamlined.

In May 1996, the issue papers were distributed to a broad base of external stakeholders (States, cities, trade associations, professional organizations, and environmental interest groups). The

issue papers were also publicly available on an EPA electronic bulletin board (Point Source Information Provision Exchange System or "PIPES") that was accessible through the Agency's Internet website at "<http://www.epa.gov/owm>." Synopses of the outreach effort were published in several trade association newsletters.

Thirty-five outside stakeholders provided written comments on the proposed issues. The Agency also considered the recommendations of the joint Water Environment Federation and Association of Metropolitan Sewerage Agencies Workshop (the WEF/AMSA Workshop) discussed below.

The Agency next prepared a draft of today's proposal and preamble, which discussed 13 issues or changes to the regulations. This draft "letter to stakeholders" was circulated to outside stakeholders in May 1997. After reviewing comments received from 70 outside stakeholders, the Agency then prepared today's notice.

Significant comments received during the preliminary outreach effort are discussed in this preamble to the proposed rule. EPA continues to solicit comment on all of the proposals and alternative options discussed below. The Agency plans to have additional discussions with interested parties during the comment period to help ensure that the Agency has the views of such parties and the best possible data upon which to base decisions for the final rule.

#### *E. What role Did WEF and AMSA Play in the Development of This Proposal?*

In the summer of 1996, the Water Environment Federation (WEF) and the Association of Metropolitan Sewerage Agencies (AMSA) sponsored an independent, parallel effort to provide recommendations for streamlining the National Pretreatment Program. WEF and AMSA convened a four-day workshop to explore pretreatment program streamlining and reinvention opportunities. The sponsors invited a group of pretreatment experts that was intended to represent a broad range of stakeholder interests, including environmental organizations, industry, large and small POTWs, States, EPA, and technical consultants.

The workshop participants developed a series of recommendations that were included in a final report. The WEF/AMSA Workshop Final Report addresses the issues that EPA had sent out for stakeholder review in May 1996 as well as additional issues recommended by the workshop participants.

The WEF/AMSA Workshop Final Report was presented to EPA's Assistant Administrator for Water in September 1996. Where appropriate, the comments and recommendations in the report are discussed below.

The WEF/AMSA Workshop Final Report also discusses ideas for broad-based reinvention options that emphasize fundamentally new and different approaches to achieving the environmental objectives of the National Pretreatment Program. EPA is addressing these options through pilot program proposals submitted by POTWs in response to a June 23, 1998 Project XL program **Federal Register** solicitation.

## II. Description of Proposed Changes

Today's proposal addresses thirteen specific issues and a few miscellaneous changes pertaining to the General Pretreatment Regulations. The proposal, in places, prints portions of existing regulatory text without change. This is done to better describe the proposed revisions. For example, 40 CFR 403.6(b) is reprinted in its entirety with the only amendment being a revision to the cited location of the definition of New Source in 40 CFR 403.3 from (k) to (l). However, EPA does not solicit, and will not respond to, comments on existing regulatory provisions not proposed to be amended, nor will such provisions be subject to judicial review upon promulgation of the final rule. EPA is soliciting comment only on the revisions described in this preamble.

### A. Specific Prohibition Regarding pH (40 CFR 403.5(b)(2))

#### a. Existing Rule

*What pH limits are addressed in this section?*

Acidic wastes can corrode sewer pipes, for example those made of concrete, and allow the release of pollutants to the environment. To address this concern, the General Pretreatment Regulations include a minimum pH limit as part of the specific prohibitions at 40 CFR 403.5(b) that apply to all nondomestic dischargers to POTWs. Section 403.5(b)(2) prohibits the discharge of "Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges."

EPA is proposing to also allow POTWs with Approved Pretreatment Programs to accept temporary discharges with a pH below 5.0 to the extent that the POTWs can document

that the discharges will not damage their systems. The proposal would authorize POTWs to allow nondomestic dischargers that continuously monitor the pH of their discharge to briefly discharge wastes with a pH below 5.0.

*Is 5.0 the appropriate pH limit for all POTWs?*

Although acidic wastewater can damage a POTW's collection system, such as one constructed of concrete sewer pipes, some POTWs have collection systems, or portions of collection systems, that are constructed with acid-resistant materials such as clay pipe. Such collection systems that are generally tolerant of acidic wastewater may be used to convey acidic wastewater without damage to the collection system. In these cases, it may not be necessary to require a nondomestic discharger to maintain the pH of its discharge at or above 5.0. In considering whether a collection system may be acid tolerant, the POTW is cautioned to inspect the construction materials of all collection system joints. Highly acidic wastes could adversely react with metal, concrete and mortar sealing joints in the sewers, resulting in infiltration of water during high water table or rainy seasons and exfiltration of wastes during other times.

The existing regulation at 40 CFR 403.5(b)(2) provides that the 5.0 limit does not apply if the treatment works "is specifically designed to accommodate such discharges." This language suggests that the ability to accept low pH wastes must have been intended for the entire POTW, including the collection system, at the time of the construction of the POTW. In fact, as part of a 1984 EPA survey ("Hydrogen Sulfide Corrosion in Wastewater Collection and Treatment Systems, Report to Congress;" September 1991 (430/09-91-009)), half of the jurisdictions with severe corrosion problems in the collection systems were found to have minor or no corrosion problems at the wastewater treatment plants. However, the current rule does not clearly allow a POTW to document that all or part of its system can safely accept temporary excursions below pH 5.0 if it is not specifically designed to do so.

*Are industrial users that continuously monitor for pH currently allowed brief excursions from the 5.0 limit?*

Many industrial users use monitoring instrumentation that measures and displays the pH of the discharge and continuously records the pH of the discharge. These records indicate whether the pH of the effluent remained

within limits and the length of time, if any, it was outside of the limits.

For various reasons, some nondomestic dischargers that continuously monitor pH experience drops in their effluent pH below the 5.0 limit for short periods of time, sometimes only a few minutes. These low pH excursions might not harm the collection systems or cause interference or pass-through at the wastewater treatment plants. The current pH prohibition does not provide for these occurrences and, because the Clean Water Act is a strict liability statute, these events are violations of the Act. POTWs frequently must devote substantial administrative resources to responding to these minor short-term violations.

#### b. Stakeholder Comments

*What changes did EPA suggest in its stakeholder outreach efforts?*

EPA recommended that industrial users that continuously monitor pH be allowed to have periodic excursions below 5.0 if the Control Authority establishes that the excursions will not harm its system and authorizes the excursion in the industrial users' permits. EPA also recommended allowing POTWs to establish alternate pH limits if the POTW can demonstrate that it can handle such wastes. Finally, EPA solicited comments regarding whether Approval Authority concurrence should be required.

*How did stakeholders respond?*

Most commenters either supported the recommendation as written or gave qualified support with various suggestions for implementing the recommendation. Several commenters stated that the pH provisions at 40 CFR 401.17 (discussed below) could serve as a basis for alternative pH requirements, and several Control Authorities stated that they were already applying such methods when selecting the enforcement action in response to such pH violations. The September 30, 1996, final report from the WEF/AMSA Pretreatment Streamlining Workshop recommended that EPA retain the national standard and provide new flexibility by allowing POTWs to establish alternative pH requirements based upon site-specific conditions.

Other commenters disagreed that such revision to the rule is needed as long as flexibility is written into the POTW's Enforcement Response Plan. Eight commenters did not favor the change to the rule because they believed it would add to Control Authorities' workload and be too burdensome to implement.

Four commenters did not favor the change, having experienced corrosion damage to the POTW collection system at the current 5.0 pH limit. Instead, they favored raising the minimum pH limit. One of these commenters cautioned that systems constructed of acid-resistant materials often included manhole inverts constructed of concrete and similar materials that are susceptible to corrosion, thus rarely being entirely resistant.

In response to EPA's request for comments regarding whether Approval Authority concurrence should be required to implement a revised pH prohibition, some commenters considered pH to be primarily a local issue and did not favor Approval Authority concurrence. They believed that, in most cases, the Approval Authority has limited direct knowledge of the details of individual users or the circumstances that would allow for periodic pH excursions. In addition, these commenters believed that requiring Approval Authority concurrence would generate significant delays, additional program costs, and increased administrative burden without substantial benefit. Other commenters stated that Approval Authority concurrence would be necessary as an important safeguard to protecting a POTW's system, particularly for POTWs without Approved Pretreatment Programs.

Although most commenters believed that the proposed flexibility in pH should be available to all POTWs, one commenter suggested expansion of the record keeping or reporting requirements for POTWs with unapproved pretreatment programs to ensure adequate technical oversight for POTWs with limited staff expertise. A second commenter recommended that such POTWs be required to develop legal authority, but not necessarily a full pretreatment program, to properly enforce the General Pretreatment Regulations as prerequisite to being allowed to implement an alternative pH limit. EPA believes that the expertise, resources, and administrative functions needed to support the alternative requirements can only be sustained by POTWs with Approved Pretreatment Programs.

#### c. Today's Proposal

##### *What is EPA proposing?*

EPA is today proposing to allow POTWs with Approved Pretreatment Programs to authorize temporary excursions below pH 5.0 provided that the POTW maintains a written technical evaluation that supports the finding that

the alternative pH requirements do not have the potential to cause corrosive structural damage to the POTW or other violations of 40 CFR 403.5(a) and (b). For industrial users that continuously monitor the pH of their discharges, POTWs could generally allow discharges below 5.0, or they could allow such temporary excursions by a limited group of industrial users.

Any alternative pH requirements developed by a POTW would be enforceable as Pretreatment Standards under the Clean Water Act. (The general narrative prohibition against pollutants that will cause corrosive structural damage at 40 CFR 403.5(b)(2) would still apply.)

In developing today's proposal, EPA attempted to address both the concern that corrosive structural damage to POTWs be prevented and the desire to provide the regulated community and the public with a more efficient and flexible industrial pretreatment program. In the September 1991 EPA Report to Congress (430/09-91-009), EPA concluded that some municipalities are not aware of sewer corrosion problems until catastrophic failure occurs. However, significant advances have occurred during the past twenty years in the areas of sewer corrosion detection and measurement, and sewer design and rehabilitation. EPA is interested in comment on whether the requirement for a site-specific technical study would adequately protect the significant public investment in wastewater collection infrastructure.

##### *What would a POTW include in its technical evaluation?*

A POTW desiring to implement alternative pH requirements would be required to prepare a written technical evaluation explaining its site-specific investigation and findings regarding the corrosion safety of the alternative pH requirements and their effect on compliance with the other general and specific Pretreatment Standards. The technical evaluation may be broad and cover a POTW's entire service area. Alternatively, the technical evaluation may be narrow and cover only a portion of the POTW's service area or specific nondomestic dischargers.

Corrosion is dependent upon a number of site-specific conditions including, but not limited to, the pH and other characteristics of an industrial discharge including its chemical composition, temperature, volume, velocity, turbulence, the buffering capacity and other characteristics of the wastewater in the collection system, the characteristics of the sewer pipe used in

the collection system including its size, age, material of construction, formation of hydrogen sulfide gas, and time since last cleaning, and other design parameters of the POTW.

In developing alternative pH limitations, POTWs must consider the effect pH may have on other wastewater constituents, potential worker safety issues, and interference, and should be mindful of the pH limitations under State and federal hazardous waste laws. For example, an extremely low pH may cause toxic gases to form in the collection system in violation of the worker health and safety provision at 40 CFR 403.5(b)(7).

##### *Could POTWs rely on the variance allowed direct dischargers under 40 CFR 401.17?*

The effluent guideline regulations list certain conditions at 40 CFR 401.17 under which excursions from pH limits are allowed for direct dischargers. However, POTWs would not be able to rely on 40 CFR 401.17 as the basis for alternative pH requirements under today's proposal. EPA developed 40 CFR 401.17 based upon the technological ability of direct dischargers to continuously meet a pH limit between 6.0 and 9.0. The pretreatment requirements, by comparison, are based on preventing corrosion in the sewer system and are much less restrictive. Under today's proposal, a Control Authority may establish a temporary lower limit less than 5.0, and the existing Pretreatment Regulations do not impose a specific upper limit. The recommendations from the WEF/AMSA Pretreatment Streamlining Workshop noted the inappropriateness of attempting to use 40 CFR 401.17 as a basis for alternative pH requirements because the reason for the pH requirement is different. The alternative pH requirements a POTW develops under today's proposal must prevent corrosive structural damage to the POTW, prevent violations of 40 CFR 403.5(a) and (b), and be based upon the POTW's site-specific conditions.

##### *How will POTWs implement the new, flexible requirements?*

A POTW may conduct the pH technical evaluation as part of a broad local limits evaluation, or as a specific evaluation that addresses only pH. The proposed revisions and evaluation would be submitted as a nonsubstantial program modification in accordance with 40 CFR 403.18. The required technical support documents must be available upon request to the public, regulated community, regulatory agencies, and other interested parties.

A POTW would authorize the use of the alternative pH requirements in the industrial user control mechanism and the local ordinance or other legal authority under 40 CFR 403.8(f)(1). The authorization should specify the technical circumstances and/or conditions under which such discharges are allowed, in support of the findings within the technical evaluation. Once applied, the POTW would be required to oversee the alternative pH requirements to confirm that corrosive structural damage and other violations of 40 CFR 403.5(a) and (b) are not occurring. A POTW with an Approved Pretreatment Program under 40 CFR Part 403 would report its ongoing oversight actions and findings in its annual pretreatment report under 40 CFR 403.12(i). EPA is requesting comment on what measures should be considered adequate oversight to ensure corrosive structural damage of the sewer system does not occur.

*What are the benefits of today's proposal?*

EPA expects today's proposal to significantly reduce the POTW's administrative burden of responding to minimal, short-term pH violations. One commenter submitted data that 30.9 administrative hours were expended during a two-year time period in response to 53 pH-only violations from industries with continuous pH monitoring. The commenter reported that 34 of those violations had pH values greater than 4.0 and lasted less than 15 minutes, and that none had any impact on the collection and treatment system. A second commenter reported that approximately 21 administrative hours were spent in one year in response to 21 pH-only violations from an industry with continuous pH monitoring. Ten excursions lasted 10 minutes or less, eight excursions lasted 15–35 minutes, one excursion lasted 60 minutes, one excursion lasted 180 minutes, and one excursion lasted 240 minutes. The lowest pH excursion was 4.5, and the commenter reported that none of the excursions adversely affected the treatment works. Today's proposal would allow Control Authorities to redirect enforcement and remediation resources to those cases where substantial pH control problems exist.

In addition, EPA is requesting comment on a provision to expand the flexibility regarding pH limitations in today's proposal by allowing POTWs that can safely accept continuous discharges with a pH below 5.0 to accept those wastes. This provision, if adopted, would remove the

“specifically designed” criterion for such discharges in the existing pH prohibition. EPA specifically requests examples, supported by data if available, of situations in which a POTW could safely accept continuous discharges with a pH below 5.0, but where it cannot make use of the “specifically designed” criterion to authorize such discharge under current regulations. Were EPA to adopt such a provision in the final rule, it would be subject to the same documentation and oversight requirements as the proposed authorization of short term pH excursions.

More generally, EPA is interested in comments regarding all aspects of today's proposal for alternative pH requirements. Whenever possible, such comments should be supported by data.

*B. Equivalent Mass Limits for Concentration Limits (40 CFR 403.6(c))*

*a. Existing Rule*

*How are categorical standards expressed?*

National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by facilities in specific industrial categories. The standards establish pollutant limitations in different ways for different categories. EPA has established categorical Pretreatment Standards that are: (1) concentration-based standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration standard multiplied by a facility's process wastewater flow. This section will focus only on concentration standards that are implemented directly as concentration limits.

*May a mass limit be imposed in lieu of a concentration limit under the current regulations?*

The current regulations do not allow an alternative mass limit to be developed where a concentration-based standard requires a concentration limit. Section 40 CFR 403.6(d) allows the Control Authority to develop equivalent mass limits for concentration-based standards in order to prevent dilution. However, both the mass limit and concentration limit are then enforceable, so the mass limit would not be an alternative limit.

Alternative equivalent limits are currently allowed only for production-based mass limits. Section 40 CFR 403.6(c)(2) allows standards expressed in terms of mass of pollutant per unit of

production to be expressed as either a concentration or mass limit.

*How do mass limits promote water conservation?*

The lack of flexibility in concentration limitations can cause problems for industrial users that are attempting to minimize water use. Throughout the country, water conservation practices have been instituted by industries and municipalities due to drought conditions and environmental considerations as well as the rising cost of water. As reported in the New York Times, November 10, 1998, pp A1, A16, “the United States Geological Survey has reported that the nation's use of water has declined significantly over the past 2 decades, even though the population has been growing. \* \* \* Americans used 9% less water in 1995 than they did in 1980, even though the population grew by 16% within that same time frame. \* \* \* The use of water in industry has fallen to 29 billion gallons a day, the lowest amount since records were first kept in 1950 \* \* \*. The Northeast, Midwest and Middle Atlantic regions showed the largest decrease of water usage, at about 17% between 1980 and 1995.”

Although water conservation usually reduces the variability in pollutant and hydraulic loadings and will often facilitate treatment, reduced water use can increase the concentration of pollutants in the reduced volume of water, even though the total mass of the discharged pollutants may have been decreased. A facility that significantly reduces water use might exceed its concentration limit despite having reduced the pollutants in its discharge. If the facility could comply with a mass limit that is equivalent to the total pollutant load from the concentration limit, then the total pollutant loading to the POTW would be unchanged or reduced, even though the effluent concentration might be increased.

For example, the metal finishing industry employs a number of industrial processes that are heavily dependent upon use of water. Of the more than 40 processes regulated under the categorical standard for metal finishing, rinse water is generally the largest component of the total process water used. By combining different rinse techniques, a plant can greatly reduce water consumption. In some cases facilities can use a “closed loop” rinsing arrangement that continually recirculates rinse water, thereby greatly reducing the discharge volume.

The use of different rinse techniques will result in wide variations in water

use. For example, "alkaline cleaning," a common metal finishing operation, requires dramatically different amounts of rinse water, depending upon the rinsing techniques used. Using a single-stage water rinse may require 1,500 liters per square meter (l/m<sup>2</sup>) of treated surface whereas a three-stage countercurrent rinsing technique reduces water use to 29 l/m<sup>2</sup> ("Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing Point Source Category," EPA 440/1-83/091, June 1983). Retrofitting a metal finishing line by installing a countercurrent rinsing system in conjunction with other water reduction practices could result in concentrations that exceed applicable categorical Pretreatment Standards. Some other examples of water conservation techniques include: (1) Timed rinses; (2) conductivity probes in the rinse tanks; (3) flow restrictors which limit the amount of water which can be added to a rinse tank; and (4) valves to allow operators to turn off incoming water to the rinse tanks when no parts are being processed.

#### b. Stakeholder Comments

##### *What changes did EPA suggest in its stakeholder outreach efforts?*

EPA's letter to stakeholders solicited comment on revising the current requirements to allow equivalent mass limits as an alternative to concentration limits developed from concentration-based standards where the industrial user has instituted water conservation practices. The draft language would have explicitly tied the determination of reduced water use to the model technology assumed by EPA in the development of the applicable national categorical Pretreatment Standard.

##### *How did stakeholders respond?*

Sixty-nine commenters responded to the draft issue paper on this subject. A substantial majority (66 of the 69) of the commenters were in favor of the proposed regulatory changes. Various commenters, however, suggested specific requirements that they believe EPA should impose on industrial users or Control Authorities as a condition to granting a mass limit equivalent to the applicable concentration-based categorical Pretreatment Standard. Others asked for clarification of the condition suggested by EPA.

Many commenters questioned how a Control Authority could ascertain whether the industrial user failed to meet a concentration-based limit solely due to reduced water use and attendant higher concentration levels in the

discharged wastewater. Some questioned whether EPA's model technology was an appropriate benchmark for determining normal water use. Several commenters suggested that the industrial user be required to demonstrate that it has installed best available technology economically achievable (BAT) for wastewater treatment or instituted pollution prevention measures and is still unable to meet the assigned concentration limit. Other commenters recommended that the industrial user show that it has historically been in compliance with all of its permit conditions, is capable of accurate flow measurement, and has detailed, long-term records on its wastestream discharges before it could be considered for an equivalent mass limit. Several commenters suggested that the industrial user be required to install accurate flow measurement equipment in order to qualify for a mass limit. One commenter suggested that mass limits be considered only for those small categorical industrial users (CIUs) that discharge less than 1,000 gallons per day (gpd).

EPA believes that it is not necessary to impose only one technical criterion as a prerequisite to granting an industrial user an alternative mass limit. Each criterion that might be imposed has its shortcomings. Historical water use is not necessarily an indication of appropriate water use. Because many effluent guideline development documents were published over a decade ago, the model treatment technologies considered by EPA in developing a categorical Pretreatment Standard may not be the most commonly used or state-of-the-art treatment option currently available. To qualify for a mass limit, the industrial user would demonstrate that the installed BAT, including in-plant controls, produces removal efficiencies equivalent to those treatment technologies outlined in the Development Document.

Specific criteria would deprive Control Authorities of flexibility. EPA prefers to let the Control Authority evaluate the information presented and judge whether a mass limit is more appropriate than a concentration limit. Because mass limits are frequently more difficult to implement than concentration limits, EPA does not expect that they will be imposed where concentration limits are more appropriate.

Several commenters felt that EPA should clarify that the imposition of a mass limit in lieu of a concentration limit for a particular categorical

Pretreatment Standard should not be a unilateral decision by the Control Authority. For most situations, EPA agrees that this is a reasonable approach. However, there may be circumstances where a Control Authority (*i.e.*, POTW) may wish to design its Pretreatment program based upon a mass limits approach. In this instance, the POTW would derive mass limits from the applicable concentration standards for each individual categorical industrial user. These mass limits would then be applied in lieu of the concentration limits. Under the current regulations, if the POTW wishes to apply mass limits derived from a concentration standard, the categorical industrial user covered by a concentration standard would still need to comply with the categorical concentration limits and the equivalent mass limits. In both scenarios, the technically-based local limits established by the POTW also apply.

Two commenters requested that the regulatory language require that the Approval Authority review and approve all conversions of concentration-based limits to mass limits. One commenter suggested that the regulatory language in 40 CFR 403.6(c)(7) be modified to specifically require the Control Authority to document how the mass limit is derived. Today's proposal would not require prior approval by the Approval Authority. Like other instances in which Control Authorities apply categorical standards to their industrial users, the application of the standards will be reviewed as part of the ongoing oversight process. The Control Authority is required to maintain sufficient documentation to support the established limits.

#### c. Today's Proposal

##### *What is EPA proposing?*

The Agency is proposing to allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an industrial user has installed BAT treatment or a treatment technology that yields removal efficiencies that are equivalent to BAT, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use. Specifically, EPA is proposing that § 403.6(c) be revised to clarify that equivalent mass limits may be authorized by the Control Authority in lieu of promulgated concentration-based limits for industrial users. The Control Authority would be required to

document how the mass limits were derived and make this information publicly available.

EPA has received a Project XLC (eXcellence in Leadership Community) proposal from an organization in Steele County, Minnesota. This project proposal includes the use of mass limits in lieu of concentration limits for categorical industrial discharges to the POTW. The Steele County XLC Project is currently at the Final Project Agreement development stage. Where implementation of an XLC project requires regulatory relief, EPA may draft a site-specific rule to allow the project to be undertaken. If this XLC project is ready to proceed before EPA finalizes the complete Pretreatment streamlining proposal, EPA may promulgate, based on today's proposal and the comments received, a separate site-specific rule to allow the industries involved in the Steele County XLC project to use, at the discretion of the Control Authority, the change at 40 CFR 403.6(c) of today's proposal.

*Who determines whether an alternative mass-based limit will be applied?*

As specified under 40 CFR 403.6(d), the strict prohibition that the industrial user not use dilution as a substitute for treatment remains in effect. No user introducing wastewater pollutants into a POTW may augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with a Pretreatment Standard. Currently, Control Authorities may impose mass limits in addition to the concentration limits where the facility is suspected of diluting its effluent to meet a concentration standard or in other cases where mass limits are deemed appropriate (40 CFR 403.6(d)). In this case, the facility would be required to comply with both the concentration limit and the mass limit.

Today's proposal would provide Control Authorities with the ability to establish equivalent mass limits for concentration-based categorical Pretreatment Standards similar to the authority available under 40 CFR 403.6(c)(2) for situations involving production-based categorical Pretreatment Standards. Under today's proposal, the equivalent mass limits would be applied in lieu of the concentration limits. A categorical industrial user may request a mass limit. The industrial user should determine if it meets the criteria for such a limit, that is, that it is utilizing control measures at least as effective as the model treatment technologies on which the applicable categorical standard was

based, and is employing water conservation methods and technologies that substantially reduce water use. However, the Control Authority would decide whether the use of alternate equivalent mass limits is appropriate.

*How will the Control Authority determine whether an alternative mass limit is appropriate?*

The Control Authority will need to judge whether the application of a mass limit in lieu of a concentration limit is appropriate. This judgement should include a finding that the industrial user is utilizing control measures at least as effective as the model treatment technologies on which the categorical standard was based, and is employing water conservation methods and technologies that substantially reduce water use. The industry must be able to provide documentation that clearly explains the water conservation practices it has employed and how the water conservation methods have led to the waste being concentrated in the wastewater discharge to the point that it cannot meet the concentration limit even though its control measures are as effective as the model treatment technologies. In making this judgement, the Control Authority may review the corresponding categorical standard Development Document for potential control options. The Control Authority might also review current trade association literature for other control options that have become available since the Development Document was produced. The categorical standards do not dictate what treatment technologies must be used; however, they do set standards to be achieved and these standards are based on certain model technologies. The Control Authority should understand these technologies and consider their effectiveness when determining whether an alternate mass limit is appropriate.

*How will equivalent mass limits be calculated?*

In order to establish a mass limit, the Control Authority will need to determine an appropriate flow from the industrial user's facility. Again, the determination should be based upon the Control Authority's judgment and supported by the above sources of information. The appropriate flow should be based upon a reasonable estimate of the flow required to achieve the facility's production goals using BAT and in the absence of the water saving technology. The flow would then be multiplied by the concentration standard to determine the alternative

mass limit that would be applied to the facility.

These equivalent standards will be modified pretreatment standards. As with any modified standard, in order for the Approval Authority and the public to be able to verify compliance by the CIUs with these equivalent standards, the Control Authority will need to document how the mass limit calculations were derived and make the documents publicly available (i.e., to the Approval Authority, EPA, the general public or any third party requesting this information).

*What additional information is EPA requesting?*

EPA is requesting comment on the need for and appropriateness of this proposed addition to the existing regulations. Further, EPA is interested in data related to processes and technologies that result in reduced discharges to the point where compliance with concentration limits is problematic. Situation-specific examples of processes and technologies with data would be helpful. EPA is also interested in commenters views on whether this option should be limited to situations in which the industrial user is employing water conservation methods. Are there other situations in which substitution of mass limits for concentration limits would be appropriate? The Agency is also requesting comment on whether it is appropriate to require public and/or Approval Authority review of an industrial user's proposed mass limit prior to Control Authority approval.

*C. Equivalent Concentration Limits for Flow-Based Standards (40 CFR 403.6(c))*

a. Existing Rule

*What is a flow-based mass limit?*

National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by members of specific industries. The standards establish limitations on the amount of pollutants to be discharged by individual dischargers in different ways for different categories. Some Pretreatment Standards currently require the limits to be expressed in terms of mass, based on the facility's flow. For such "flow-based standards," the national guideline contains pollutant concentrations that relate to the discharges from specified categories of industry. For an individual facility, the Control Authority develops a mass limit by multiplying the applicable pollutant concentration (expressed in terms of mass of pollutant per volume of discharge) by the average daily flow

from the facility (expressed in terms of volume per day). The result is a limit on the mass of pollutants per day.

*Why was the mass limit approach developed?*

EPA has used mass limits to encourage flow reduction and to prevent dischargers from meeting concentration limits by diluting their wastewater. The first categorical standards to require mass limits established an allowable quantity of mass of pollutant per unit of production at the facility. Individual limits required knowledge of a facility's production rates. In order to develop a national production-based standard, production rates must correlate to achievable wastewater flows.

EPA uses concentration-based standards if production and achievable wastewater flow cannot be correlated nationally. EPA explained this approach in the preamble to the proposed Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) regulation (48 FR 11828, March 21, 1983). The concentration-based standard is applied as a mass limit by multiplying the concentration by the process wastewater flow at the specific facility. This approach minimizes the potential for dilution of process wastewaters by non-process wastewater.

*What are the problems with mass limits based on flow?*

Flow-based mass limits can, however, be difficult for the Control Authority to implement. To develop a flow-based mass limit, the Control Authority must determine an appropriate process wastewater flow for the facility and then multiply that by the appropriate concentration standard. This is difficult in cases where the facility has highly variable production that leads to flows that often vary week-to-week or day-to-day. This is especially true for smaller facilities where production tends to be more variable and installation of equipment to provide flow equalization may not be practical.

Testing for compliance with the flow-based mass limit requires having accurate information on the flow from all regulated processes at the time the sample is taken. Testing for compliance with a concentration limit only requires taking the wastewater sample and comparing the sampled concentration to the limit.

*May alternative limits be developed for flow-based categorical standards?*

Currently, 40 CFR 403.6(c) allows Control Authorities to apply an equivalent concentration limit to implement a Pretreatment Standard

expressed in terms of mass of pollutant per unit of production. The regulations do not allow equivalent concentration limits in cases where the Pretreatment Standard requires a mass limit to be calculated based on the facility's process wastewater flow.

**b. Stakeholder Comments**

*What changes did EPA suggest in its stakeholder outreach efforts?*

EPA recommended allowing Control Authorities to set equivalent concentration limits in cases where Pretreatment Standards currently require the limits to be expressed in terms of mass, based on the facility's flow (e.g., the Organic Chemicals Plastics and Synthetic Fibers [OCPSF] standard). EPA also requested comment on restricting this to situations where the facility had highly variable flows.

*How did stakeholders respond?*

The majority of respondents expressed varying degrees of support for the recommendation put forth by the Agency for equivalent limits. There were a few opposed to the recommendation, and others that provided additional issues for consideration without indicating approval or disapproval. The commenters who endorsed the recommendation to allow equivalent concentration limits stated that this would be helpful to POTWs and industries because it would make determining compliance much easier.

Those who opposed the recommendation indicated they felt it was more appropriate to revise the individual categorical standards than the General Pretreatment Regulations. The Agency considered revising the individual standards, but believes revisions of the General Pretreatment Regulations are appropriate because the issue being addressed is an implementation issue rather than a standards development issue. The issue here is how these standards are to be applied rather than whether the development of these standards was appropriate. This is explained in more detail throughout the following sections.

Some commenters felt the equivalent limits should be available to all dischargers regulated by mass limits. The Agency considered this, but determined it would not be appropriate given the way the concentration-based standards were designed to be implemented based on process wastewater flow. This is further explained in Section c, "Today's Proposal."

**c. Today's Proposal**

*What is EPA proposing?*

Today, EPA is proposing to allow Control Authorities to set limits on industrial users by applying the concentration numbers in a flow-based standard directly as equivalent concentration limits. The Control Authority would be allowed to apply such equivalent concentration limits only if the flow from the facility is so variable that the development of mass limits is impractical. Section 40 CFR 403.6(d) will continue to prohibit facilities from increasing flow in order to meet their concentration limits through dilution.

As with other concentration limits, the Control Authority should be certain that dilution is not occurring and that the discharge represents regulated process wastewater flows. The concentration may need to be adjusted using the combined wastestream formula in 40 CFR 403.6(e) if the wastestream is mixed with non-process wastewater or wastewater from other processes.

Note that flow-based standards, like all national categorical Pretreatment Standards, are self-implementing. Facilities to which these standards are applicable must comply with the standards even if the control authority has not issued a permit or other control mechanism that establishes facility-specific limits. If the control authority issues a permit or other control mechanism that correctly implements the flow-based standard as a concentration limit, then compliance with the standard would be measured through compliance with the concentration limit. However, if the control authority issues a permit or other control mechanism that applies an incorrectly calculated equivalent limitation, the industrial user would still be responsible for complying with the correct standard, i.e. the mass limit or the correctly calculated equivalent concentration limit.

*Would the equivalent concentration limit replace the mass limit?*

Yes, provided it is calculated correctly, as discussed above. Today's proposal would be implemented in the same manner as Control Authority's setting of equivalent limits for production-based standards under the existing regulations. As with other equivalent concentration limits under 40 CFR 403.6(c), under today's proposal the equivalent limits will be deemed Pretreatment Standards for the purposes of § 307(d) of the Clean Water Act and will be enforceable as such.



*Why is the proposal limited to facilities with highly variable flows?*

Under today's proposal, the Control Authority would be allowed to directly apply the concentration listed in the standard to those facilities with highly variable flow because calculating a mass limit based on a reasonable long-term average flow would be impractical only for these facilities. In this situation, application of the concentration standard would be equivalent to a mass limit derived from flow.

In the case of a concentration standard expressed as a mass limit based on the process wastewater flow, the Control Authority currently derives a mass limit by multiplying the industrial user's average daily flow rate of process wastewater regulated under the standard by the concentration set out in the standard. Using the OCPSF category as an example, the flow rate must be based on a reasonable measure of the actual long-term average daily flow of the regulated process wastewater (52 FR 42522, November 5, 1987; Memorandum dated February 8, 1988, from James Elder, Director of the Office of Water Enforcement and Permits to Regional Water Management Division Directors and NPDES State Directors).

If the flow of the discharge from a facility is so highly variable that determining a reasonable long-term average flow is impractical, then calculating a mass limit may also be impractical. If the Control Authority finds that determining a reasonable long-term average flow is impractical, the actual flow must be used. Since the actual flow value would then be used both for setting the mass limit and for determining the mass in the discharge when sampled for compliance, the flows would cancel out and the result would be the same as comparing the sampled concentrations directly to the concentration in the flow-based standard in order to determine compliance. In other words, the total mass discharged to the POTW based on the concentration limit would be the same as if the mass limit were used.

*How would EPA define "highly variable flow"?*

EPA recognizes that the Control Authority must have some discretion to determine when, under site-specific conditions, flow is "highly variable." In each case where a Control Authority allows equivalent limits, the Control Authority should document why the equivalent limits were necessary. The justification should not be based on one instance of substantial increase or decrease in flow. The Control Authority

should also be sure that dilution is not taking place (40 CFR 403.6(d)). In the Stakeholder Review Draft of this proposal, the Agency recommended a demonstration that average flows regularly differ from the long term average by  $\pm 20$  percent. The use of 20 percent is consistent with EPA's "Guidance Manual for the Use of Production-based Pretreatment Standards and the Combined Wastestream Formula" (EPA 833-B-85-201, September 1985). EPA received a number of comments concerning the use of 20 percent as a measure. Many commenters felt 20 percent was appropriate, while others felt 30 or 40 percent would be more appropriate. A few commenters pointed out that the definition of "highly variable" should include both percent change and duration, such that the total flow (not the flow rate) in a fixed period of time has changed by 20 percent. Today EPA is requesting further comment on numerically defining the term "highly variable flow." EPA is also requesting comment on whether this alternative should be limited to facilities with highly variable flow. Are commenters aware of other situations where the implementation of a flow-based standard is impractical (e.g., obtaining accurate measurements of flow is costly)? Alternatively, are there situations where substituting concentration limits for flow-based limits would be desirable even though implementing the flow-based limits is not "impractical"? The Agency is also requesting comment on whether it is appropriate to require public and/or Approval Authority review of an industrial user's proposed concentration limit prior to Control Authority approval.

*D. Oversight of Categorical Industrial Users (40 CFR 403.3(u), 403.8(f) and 403.10(f))*

*a. Existing Rule*

*Should all categorical industrial users be considered significant?*

POTWs with Approved Pretreatment Programs and States acting as Pretreatment Control Authorities are required to provide certain minimum oversight of significant industrial users (SIUs). The required minimum oversight includes inspection and sampling of each SIU annually, reviewing the need for a slug control plan every two years, and issuing a permit or equivalent control mechanism every five years (40 CFR 403.8(f)(1)(iii) and (2)(v) and 403.10(f)(2)(i)). Industrial users that are not SIUs are not necessarily subject to this oversight.

Control Authorities have expressed concern with the rigidity of the oversight requirements, especially with respect to smaller facilities that are subject to categorical Pretreatment Standards and facilities that they believe have no potential to cause pass through or interference. If these facilities were excluded from the definition of SIU, Control Authorities could, on a case-by-case basis, determine adequate sampling and inspection frequencies and whether individual permits are necessary for the facilities.

*What facilities are currently defined as significant industrial users?*

"Significant industrial user" is defined in existing 40 CFR 403.3(t) to include two types of facilities. The first includes all industrial users that are subject to a Pretreatment Standard for New or Existing Sources. These standards are often referred to as national categorical Pretreatment Standards, and facilities subject to the standards are referred to as categorical industrial users (CIUs). Today's proposal would exclude certain "non-significant" CIUs from the definition of SIU.

The second category of facilities included in the definition of SIU includes certain facilities that are not CIUs. All non-categorical facilities that discharge 25,000 gallons per day or more of process wastewater are considered SIUs, as are facilities that contribute a process wastestream constituting 5 percent or more of the average dry weather or organic capacity of the POTW. The control authority may exclude such a facility from the SIU definition based upon a finding that it does not have a reasonable potential to adversely affect the operation of the plant or to cause a violation of any Pretreatment Standard or requirement. Control Authorities may also consider smaller facilities to be SIUs if the facilities have the potential to cause problems with a POTW's operations or violate Pretreatment Standards or requirements.

Since Control Authorities already have flexibility with regard to oversight of non-categorical facilities, they are not the focus of today's proposal.

*What is the history of the definition of SIU?*

The definition of SIU and related requirements were established in July 1990 by the rule to implement the Domestic Sewage Study ("the DSS Rule") (55 FR 30082, July 24, 1990). Before this regulatory revision, sampling and inspection frequency were only

recommended in EPA guidance ("Pretreatment Compliance Monitoring and Enforcement Guidance," September 1986). The proposed DSS Rule (53 FR 47649, November 23, 1988) would have required Control Authorities to inspect and sample SIUs at least once every two years. The proposal requested comment on whether to require annual inspections and sampling. The preambles to the proposed and final rule did not specifically address whether to adopt a different requirement for oversight of smaller SIUs.

The proposed Metal Products and Machinery rule (60 FR 28269, May 21, 1995) solicited comment on whether, as an alternative to exempting low-discharge industrial users from the rule, EPA should revise Part 403 to reduce monitoring, reporting, and inspection requirements applicable to small-flow facilities. Today's proposal elaborates on that issue.

*Can CIUs that do not discharge regulated pollutants be considered SIUs?*

Some categorical standards only require a certification statement that an industrial user does not use a pollutant of concern. See, e.g., 40 CFR 439.16, Pretreatment Standard for Existing Sources, Pharmaceutical Manufacturing. Other standards may require that there be no discharge of process wastewater. See, e.g., 40 CFR 455.46, Pretreatment Standard for Existing Sources, Pesticide Formulating, Packaging, and Repackaging. An industrial user is considered to be subject to the categorical standard if it meets the applicability requirements of the standard. It should be noted that in the applicability section of the various categorical standards, the term "discharge" includes the potential to discharge. For example, a pharmaceutical manufacturer may comply with monitoring requirements in 40 CFR 439.16(a)(2) by filing a semi-annual certification that it does not use or generate cyanide, while a pesticide formulator may comply with the monitoring requirements of 40 CFR 455.46 by filing a semi-annual certification of no discharge. Under current regulations, Control Authorities must regulate these facilities as SIUs. Under today's proposal, the facility would still be subject to the categorical standard, but at the discretion of the Control Authority, might not be considered an SIU.

If the only wastestream that an industrial user discharges (or could potentially discharge) to the POTW is not subject to the requirements of any Pretreatment Standard for New or

Existing Sources, the facility would not be considered a categorical industrial user for the purposes of 40 CFR Part 403. For example, if an industrial user that employs a 100 percent recycle of process wastewater at no time has or will discharge regulated process wastewater to the POTW and does not have the potential to discharge regulated process wastewater to the POTW, the industrial user would not be considered to be subject to the categorical standard for the process and, therefore, would not be required to be regulated as an SIU. Under the existing regulations, Control Authorities should consider issuing "no discharge" permits to such facilities with provisions such as a requirement to provide notice of changes in operation and to allow inspections. Control Authorities should also consider whether the facility presents a reasonable potential for discharging pollutants of concern and warrants regulation as an SIU.

Commenters have pointed to confusion regarding whether POTWs are required to sample facilities that have no discharge from any regulated process. EPA notes that POTWs are not currently required to sample facilities that do not discharge, and no revision to the regulations is necessary.

**b. Stakeholder Comments**

*What changes did EPA suggest in its 1997 letter to stakeholders?*

EPA's 1997 letter to stakeholders solicited comment on revising the current definition of significant industrial user to exclude certain non-significant facilities that are subject to national categorical Pretreatment Standards. The draft suggested a definition of "non-significant" that included (1) facilities that never discharge concentrated wastes such as solvents, spent plating baths, filter backwash, and sludges, or more than 100 gallons per day (gpd) of other process wastewater, and (2) facilities subject only to certification requirements after having met baseline monitoring report requirements (e.g., pharmaceutical manufacturers).

The 1996 WEF/AMSA Pretreatment Streamlining Workshop had recommended excluding facilities under 100 gpd from the definition of significant industrial user. The Workshop also presented recommendations for additional streamlining. One of the Workshop's recommendations was that Control Authorities be able to exempt from the definition of SIU any categorical industrial user that has no reasonable

potential to adversely affect the POTW's operation.

The Workshop also recommended that EPA allow Control Authorities more flexibility in the oversight of facilities that would continue to be defined as SIUs. Specifically, the Workshop recommended that EPA allow Control Authorities more flexibility in sampling SIUs, while perhaps keeping the annual inspection requirement. EPA's draft sought comment on these recommendations and also on whether to allow POTWs more flexibility in sampling SIUs that had been in consistent compliance.

*How did Stakeholders Respond?*

Most commenters supported allowing POTWs to reduce oversight at least of non-significant categorical industrial users that discharge up to 100 gpd. Most municipal commenters not only supported exempting facilities that discharge 100 gpd but would have raised the limit to anywhere from 300 gpd to 4,000 gpd.

Several commenters, however, thought that the definition of SIU should not be changed. A slight majority of State commenters opposed deleting even 100 gpd facilities from the definition of SIU because it would result in the elimination of minimum oversight requirements. A few commenters stated that requirements should be reduced by amending the national categorical standards, not the definition of SIU.

Some commenters opposed a definition based on flow and preferred one based on total mass or on potential to impact the POTW. One made a specific recommendation that SIU status be determined by considering both the flow and its toxicity using the toxic weighting factors used by EPA in guideline development.

A few commenters addressed whether facilities that are in consistent compliance should be allowed to be excluded from oversight as SIUs. They generally supported the idea but opposed as arbitrary the suggestion that only 50 percent of SIUs could be excluded under the exception. One commented that, regardless of its compliance history, any SIU with the potential to adversely impact the POTW should be an SIU.

Approval Authority commenters generally opposed and POTW commenters generally supported not requiring Control Authorities to regulate as an SIU any industrial user that did not present a potential to adversely impact the POTW. One supporter of the concept suggested that a facility should not be required to be an SIU if it could

discharge all of its process chemicals to the POTW without treatment and without impacting the POTW.

c. Today's Proposal

*What changes to the SIU definition is EPA proposing?*

EPA is proposing to allow Control Authorities to exempt non-significant categorical industrial users from the definition of significant industrial user. Today's proposal would define non-significant categorical industrial users as (1) facilities that never discharge untreated concentrated wastes that are subject to the categorical Pretreatment Standard as identified in the development document for the standard, and never discharge more than 100 gallons per day (gpd) of other process wastewater, and (2) industrial users subject only to certification requirements after having met baseline monitoring report requirements (e.g., pharmaceutical manufacturers).

Regardless of whether they are considered SIUs, all categorical industrial users would still be required to comply with applicable categorical Pretreatment Standards and the related reporting requirements in 40 CFR 403.12. Control Authorities would still be required to perform the same oversight of non-significant categorical industrial users that is required for other facilities that are not SIUs, including notifying the categorical industrial user of its status and requirements (40 CFR 403.8(f)(2)(iii)); receiving and reviewing required reports (40 CFR 403.8(f)(2)(iv) and 40 CFR 403.12(b), (d), & (e)); random sampling and inspection (40 CFR 403.8(f)(2)(v)); and investigating noncompliance as necessary (40 CFR 403.8(f)(2)(vi)).

The POTW's annual report would provide a list of the facilities that are being regulated as non-significant facilities. After an initial list is provided, deletions and additions may be keyed to the previously submitted list.

*Will EPA consider criteria other than a 100 gpd flow-cutoff for non-significant CIUs?*

EPA recognizes that any numeric flow cutoff would have both advantages and disadvantages. The 100 gpd criterion was supported by the stakeholders at the WEF/AMSA meeting, and EPA is including this criterion in today's proposal. It is clear from comments on drafts of this proposal that there is no consensus on an appropriate higher number. The 100 gpd flow is a conservative number that most commenters could support. EPA

estimates that about 2 percent of current CIUs might be eligible for non-significant status using this criterion.

In today's proposal EPA is again requesting comment on alternative criteria for determining non-significant status. Such alternative criteria might include a higher flow cutoff or a numeric cutoff based on some alternative criteria such as the estimated mass of pollutant loadings or the percentage of a POTW's total flow discharged by a particular CIU. Alternatively, the criteria might be narrative and include a qualitative description of what constitutes a significant industrial user. Commenters are encouraged to provide data on the likely effects of alternate criteria, including the number of CIUs that would be eligible for non-significant status and any adverse impacts on POTWs or the environment that might result.

EPA is also requesting comment on what consideration should be given to the compliance record of the non-significant CIU. That is, prior to designating a CIU as non-significant, should POTWs examine the compliance record of the CIU and its potential to maintain a high level of consistent compliance with pretreatment standards and requirements? EPA is interested in other possible ways of providing flexibility related to the compliance record of the industry. If EPA promulgates a relatively narrow exclusion, such as the 100 gpd cutoff in today's proposal, it might be appropriate to offer greater flexibility to POTWs to target oversight resources to SIUs with the greatest potential to cause harm to the POTW or the environment. One such alternative would be to relax the minimum monitoring requirements for facilities with a consistent record of superior environmental performance, as was recently done for direct dischargers ("Interim Guidance for Performance-based Reduction of NPDES Permit Monitoring Frequencies," April 1996). This would not only reduce administrative burden, but would provide an incentive for facilities to reduce pollutant loadings still further. EPA requests comment on this or similar alternatives to allow better targeting of POTW oversight resources.

*How would the flow from non-daily batch dischargers be counted?*

Under the proposal, the 100 gpd criterion is a daily maximum and cannot be aggregated for the purpose of periodic batch dischargers. EPA is interested in comments, however, on whether to allow the non-significant definition to include facilities that

discharge up to 500 gallons of process wastewater once per week. One commenter suggested that not allowing aggregation would discourage efficient treatment of these wastes. EPA, however, does not believe that the benefits to the industrial user of being defined as non-significant are sufficient to pressure facilities into inefficient practices, because that definition affects requirements applicable to the Control Authority.

*E. Categorical Industrial User Monitoring (40 CFR 403.12)*

a. Existing Rule

*What are the current minimum sampling requirements for categorical industrial users?*

The Pretreatment Regulations have required since 1978 that all facilities subject to national categorical Pretreatment Standards submit to their Control Authority twice per year a report on the pollutants in their effluent stream that are limited by the applicable categorical Pretreatment Standards (40 CFR 403.12(e)(1)). The report must include the results of sampling and analysis of the effluent which is representative of conditions occurring during the reporting period at a frequency necessary to assess and assure compliance with applicable standards (40 CFR 403.12(g)). The regulations make clear that these are minimum requirements and Control Authorities have the flexibility to increase sampling and reporting requirements. The regulations also require the Control Authority to sample all SIUs at least once per year (40 CFR 403.8(f)(2)(v)).

The regulations allow the Control Authority to perform the sampling required of the categorical industrial users (40 CFR 403.12(g)(1)). Commenters stated that it is not clear whether, when Control Authority sampling detects a violation, it is the Control Authority or the user that must resample within 30 days. Resampling is required by 40 CFR 403.12 when the sampling by the user detects a violation.

b. Stakeholder Comments

*What changes did EPA suggest in its 1997 letter to stakeholders?*

EPA discussed two options in its 1997 letter to stakeholders. The first option was tied to the proposal to allow Control Authorities to reduce oversight of non-significant facilities (Proposal D). For those non-significant facilities that a Control Authority would not be required to sample, because they are no longer SIUs, but which would still be required to self-monitor because they

are categorical industrial users, the Control Authority could elect to sample the facility and only require the facility to self-monitor once per year.

EPA also solicited comment on whether to allow Control Authorities to waive all self-monitoring of non-significant facilities. The facility's minimum monitoring requirements would be determined by the Control Authority.

Under both approaches, the facilities would still be required to file Baseline Monitoring Reports and 90-day compliance reports, and to comply with the categorical standard.

#### *How did stakeholders respond?*

Almost all commenters supported streamlining at least to the extent of allowing one annual sample by a POTW and one by a non-significant categorical industrial user. There was concern that the proposal did not provide much streamlining and would create a category that would have to be tracked separately. Many argued that EPA should go further and allow Control Authorities complete discretion to set minimum monitoring requirements for non-significant facilities. Some commenters thought these facilities should not be subject to categorical standards at all. Others said that there should be no minimum requirements for facilities that are not SIUs, even if they are subject to a national categorical standard. There was little support, however, for an alternative approach that would have waived all industrial user monitoring only if a Control Authority conducted unannounced monitoring annually.

One trade association said that it would actively oppose this proposal because it favors small facilities. EPA does not believe that the proposal inappropriately favors small industrial users. POTWs are already allowed to perform the sampling that users are otherwise required to perform. This proposal merely authorizes a different allocation of that sampling. Control Authorities could provide this relief only if they find the sampling to be adequate to assure compliance by the facility.

One stakeholder commented that 40 CFR 403.12(g) already allows one annual sample to be taken by the Control Authority and one to be taken by the categorical industrial user. EPA does not agree with this interpretation. This particular part of the regulation was established on October 17, 1988, in response to the findings of the Pretreatment Implementation Review Task Force (PIRT) ("Pretreatment Implementation Review Task Force

Final Report to the Administrator," January 30, 1985). The Pretreatment Implementation Review Task Force recommended changing the language in 40 CFR 403.12 to allow for POTW monitoring in lieu of self-monitoring. This change was to address concerns by POTWs that some industrial user monitoring was not reliable and the fact that some users would prefer that the POTW conduct the monitoring. Individual samples taken by the Control Authority and the CIU at different times during the year would not address the reliability issue.

Other commenters noted that three samples are required annually when the POTW samples for the industrial user, with additional samples required if violations are detected. At the time the PIRT regulatory changes were made, the regulations required that CIUs report their compliance status twice per year; this in turn required sampling a minimum of two times per year. At this time there was no minimum sampling frequency required to be performed by the POTW. Since the PIRT regulatory changes clearly established that the POTW could assume the responsibility for the CIUs' sampling, only two samples were required. In the 1990 regulatory changes resulting from the Domestic Sewage Study (DSS), the Agency required that POTWs sample effluent from each SIU at least once per year (40 CFR 403.8(f)(2)(v)). The preamble supporting this regulatory change did not discuss a need for POTWs to sample three times per year in cases where the POTW had assumed responsibility for the categorical industrial user's monitoring. The discussion in the preamble focused on the need for a minimum frequency of independent sampling by the POTW to check the industrial user's monitoring data. If the POTW is already doing the twice per year sampling in lieu of the categorical industrial user, then the independent check is achieved. This is also explained in the "Industrial User Inspection and Sampling Manual for POTWs" (p. 102; EPA 831-B-94-001, April 1994).

#### c. Today's Proposal

##### *What is EPA proposing?*

This proposal is tied directly to the definition of non-significant categorical industrial user proposed today to be included in 40 CFR 403.3(u)(1)(i). EPA is proposing elsewhere today to allow Control Authorities to exempt "non-significant" categorical industrial users from the definition of Significant Industrial Users. In conjunction with that proposal, EPA is also proposing to

not establish any minimum inspection and sampling requirements for non-significant categorical industrial users. Instead, the new requirements would allow the Control Authority to establish the appropriate level of inspection and industry and Control Authority sampling for these facilities. In addition, EPA is proposing to establish new minimum reporting requirements for non-significant categorical industrial users. EPA is proposing that at a minimum, a non-significant facility would be required to annually report and certify its status as a non-significant facility, and certify that it is in compliance with the applicable Pretreatment Standards. A Control Authority may require more frequent sampling, inspections, or reporting as it finds necessary to ensure compliance with the categorical standards.

Today's proposal would not require each compliance certification from a non-significant facility to be supported by sampling data. Such facilities, however, must have a reasonable basis for their compliance certifications. When sampling is not performed, the non-significant facility must describe the basis for its compliance certification, such as no changes in any processes that generate process wastewaters or no change in raw chemicals used. EPA recommends that sampling by the industry or Control Authority be performed from time to time to confirm compliance with the categorical standards.

##### *Who must resample when POTW sampling indicates a violation?*

The current regulations specify that an industrial user must repeat sampling within 30 days whenever its sampling indicates a violation, unless the Control Authority is sampling monthly or performed sampling at the industrial user in the interim between the industrial user's initial sampling and the receipt of the results of its sampling (40 CFR 403.12(g)(2)). Although the regulations state that a Control Authority may perform the industrial user's sampling and analysis (40 CFR 403.12(g)(1) and (h)), they do not state that resampling is required when the Control Authority's sampling indicates a violation.

EPA is also proposing today that if the POTW has performed the sampling for the industrial user, the POTW must resample when a violation is detected unless it requires the user to perform the repeat sampling. EPA believes that the current requirement that the user resample when a violation is detected should also apply when the POTW samples for the user in order to

determine when the user has returned to compliance. The POTW currently may elect to perform the resampling for the user. If it does not, however, the user should still be required to perform the required resampling. EPA notes that it is in the user's interest to assure that resampling occurs as soon as possible because it will be assumed that the user continues to be in noncompliance until sampling indicates that the user has returned to compliance. Further, today's proposal requires the POTW, in cases where the POTW has performed the sampling, to notify the industrial user as soon as possible after it becomes aware of a violation based upon the sampling results.

*Should minimum monitoring be the same as required of NPDES permittees?*

EPA is also interested in comment on whether to require one annual sample to be taken by either a non-significant categorical industrial user or its Control Authority. This approach would be consistent with the minimum monitoring requirement for NPDES permittees, which is only once per year (40 CFR 122.44(i)(2)).

EPA notes, however, that there are differences between the Pretreatment program and the NPDES permitting program that suggest that additional minimum monitoring is appropriate in the Pretreatment program. All dischargers to waters of the United States are required to have an NPDES permit and thus are subject to the NPDES minimum monitoring requirements. The minimum monitoring requirements of the Pretreatment program only apply to those users that have been defined as significant industrial users. Approximately 85 percent of the industrial dischargers to POTWs are not considered significant and have no minimum monitoring requirements ("National Pretreatment Program, Report to Congress," pp. ES-4, ES-5, 3-2 and 3-11; July 1991 (21W-004)). Also, the Pretreatment program primarily controls toxic pollutants and pollutants in quantities that could cause pass through or interference at the POTW, while an NPDES permit is required for the addition of any pollutants to waters of the United States from a point source.

*Should EPA revise guidelines to exempt non-significant facilities?*

The WEF/AMSA Workshop Report recommended that EPA consider exempting non-significant facilities as it develops new and revises existing categorical Pretreatment Standards. The proposed Metal Products and Machinery rule (60 FR 28209, May 30,

1995) is an example of EPA having considered the appropriateness of including small facilities within the scope of an effluent guideline.

As noted in its recent "Effluent Guidelines Plan Update" (62 FR 8726, February 26, 1997), EPA is committed to promulgating regulations for several industries under court ordered schedules. In order to determine whether small facilities should be excluded from existing guidelines, EPA could have to collect and analyze data and information currently not in the administrative record. Any decisions would have to be based on current data for each industry under examination and would be collected with OMB approval under the Paperwork Reduction Act. Since there are currently more than 30 different industries subject to categorical standards, data collection would create a heavy burden on industry and would represent a substantial effort on the part of EPA which would adversely impact the current court ordered schedules. For these reasons, EPA does not believe existing guidelines and categorical standards should be reopened to consider exempting "non-significant" facilities. EPA does agree, however, there should be an examination as to whether small facilities should be regulated as it develops new categorical Pretreatment Standards.

*F. Slug Control Plans (40 CFR 403.8(f)(2)(v))*

a. Existing Rule

*What is a slug discharge and how are they regulated?*

Two separate provisions in Part 403 define and address slug discharges. A slug discharge is "\* \* \* any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge" (40 CFR 403.8 (f)(2)(v)). Section 40 CFR 403.5(b)(4) prohibits industrial users from introducing "\* \* \* any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW." Because slug discharges can cause Interference with a POTW operation, they are regulated by this specific prohibition and the more general prohibition against introducing into a POTW pollutants that can cause Pass Through or Interference (40 CFR 403.5(a)(1)). Today's proposal does not alter these prohibitions.

Current regulations also require Control Authorities to ensure that industrial users have policies and

procedures in place to prevent or mitigate the effects of slug discharges. Control Authorities must "\* \* \* evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges" (40 CFR 403.8(f)(2)(v)). Today's proposal addresses the requirement that Control Authorities review the need for a slug control plan every two years.

*What is a slug control plan?*

The primary function of a "slug control plan" is to ensure that an SIU has a planning and implementation tool to prevent Interference at a POTW treatment facility by a non-routine or accidental discharge. The minimum elements required in a slug control plan are (1) a description of discharge practices, (2) a description of all stored chemicals at the facility, (3) procedures for immediately notifying the POTW of the slug discharge and providing written follow-up notification, and (4) a variety of procedures (e.g., inspection and maintenance of chemical storage areas) for preventing adverse impacts from any accidental spills (40 CFR 403.8(f)(2)(v)(A) to (D)).

*Why should the regulation be changed?*

Many POTWs believe the requirement to review the need for a SIU's slug control plan every two years is unproductive administrative paperwork. One large metropolitan POTW required only two of its 150 designated SIUs to prepare slug control plans. The WEF/AMSA report characterizes a slug control plan as "a token piece of paper which gives little added protection to the significant industrial user or the POTW." Although the slug control plan requirement is designed to protect POTWs, periodic evaluation of the continuing need for and/or development of a slug control plan, alone, does not necessarily provide for any greater environmental protection.

b. Stakeholder Comments

*What changes did EPA suggest in the 1997 draft sent to stakeholders for review?*

In the 1997 draft sent to stakeholders for review, EPA proposed eliminating the requirement that POTWs evaluate the need for a slug control plan for each SIU every two years. POTWs would be given the flexibility to review the need for slug control plans or other actions as part of their ongoing oversight of industrial users. Where a slug control plan is found to be necessary, appropriate requirements would be placed in the SIU's permit.

*How did stakeholders respond?*

A substantial majority of the 70 commenters supported the draft recommendations as being reasonable, appropriate, and in keeping with EPA's proposed streamlining efforts. Fifty-one of the commenters essentially agreed with the discussion and language as written. Fourteen reviewers had no comments on the proposal. Of the remaining commenters, most were either neutral or wanted additional language that would clarify the type of slug discharge that would trigger a Control Authority to require the development of a slug control plan. One commenter stated that their organization would not change anything relating to their practice with regard to slug control plans and that they would retain their very stringent local ordinances requiring a two-year evaluation of the plans.

Several commenters noted that most industrial users already have spill plans in place and that it would be more practical and eliminate confusion for the industrial user to prepare one slug and spill prevention plan that satisfies the various requirements of the Pretreatment program, the Spill Prevention Control and Countermeasures Plan required by the Clean Water Act (CWA) and various hazardous waste laws. EPA agrees with this suggestion and encourages industrial users, POTWs, and other entities to explore ways of having one document satisfy all of the spill planning requirements.

The WEF/AMSA report suggested that EPA substitute the phrase "uncontrolled releases" for "slug discharge." Slug discharges, however, are not limited to uncontrolled releases but may include any nonroutine discharge. In subsequent comments, WEF suggested that the definition of "slug discharge" be expanded to clarify that it is a nonroutine discharge that has the potential to cause interference or pass through or in any other way violate the Control Authority's regulations, local limits or permit conditions. EPA has incorporated this suggestion into today's rule.

*Will oversight be adequate without a two-year review requirement?*

Two commenters opposed the draft proposal because they believe that the Approval Authorities would no longer be able to hold the Control Authorities accountable for continuing to conduct slug load evaluations. The proposed regulatory changes, however, do not absolve Control Authorities from the requirement to prevent disruptions caused by slug discharges.

In many instances, operating conditions at an SIU will not have changed significantly since the issuance of its individual control mechanism and the facility will be in compliance with all of its permit conditions. Under these circumstances, the requirement to review and evaluate the need for a slug control plan could be an unproductive use of resources by the Control Authority. Control Authorities are required to periodically inspect industrial users and should be aware of changes at an SIU that may necessitate a reconsideration of the SIU's slug control plan.

The existing regulations also require that industrial users "\* \* \* promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge" (40 CFR 403.12(j)). Upon receiving this notice, the POTW could determine whether revision of the industrial user's slug control plan is necessary.

*Do the proposed changes impose any additional burden upon the industrial user?*

EPA does not intend that today's proposal impose any new requirements on IUs, but it does formalize the requirement for SIUs to control slug discharges (where determined to be necessary by the Control Authority) by adding incorporation of the requirement into SIUs' permits (40 CFR 403.8(f)(1)(iii)(F)). The focus of today's proposal is to address the frequency with which POTWs must consider the adequacy of an SIU's slug control plan or other measures to control slug discharges. One commenter strongly opposed any changes to the current regulation by arguing that the changes in EPA's draft proposal to stakeholders would add to the regulatory burden. This commenter feels that the draft regulatory language would require Control Authorities to force the industrial user to undertake physical improvements deemed desirable by the Control Authority. The commenter also stated that the CWA confers no authority upon a Control Authority to directly regulate a user's physical plant or production practices.

EPA promulgated the requirement for a two-year review cycle of the need for a "slug control plan" in the Domestic Sewage Study rulemaking (55 FR 30082, July 24, 1990). In the preamble discussion to that rulemaking, EPA explained the need for POTWs to implement slug control programs. As part of the discussion, EPA referenced the guidance manual, "Control of Slug Loadings to POTWs" (EPA 21W-4001,

February 1991), which was then under preparation. This manual provides detailed guidance for POTWs to evaluate whether significant industrial users need to develop slug control plans. It also provides guidance for significant industrial users to then develop those slug control plans. This recognizes that POTWs will need to determine whether existing situations may impact their treatment works, while industries are in the best position to solve problems relative to their physical plants or production processes. Part 403 only requires that, where found to be necessary, a POTW must require a significant industrial user to develop a plan to prevent slug discharges. As indicated by the discussion above, this has always been EPA's interpretation of the requirement in 40 CFR 403.8(f)(2)(v) although today's proposal clarifies the regulatory language.

*c. Today's Proposal**What is EPA proposing?*

Today's proposal would eliminate the requirement that POTWs evaluate the need for a slug control plan for each SIU every two years. The Agency proposes to amend the language in 40 CFR 403.8(f)(2)(v) to give POTWs the flexibility to review the need for slug control plans or other actions as part of their ongoing oversight of industrial users. To encourage some minimum review, today's proposal would also add 40 CFR 403.8(f)(1)(iii)(F) to require that, where a slug control plan is found to be necessary, appropriate requirements would be placed in the industrial user's individual control mechanism.

*What would industrial users be required to do to comply with these proposed changes?*

Today's proposal would not impose new burdens on SIUs. All SIUs still should take positive action to eliminate or mitigate the effects of a slug discharge. These actions may include constructing physical containment facilities as well as implementing sound management practices to prevent slug discharges.

*What actions must the POTW take to ensure that adequate slug control mechanisms are implemented by the significant industrial user?*

EPA expects that, as an integral part of its ongoing oversight of all SIU facilities, the POTW will consider whether adequate measures are in place to avoid slug discharges. The POTW is authorized to use its own discretion in determining the timing, level of detail, and commitment of resources necessary

to ensure the facility has adequate measures in place to prevent slug discharges. POTWs still may require that the SIU develop a slug control plan or similar management tool whenever that facility's slug prevention measures are judged to be inadequate.

The proposed changes to the regulations should reduce the paperwork burden imposed upon the SIU and POTW while maintaining environmental protection. Both parties should take tangible, protective measures to eliminate the risk of slug discharges.

*G. Sampling for Pollutants Not Present (40 CFR 403.12(e))*

a. Existing Rule

*Generally, what are the current periodic sampling and reporting requirements?*

Currently, 40 CFR 403.12(e)(1) requires industrial users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice a year indicating the nature and concentration of all pollutants in their effluent that are limited by the standards. Section 40 CFR 403.8(f)(2)(v) requires Control Authorities to sample these industrial users at least annually.

*Is monitoring required for regulated pollutants that are not expected to be present in a categorical industrial user's waste stream?*

Sampling is currently required for all pollutants limited by the categorical Pretreatment Standard even if certain pollutants regulated by the standard are not reasonably expected to be present. For example, the pollutants might be expected to not be present based upon prior sampling and analysis, knowledge of process chemistry, raw materials use, and potential byproducts.

b. Stakeholder Comments

*What changes did EPA suggest in its 1997 letter to stakeholders?*

EPA suggested revising its regulations to allow industrial users to forego sampling of a pollutant regulated by a categorical standard if the user demonstrated through sampling and other technical data that the pollutant is not present and certified on each report that the pollutant is only present at background levels with no increase due to the industrial user's activities. The Control Authority would still be required to sample all SIUs for all regulated pollutants at least once per year. In addition, EPA specifically requested comments on:

- How to define what is meant by "not present";

- Determining an adequate technical basis to support a decision that sampling be waived or reduced; and

- Whether reduced monitoring should apply to organic chemicals given their relative variability in production and as contaminants in raw materials.

The comments received on specific issues are discussed below with EPA's proposal on each issue.

*How did the stakeholders respond?*

EPA received comments on the draft issue paper from 60 stakeholders. Virtually all of the respondents stated that EPA should either reduce or eliminate sampling of pollutants not expected to be present in effluent. One commenter would support the concept only if a prohibition of subsequent discharge is included, similar to that which is proposed for NPDES requirements (see discussion below). Another commenter believed that the current requirement to sample for all pollutants provides the best evidence to support determinations regarding the presence or absence of pollutants.

c. Today's Proposal

*How is EPA proposing to define "not expected to be present"?*

Today's proposal would authorize a Control Authority to allow an industrial user subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. This flexibility is already available for noncategorical industrial users, via the local limits allocation method implemented by the Control Authority. There would also be a reduced sampling requirement for the Control Authority once it had determined that a pollutant was not expected to be present. Most commenters agreed that EPA should not propose an absolute definition of "not present" because limitations on analytical detection capabilities would preclude an industrial user from being able to certify that any pollutant is "not expected to be present" in its wastewater. Some commenters preferred the term "not regulated." EPA notes, however, that the pollutants will continue to be regulated even if the industrial user has been authorized not to sample for them. The requirement to comply with each pollutant limit in a standard can be ended only through modification of the categorical Pretreatment Standard. If sampling indicates that an industrial user has

exceeded a limit, the user will be in violation of that limit and must resume sampling immediately.

Other commenters suggested that the standard for not sampling should be "not detectable" or Below Detection Limit ("BDL") rather than not expected to be present. EPA is not proposing a standard that refers to the detectability of a pollutant. In light of the increasingly low detection limits that result from modern analytical methods, the pollutant may in fact be detectable but only at background levels that are not of regulatory concern. If EPA established the absence or the non-detectability of a pollutant as the threshold criterion for reduced sampling frequency, EPA anticipates that few if any industrial users would be able to avail themselves of the option.

Stakeholders did not generally support the approach in which sampling could be waived if the pollutant is expected to be 50 percent below the regulated permit limit. Some commenters specifically disagreed with the percentage approach, as it suggested the possibility that the pollutant was added during the industrial process and could be higher under upset or abnormal circumstances. This suggests that compliance could not adequately be demonstrated without regular monitoring.

*What information would be required to support a conclusion that a pollutant is not expected to be present?*

Today's proposal would require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. EPA is not proposing that a specific amount of sampling data be required but is interested in comment.

Influent and effluent sampling may be necessary for the initial determination to support the technical factors. After the Control Authority notifies an industrial user that a pollutant is "not expected to be present," subsequent periodic compliance reports may be limited to the submission of the certification statement. Three commenters thought that EPA should establish a regulatory minimum amount of sampling to be conducted for the determination of "not expected to be present." For example, the regulation might require three years of sampling data to document that the pollutant is not expected to be present. Existing sampling data could be used to support requests for reduced sampling. For new facilities or processes, a shorter time might be appropriate if technical data

supported it. Dischargers subject to Metal Finishing Guidelines (40 CFR Part 433), for example, submit Total Toxic Organics (TTO) analytical results for the organics that are reasonably expected to be present as part of the baseline monitoring report; after submission and approval of a Toxic Organic Management Plan, subsequent compliance reports contain a certification statement in lieu of the TTO self-monitoring. On the other hand, the appropriate amount of sampling may be site-specific and better determined by the Control Authority. The Control Authority would be able to consider the specific processes and pollutants involved and other circumstances that would support the reliability of the industrial user's certification that there has been no increase of the pollutant in its wastewaters due to its activities.

EPA is also soliciting comment on whether sampling of influent should be required. Although not favored by eight commenters, most commenters agreed with the concept of either sampling influent water to the industrial processes or using the public water system quality reports to characterize "background" quality during the initial determination of "not expected to be present."

The Safe Drinking Water Act and its Amendments (SDWA) prescribe specific monitoring and quality assurance requirements on public water systems, data which the industrial user and Control Authority could obtain via the public record to characterize the background quality. However, an industrial user that uses make-up water from a non-public water system could conduct a similar monitoring program to generate a representative data set for its process influent.

Today's proposal would require that, in addition to sampling data, the decision to waive sampling be based on technical factors. Such factors include knowledge of the raw materials used by the industrial user and knowledge of the facility's processes and potential by-products, but do not include pretreatment process capability and efficiency. All factors considered should be documented in the industrial user's individual control mechanism file.

*Would any ongoing sampling be required for pollutants not expected to be present?*

EPA is proposing that, after a determination has been made that a pollutant is not expected to be present, the Control Authority may waive sampling of that pollutant by the industrial user or reduce the required

frequency of sampling to less than twice per year. The Control Authority would only be required to perform the sampling and analysis required by 40 CFR 403.8(f)(2)(v) for all regulated pollutants once during the term of the industrial user's individual control mechanism.

Commenters were split on whether EPA should continue to require ongoing sampling at some reduced frequency to verify that the pollutant is not expected to be present. Several recommended annual monitoring for all regulated pollutants by either the industrial user or the Control Authority, and a few recommended less frequent verification at times such as permit renewal. Eight commenters stated that the Control Authority should not be required to sample the industrial user if the Control Authority had already determined that the pollutants were not expected to be present. EPA believes that, if the Control Authority has determined, based on both sampling data and a technical evaluation that a pollutant is not expected to be present at levels above background, and if the industrial user continues to certify that there is no increase of the pollutant in its effluent due to the activities of the industrial user, then it is appropriate to allow the Control Authority to determine whether to sample the facility more frequently than once during the term of the permit and how often to require sampling by the industrial user. However, EPA is requesting comment on what the rule should specify regarding Control Authority oversight.

*Who would authorize industrial users to reduce the sampling frequency?*

Today's proposal would allow the Control Authority to authorize reduced sampling. One commenter suggested that further approval procedures (e.g., requiring Approval Authority concurrence) would likely result in delays and administrative costs that would subvert the streamlining benefits sought by EPA. EPA agrees that prior approval from Approval Authorities should not be necessary. Approval Authorities would review the implementation of this provision as part of their regular oversight activities.

*Would industrial users be required to certify that a pollutant is not expected to be present and that processes have not changed?*

EPA is proposing that an industrial user submit, as part of its regular semi-annual monitoring reports, certifications that there has been no increase in the pollutant in its wastewater due to activities of the industrial user. The

willingness of an industrial user to so certify will provide assurance that the pollutant is in fact not present above background levels because a false statement is criminally punishable under 40 CFR 403.12(n).

Most of the commenters responding to this issue were in favor of some type of industrial user certification process. Comment varied as to whether the certification should be submitted semi-annually, annually, or biennially. A few commenters noted that the certification process was consistent with the existing procedures for certifying in lieu of sampling for TTOs. One commenter thought a certification process is not needed because industrial users are already required to notify POTWs if their discharges change substantially. An application form, signed and certified by the industrial user prior to issuance of the user permit, was suggested by a commenter as a possible implementation tool to document and aid enforcement of any change in the other technical factors (industrial process, raw materials, etc.) used in the determination of "not expected to be present."

*Would relief be allowed for pollutants that are regulated as indicators of other pollutants?*

Today's proposal would allow Control Authorities to waive sampling of indicator pollutants to the same extent as other pollutants. One commenter said that the technical information documenting that a pollutant is not expected to be present should be provided for all pollutants of concern and not just the indicator pollutant. The Agency disagrees. Even if the pollutant is regulated as an indicator for other pollutants, the Agency believes that periodic sampling for the indicator can be waived if technical information and past sampling support the conclusion that the indicator pollutant will not be present.

*Would EPA apply reduced monitoring for organic chemicals?*

Today's proposal would not allow reduced monitoring for discharges subject to the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) guidelines. However, EPA is requesting comment on whether Control Authorities should be able to waive sampling at OCPSF facilities of organic chemicals that are not expected to be present. Because the constituents in the effluent from organic chemical manufacturers may vary significantly over time, past information may not be reliable as evidence of whether the pollutant will be present in the future.



The preamble to the OCPSF guidelines discussed the need for minimum monitoring of all regulated organic chemicals (52 FR 42522, November 5, 1987). EPA imposed on OCPSF facilities standards for a wide range of pollutants because of the diversity of sources that could introduce pollutants into the wastewater, such as raw materials, contaminants in raw materials, process changes, and byproducts. Many of the organic toxic pollutants are directly manufactured by OCPSF facilities as well as used as raw materials or generated as byproducts in industry processes. It would be difficult to guarantee that a plant will not discharge any of the regulated pollutants.

EPA is interested in comment on whether Control Authorities should be able to waive sampling for organic chemicals at OCPSF facilities if a facility establishes that a pollutant is not expected to be present and certifies to that effect. EPA is also interested in comments on whether any restriction on relief from sampling for organic chemicals not expected to be present should apply to sources of organic chemicals other than OCPSF facilities.

*How does the proposal compare with NPDES requirements?*

Direct discharging facilities subject to NPDES permits are similarly required to sample for all regulated pollutants. Proposed changes (61 FR 65268, December 11, 1996) to the NPDES regulations in 40 CFR 122.44(a)(2) would give the Regional Administrator or State Program Director the authority to allow dischargers subject to technology-based effluent limitation guidelines and standards to forego sampling of a pollutant found in 40 CFR subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not expected to be present in quantities greater than the background level and the discharger certifies on each discharge monitoring report submitted to the Permitting Authority that the pollutant is present in its wastestream only at background levels with no increase in the pollutant due to activities of the discharger. This exclusion would apply only for the term of the permit and would not be available to new sources/new dischargers for the dischargers' first permit term.

Similarly, under the Pretreatment Regulations, an industrial user that is allowed to not sample for a pollutant is still subject to the pollutant limits in the applicable national categorical Pretreatment Standard.

Under today's proposal, such limits would continue to be placed in the CIU's permit or other control mechanism, but the Control Authority would be allowed to eliminate the user's self-monitoring requirements. The Control Authority would be required to sample all pollutants regulated by the applicable categorical standard at least once during the term of the CIU's permit. If any new information indicated that the CIU was in fact discharging the pollutant at greater than background concentrations, the industrial user could not certify that there has been no increase in the pollutant due to its activities and would be required to resume monitoring. If the level of the pollutant exceeds the standard, the industrial user would be liable for violating the categorical standard. If the industrial user fails to provide notice of the change in discharge, it is also liable for violating 40 CFR 403.12(j).

*H. Use of Grab and Composite Samples (40 CFR 403.12(b), (d), (e), (g) and (h))*

*a. Existing Rule*

*Which sampling requirements are addressed in this section?*

Part 403 is very specific regarding when grab and composite samples must be used for baseline monitoring reports and 90-day compliance reports. See 40 CFR 403.12(b)(5)(iii) and (d). For those reports, the industrial user generally must collect (1) a minimum of four grab samples for determination of pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds and (2) 24-hour composite samples for all other pollutants. Those regulations also specify that composite samples must be flow-proportional unless the industrial user demonstrates that this is infeasible. For periodic compliance reports under 40 CFR 403.12(e) and (h), however, there is no regulatory language that specifically addresses the use of grab and composite samples.

This section of today's proposal addresses (1) the application of 40 CFR 403.5(b)(5)(iii) provisions to the periodic compliance reports; (2) when a time-proportional sample may be used instead of a flow-proportional sample; (3) when multiple grab samples may be composited prior to analysis; (4) whether four grab samples are required whenever grab sampling is appropriate; and (5) the sampling of facilities that discharge less than 24 hours per day. Other issues raised by commenters are also addressed.

*What are "grab samples" and when are they required?*

A grab sample is " \* \* \* a sample which is taken from a wastestream without regard to the flow of the wastestream and over a period of time not to exceed 15 minutes" ("Industrial User Inspection and Sampling Manual for POTWs," EPA 831/B-94-001, April 1994). However, grab samples of volatile organic compounds (VOCs) must be collected almost instantaneously (i.e., less than 30 seconds of elapsed time) and properly preserved ("Comparison of Volatile Organic Analysis Compositing Procedures," EPA 821/R-95-035, September 1995). An analysis of an individual grab sample provides a measurement of pollutant concentrations in the wastewater at a particular point in time. Grab samples are usually collected manually, but can be obtained with a mechanical sampler.

Grab samples are required in order to accurately analyze those pollutant parameters that may be affected by biological, chemical, or physical interactions and/or exhibit marked physical and compositional changes within a short time after collection. Grab samples should be used when (1) wastewater characteristics are relatively constant; (2) parameters to be analyzed are likely to be affected by the compositing process, such as the procedures used for oil and grease; (3) composite sampling is infeasible or the compositing process is liable to introduce artifacts of sampling; and (4) the parameters to be analyzed are likely to change with storage. In particular, accurate determination of pH, temperature, total phenols, oil and grease, sulfide, volatile organic compounds, and cyanide requires properly collecting and carefully preserving grab samples.

*What are composite samples and when are they required?*

A composite sample is formed by mixing discrete samples or "aliquots." For a "flow-proportional" composite sample, each individual aliquot is collected after the passage of a defined volume of discharge (e.g., every 2,000 gallons). For a "time-proportional" composite sample, the aliquots are collected after the passage of a defined period of time (e.g., once every two hours), regardless of the volume or variability of the rate of flow during that period. Flow-proportional compositing is usually preferred when effluent flow volume varies appreciably over time. The number of discrete samples necessary for a composite sample to be representative of the discharge depends

upon the variability of the pollutant concentration and the flow.

Automatically collected composite samples are usually preferred to collecting grab samples and then manually compositing the grabs into a single sample. Possible handling errors made during the compositing process could yield a sample that is not truly representative of the discharge. However, composite samples can be prepared from manually collected grab samples if each grab contains a fixed volume that is retrieved at intervals that correspond to the periods of wastewater discharge or time of the facility's operation.

*When may the requirement for flow-proportional composite samples be waived?*

The current regulations allow Control Authorities to waive the requirement for flow-proportional compositing of samples for baseline monitoring reports and 90-day compliance reports in limited circumstances. The Control Authority may accept sample data that are obtained from time-proportional composite sampling or a minimum of four grab samples if flow-proportional sampling is infeasible (e.g., the facility cannot accurately measure flow) and the industrial user demonstrates that these alternative sampling techniques will provide a representative sample of the effluent (40 CFR 403.12(b)(5)(iii)).

#### b. Stakeholder Comments

*What changes did EPA suggest in the May 1997 letter to stakeholders?*

In the 1997 draft sent out for stakeholder review, EPA requested comment on whether to allow manual collection and compositing of grab samples for cyanide, volatile organic compounds, and other pollutants not affected by the compositing process.

The draft also discussed the applicability of time-proportional versus flow-proportional sampling methodologies for stakeholder review and comment. EPA attempted to clarify the meaning of "infeasible" in the current regulatory language that allows the use of time-proportional composite sampling where flow-proportional sampling is determined to be "infeasible" (40 CFR 403.12(b)(5)(iii)).

The Agency also proposed that the same sampling and analytical procedures that are required for baseline monitoring reports and 90-day compliance reports be applicable to the periodic compliance reports required under 40 CFR 403.12(e) and (h). The draft recommended, however, that Control Authorities retain the flexibility

to determine the number of grab samples needed for periodic compliance reports, while four grabs would continue to be required for the other reports.

EPA also requested comment on the WEF/AMSA Workshop's proposal to eliminate the sampling protocols and requirements specified in the current regulations and instead define what would constitute a "representative sample."

*How did stakeholders respond?*

There was no clear consensus on the regulatory changes proposed in the draft document. Thirteen commenters had no comment on the proposal. Nineteen commenters essentially agreed with the draft as written. However, the remaining 45 reviewers had fairly divergent opinions as to how the pretreatment sampling requirements could be streamlined. A significant number of respondents (28 out of the 70 commenters) supported the WEF/AMSA proposal to develop a definition and criteria for a "representative sample" that would eliminate much of the regulatory language describing sampling requirements in 40 CFR 403.12 (b), (d), (e), (g) and (h).

*What are EPA's responses to specific stakeholder comments?*

Several commenters did not support manually compositing cyanide and volatile organic compounds because they believed the sample integrity and accuracy would be compromised. In response, EPA notes that reliable procedures for collecting and compositing cyanide and volatile organics have been developed and EPA has published guidance manuals describing the applicable sampling and analysis methodologies. See "Industrial User Inspection and Sampling Manual for POTWs," EPA 831/B-94-001, April 1994, and "Comparison of Volatile Organic Analysis Compositing Procedures," EPA 821/R-95-035, September 1995.

Another commenter stated that the sampling procedures outlined in 40 CFR Part 136 adequately discuss the relationship between grab and composite samples and that no changes to the regulations are necessary. EPA notes, however, that it continues to receive questions relating to sampling issues and believes that clarification of sampling procedures is necessary.

Other commenters requested that EPA clarify when a composite sample is generated for the purpose of determining compliance with prescribed sample holding times (i.e., does the "clock" start running when the

first or last sample aliquot is collected?). EPA notes that for most circumstances sampling procedures specify that the time the last sample aliquot is collected should be the starting time for calculating sample holding times. Also, this requirement is consistent with sampling procedures used in developing individual effluent limitation guidelines for specific categorical industries in 40 CFR 405-471. However, the holding time can commence at the beginning of the compositing period if it is known that beginning the holding time at the end of the compositing period would result in degradation of the sample. See 40 CFR 136.3, Table II notes.

Another commenter proposed that EPA accept continuous recording pH meter records in lieu of discrete grab samples as a demonstration of compliance with pH limits. In response, EPA notes that, as long as the facility uses EPA-approved methods, continuous recording pH meter records are acceptable to demonstrate compliance with pH limits. The industrial user must provide documentation (recording charts and meter calibration records) to verify adherence to the pH range specified in the permit and accuracy of the metering system.

Several commenters believe the proposed regulatory changes will actually increase the workload if manually composited samples are required. In their opinion, compositing samples would be technically more difficult to collect and their inspectors would need additional training to acquire the necessary technical expertise to implement these programmatic changes. One commenter believes POTWs should not be given any authority to prescribe manual compositing of grab samples merely because the POTW determined that the sample quality would not be affected by the compositing process. In response, EPA notes that today's proposal does not require the compositing of individual samples prior to analysis, but rather provides that option in circumstances where it is not now clearly allowed. The only reason to composite the individual grab samples prior to analysis is to save resources; this technique should not be required if compositing the samples results in added expense.

*Did commenters support allowing time-proportional sampling when flow-proportional sampling is infeasible?*

The merits and inadequacies of using flow-proportional versus time-proportional sampling methodologies generated many comments. A majority

of the commenters believe that time-proportional sampling is as accurate and far less complicated than flow-proportional sampling. Several commenters stated their belief that time-proportional sampling provides data representative of most waste streams and should always be an acceptable sampling technique. A number of commenters stated that flow-proportional sampling should only be required when flow metering equipment has already been installed at a facility. One commenter pointed out the fact that the magnitude of the flow has little effect on the representativeness of time-proportional versus the flow-proportional sampling techniques; the variability of the flow is the critical factor.

Several other commenters stated that the effluent limitation guidelines for various categorical standards were developed using time-proportional sample data. In their opinion, EPA's insistence upon using flow-proportional sampling techniques to demonstrate compliance with categorical standards is inconsistent and unsupported. However, if the facility flow rates are so variable that time-proportional sampling would give inaccurate, unrepresentative results, then other, accurate sampling protocols, such as flow-proportional sampling, should be used. In other words, the industrial user bears the responsibility for providing representative sampling data at all times.

Other stakeholders stated that batch dischargers and minimal flow facilities cannot effectively or accurately measure effluent flow and, therefore, cannot use flow-proportional sampling techniques. Many of these facilities have space and right-of-way limitations that make installation of conventional flow measurement systems (e.g., weirs or flumes) difficult. Several commenters stated that installing and maintaining accurate flow measurement devices for small dischargers may add a significant cost burden and have no beneficial impact upon the representativeness of the data obtained. In most cases, commenters stated that time-proportional sampling saves both time and money without compromising accuracy.

Under today's proposal, the Control Authority would be able to authorize the use of time-proportional composite sampling in lieu of flow-proportional sampling upon determining that time-proportional sampling will produce a representative sample.

*Did commenters support extending the sampling provisions in 40 CFR 403.12(b)(5)(iii) to periodic compliance reports?*

Numerous commenters (mainly POTWs) felt that the Control Authorities should have complete authority to select whatever sampling protocols they believe provide accurate results. Many interpreted the existing regulatory language in 40 CFR 403.12(g)(3) as providing them with the authority to unilaterally set sampling protocols for all periodic compliance reports. EPA recognizes the confusion surrounding this issue. EPA believes that the regulations need to be revised to clarify the applicability of the sampling provisions in existing 40 CFR 403.12(b)(5)(iii) to periodic compliance reports. At the same time, EPA is proposing to revise those provisions to give the Control Authority more flexibility to determine what procedures are necessary for an industrial user to obtain a representative sample.

*Could EPA require sampling to be "representative" and not specify the sample type?*

The WEF/AMSA Workshop Report recommended that all references to sample "types" (e.g., grab versus composite, flow-proportional versus time-proportional) be dropped and that the regulatory language require only that the sample be a "representative sample." EPA would then define the term "representative sample" to provide the POTW with the flexibility to specify the appropriate sampling protocols. The Report highlighted issues that would have to be addressed in order to define a "representative" sample. These issues include (1) the appropriate sampling period (e.g., 24-hours or during the period of discharge); (2) use of flow-proportional versus time-proportional methods; (3) use of grab samples versus composite samples; (4) use of grab samples for pH monitoring; (5) use of grab samples for degradable and volatile parameters; (6) allowing manual compositing of samples when the methodology is approved by the Administrator; and (7) applying the criteria to instantaneous, daily maximum and monthly average limits.

A significant number of stakeholders were in favor of this proposal and requested that EPA both develop a definition and provide guidance outlining specific criteria necessary to define what constitutes a "representative sample" for specific industrial process scenarios. Several commenters asked that EPA provide a definition of "representative sample" in

40 CFR 403.3 and outline more specific guidelines in 40 CFR 403.12(g).

One dissenting commenter pointed out that the demonstration of a sample's "representativeness" is an additional element in making a determination of "infeasibility." This commenter argued that if the Agency does not provide concrete guidance to define all cases of "infeasibility," then the issue of what type of sample is truly representative cannot be resolved.

EPA is not prepared to offer a comprehensive definition of what constitutes a "representative sample" or specific guidance at this time. Given all of the physical parameters (type of pollutant, volume, concentration, viscosity, chemical reactivity) and different techniques for preserving, compositing (if appropriate), and analyzing the sample(s), a single, all-encompassing definition of a "representative sample" may not be achievable. EPA solicited comments on how to define a "representative sample" in the May 1997 pre-proposal draft; however, no commenter provided specific suggestions. EPA believes that it would be difficult to develop appropriate criteria that could be applied to all types of "representative samples."

EPA believes that the current regulations, as proposed to be modified today, set minimum guidelines for what would constitute a representative sample. EPA solicits input on how any or all of the factors discussed above could be used to define a "representative sample." Stakeholders are encouraged to provide comment and supporting data describing which current requirements are not necessary to obtain a representative sample, or how a representative sample could be more specifically defined. EPA will assess the comments and develop an appropriate response for inclusion in the final regulation.

#### c. Today's Proposal

##### *What is EPA proposing?*

EPA is proposing to clarify the sampling requirements in 40 CFR 403.12. The requirements of 40 CFR 403.12(b)(5)(iii), which currently are explicitly applicable to the baseline monitoring reports and 90-day reports required by 40 CFR 403.12(b) and (d), would be extended to the periodic reports required in 40 CFR 403.12(e) and (h). These changes will be accomplished by consolidating the new requirements for all of the reports in 40 CFR 403.12(g). Redundant sections would be removed.

The proposed regulatory changes would eliminate the requirement that a minimum of four grab samples be taken in all instances to measure pH, cyanide, total phenols, oil and grease, sulfides and volatile organic compounds. Control Authorities will have the flexibility to determine the appropriate number of grab samples required for periodic compliance reports. For new facilities, the industrial user would still be required to take a minimum of four grab samples to measure pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds to meet baseline monitoring and 90-day compliance report requirements. For existing facilities where historical sampling data are available, the Control Authority may authorize a lower minimum. EPA is interested in comment on whether the Control Authorities should be allowed the flexibility to determine the appropriate number of grab samples required to meet baseline monitoring and 90-day compliance report requirements for facilities without historical sampling data as well.

EPA is also proposing to clarify the language currently in 40 CFR 403.12(b)(5)(iii) in two ways. First, EPA is proposing to specifically allow compositing of certain types of grab samples prior to their analysis. The pollutants that could be composited include cyanide, volatile organic compounds, and any other parameters that the Control Authority finds are unaffected by the compositing process as documented in approved EPA methods.

EPA is also proposing that Control Authorities may authorize time-proportional or grab sampling in lieu of flow-proportional sampling as long as the samples are representative of the discharge.

*When and what type of grab samples could be manually composited?*

Today's proposal would allow multiple grab samples for cyanide and volatile organic compounds collected during a 24-hour period or an operating day to be manually composited in the laboratory prior to analysis. Control Authorities also would be allowed to authorize manually composited grab samples for other parameters that are unaffected by compositing procedures. The main concern is that a composite sample provide an accurate representation of the pollutant in the wastewater. The composite sample should provide analytical results that are comparable to averaged results of the individual grab samples taken over a specific time interval. Generally, a

sample can be composited if the analytical method does not require rinsing of the sample vessel as a part of the process and the individual aliquots were properly preserved. In all cases where a series of grab samples is manually composited, those parameters that have preservation requirements in 40 CFR Part 136 must be properly preserved and/or stored at the time of collection as required by the specific analytical method employed prior to compositing. In addition, EPA wishes to reaffirm that some pollutants are not amenable to the compositing process. Total residual chlorine, pH, and temperature samples can not be "composited" under any circumstances because the results would be changed by the compositing process. Therefore, today's proposal would not allow Control Authorities to authorize manually composited samples for these parameters.

Although analytical procedures for compositing oil and grease samples have been developed, the general consensus among laboratory experts is that current techniques do not provide consistently reliable results. However, continuing advances in analytical technology may provide methodologies that will make accurate compositing of oil and grease samples technically less cumbersome and more cost effective in the near future. Therefore, the Control Authority should have the flexibility of allowing industrial users to submit data from composited oil and grease samples as long as the sampling and analytical procedures used are sanctioned by EPA in 40 CFR Part 136 or outlined in technical guidance documents.

EPA guidance ("Industrial User Inspection and Sampling Manual for POTWs," EPA 831/B-94-001, April 1994) describes procedures for manually compositing individual grab samples that will provide accurate results. The reader should also consult the regulations in 40 CFR Part 136 to identify the accepted analytical protocols for specific classes of compounds or individual parameters. A separate guidance manual ("Comparison of Volatile Organic Analysis Compositing Procedures," EPA 821/R-95-035, 1995) describes procedures for accurate compositing of volatile organic compounds.

*When could flow-proportional sampling be waived?*

Today's proposal would allow Control Authorities to waive the requirement that industrial users collect flow-proportional samples. The regulation would no longer require Control Authorities to require the industrial user

to demonstrate that flow-proportional samples are "infeasible."

If the Control Authority doubts the equivalency of the two sampling methodologies (time-proportional versus flow-proportional samples), because of highly variable flow or other complicating factors, it still may require the industrial user to demonstrate that the time-proportional or grab samples are representative of the discharge prior to allowing the industrial user to submit such samples. Today's proposal, however, would delete the requirement that the demonstration be made in all cases.

As always, the Control Authority should prescribe a sampling protocol that produces representative results. The selected protocol should take into consideration all of the operation conditions and the physical configuration of the industrial user facility.

*What are the sampling requirements for those facilities that do not discharge continuously?*

Today's proposal would clarify that, although a "24-hour composite sample" must be taken within a 24-hour period, the sample should only be collected during that portion of the 24-hour period that the industrial user is discharging from the regulated process and/or from the treatment unit. Continuous sampling over a 24-hour period for a facility that discharges its process wastewater for less than 24 hours (e.g., an 8-hour shift or a 20-30 minute batch discharge) could cause the sample to be diluted in the sampler. Since flows of non-industrial wastewater routinely occur after the shift is over, use of an automatic sampler programmed for a 24-hour sampling protocol would yield unrepresentative results. The proposed 40 CFR 403.12(g)(3) would clarify that industrial users must collect samples that are commensurate with the time period during which the industrial wastewater is actually being discharged. However, the industrial user and Control Authority should be careful to ensure that if wastewater is discharged other than at the time of composite sample collection, that wastewater is not a regulated wastestream.

*I. Removal Credits (40 CFR 403.7)*

*a. Existing Rule*

*Generally, what aspects of the removal credit regulation is EPA addressing today?*

Removal credits are a regulatory mechanism by which industrial users may discharge a pollutant in quantities

that exceed what would otherwise be allowed under an applicable categorical pretreatment standard because it has been determined that the POTW to which the industrial user discharges consistently treats the pollutant. Today, EPA is proposing to revise one aspect of the removal credit regulations in 40 CFR 403.7.

EPA is clarifying that existing restrictions on removal credit authority for POTWs subject to Overflows apply to Combined Sewer Overflows (CSOs) and Sanitary Sewer Overflows (SSOs). In addition, those restrictions are being revised based on suggestions from several representatives of the SSO subcommittee of EPA's Urban Wet Weather Flows Federal Advisory Committee to further restrict removal credits upstream of SSOs and CSOs and to be consistent with a judicial decision allowing removal credits only to the extent that a pollutant is consistently treated.

Although discussed in previous stakeholder drafts, EPA is not proposing to amend Part 403 to make removal credits available for those pollutants that are not now listed in Part 403, Appendix G as eligible for removal credits. Instead, EPA expects that POTWs that desire removal credits for pollutants not listed in Appendix G will petition the Agency either for promulgation of Part 503 standards for the pollutants for which removal credits are desired or for an amendment to Table II of Part 403, Appendix G. In order for a petition to be considered by EPA, it must contain documentation consistent with the records of decision underlying current Appendix G listings. (Petitioners are referred to "Technical Support Document for the Round Two Sewage Sludge Pollutants" (EPA-882-R-96-003, August 1996).) Data must be included on the toxicity, fate, effects, and environmental transport properties of individual pollutants adequate to allow EPA to construct a Part 503 numerical standard, or to allow EPA to make a finding that the concentration of the pollutant in sewage sludge is not sufficient to create a reasonable probability of negative human health or environmental impacts from that pollutant contained in the sewage sludge considering the specific sewage sludge use or disposal practice being employed by the POTW.

#### b. Background on Sewage Sludge Issue

##### *When are removal credits authorized?*

Section 307(b) of the Clean Water Act directed EPA to establish national Pretreatment Standards for categories of sources to prevent interference with

POTW operation and pass-through of inadequately treated pollutants. Because, in certain instances, POTWs could provide some or all of the treatment of an industrial user's wastewater that would be required pursuant to the Pretreatment Standard, the Act also established a discretionary program for POTWs to grant "removal credits" to their industrial users. The credit, in the form of a less stringent categorical Pretreatment Standard, allows an increased concentration of a pollutant in the flow from the industrial user's facility to the POTW provided certain requirements are met.

Section 307(b) establishes a three-part test a POTW must meet in order to obtain removal credit authority for a given pollutant. Removal credits may be authorized only if (1) the POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate discharge would "not violate that effluent limitation, or standard which would be applicable to that toxic pollutant if it were discharged" directly rather than through a POTW, and (3) the POTW's discharge would "not prevent sludge use and disposal by such [POTW] in accordance with section [405] \* \* \*" (§ 307(b)). Through several rulemakings, EPA promulgated and revised its removal credit regulations, which are codified at 40 CFR 403.7.

##### *Why are sludge standards a prerequisite to removal credit authority?*

The United States Court of Appeals for the Third Circuit interpreted the Clean Water Act as requiring EPA to promulgate the comprehensive sewage sludge regulations required by CWA § 405(d)(2)(A)(ii) before any removal credits could be authorized. See *NRDC v. EPA*, 790 F.2d 289, 292 (3rd Cir., 1986); *cert. denied*, 479 U.S. 1084 (1987). Congress made this explicit in the Water Quality Act of 1987, which provided that EPA could not authorize any removal credits until it issued the sewage sludge use and disposal regulations. On February 19, 1993, EPA promulgated Standards for the Use or Disposal of Sewage Sludge, which are codified at 40 CFR Part 503 (58 FR 9248).

At the same time EPA promulgated the Part 503 regulations, EPA also amended its General Pretreatment Regulations to make removal credits available for the pollutants controlled by those sewage sludge use or disposal standards. EPA also added a new Appendix G to Part 403 that includes two tables of pollutants which would be eligible for removal credits so long as the other procedural and substantive requirements of 40 CFR Part 503 and 40

CFR 403.7 are met. The first table (Appendix G—Table I) lists, by use or disposal practice, the pollutants that are regulated in Part 503 and eligible for removal credit authorization. The second table (Appendix G—Table II) lists, by use or disposal practice, additional pollutants that are eligible for removal credits if the concentration of the pollutant in the sewage sludge does not exceed a prescribed concentration. The pollutants in Appendix G—Table II are the pollutants that EPA evaluated and decided not to regulate during development of the Part 503 regulations. See 58 FR 9381-9385. Minor revisions to Appendix G were made on October 25, 1995 (60 FR 54763).

##### *Will EPA be issuing standards for additional pollutants in sewage sludge?*

EPA is now in the second stage of development of sewage sludge standards. The Agency has completed the process of identifying a second set of pollutants that may cause adverse effects on public health or the environment in sewage sludge that is used or disposed ("Round Two Sewage Sludge Pollutants"). The final list of pollutants was submitted to the District Court in Oregon in November 1995 as part of litigation to compel the Agency to develop sewage sludge standards (*Gearhart v. Browner*, Civ. No. 89-6266-HO, D. Oregon.) EPA has identified only two additional pollutant categories for which limits may be developed in Round Two: dioxins/dibenzofurans and coplanar polychlorinated biphenyls (PCBs).

##### *How did EPA determine which pollutants to consider for Round Two sewage sludge standards?*

The analysis supporting the selection of these pollutants, and the exclusion of others, is presented in "Technical Support Document for the Round Two Sewage Sludge Pollutants" (EPA-882-R-96-003, August 1996). The pollutants analyzed in that document can be divided into three groups. The first group consists of pollutants that were detected in more than 10 percent of the samples in EPA's 1988 National Sewage Sludge Survey and that had not already been regulated in Round One. For these pollutants EPA performed a thorough review of the scientific literature for human health and toxicity data. To the extent data were available, they were reviewed to determine whether the presence of the pollutants in sewage sludge would present an unreasonable risk to public health and the environment when sewage sludge is used or disposed.

The second group of pollutants consists of pollutants that were detected at least once but in less than 10 percent of the total samples. EPA examined these pollutants only to determine whether they were highly toxic.

The third group consisted of pollutants not detected in any sample during the National Sewage Sludge Survey. EPA did not consider these pollutants for inclusion in Round Two.

EPA decided not to consider further for regulation those pollutants that are either not frequently detected, or are not known to present an unreasonable risk. Pollutants were either not analyzed or not fully analyzed by EPA because they were not detected, were detected infrequently in samples from the National Sewage Sludge Survey, or sufficient data and information on the pollutants' toxicity, fate, effects and environmental transport properties were not available for EPA to make a finding for further regulation.

*Would pollutants that EPA is not considering for sewage sludge standards be eligible for removal credits?*

When promulgating the initial regulations under Part 503, EPA interpreted the Court's decision in *NRDC v. EPA* as only allowing removal credits for a pollutant if EPA had either regulated the pollutant or established a concentration of the pollutant in sewage sludge below which public health and the environment are protected when sewage sludge is used or disposed. Today's proposal does not change this situation.

*What changes did EPA suggest in its 1997 letter to stakeholders?*

EPA's letter to stakeholders would have removed the current prohibition against removal credits for pollutants for which EPA has not established a safe level in sewage sludge for the POTW's use or disposal practice. Specifically, if EPA were no longer considering developing a standard for a pollutant for the POTW's sewage sludge use or disposal practice, the POTW could receive removal credit authority for the pollutant (assuming the other regulatory requirements are met) if the POTW submitted with its removal credit application a study that supported the conclusion that the granting of removal credits would not increase the level of pollutants in the POTW's sewage sludge to a level that would have an adverse impact on public health and the environment.

*How did stakeholders respond?*

State representatives were divided on this proposal, with a majority opposing

the proposal or the concept of removal credits generally. Commenters representing industry either supported the proposal or had no comment. Commenters representing POTWs were evenly split. Commenters representing an environmental group opposed EPA's proposal to allow granting of removal credits for those pollutants not controlled by a sewage sludge standard. A few commenters asked EPA to clarify the extent of the study that the POTW would have to perform and the standard that the sewage sludge would have to meet.

A variety of reasons were given for opposing the proposal. One commenter thought that categorical Pretreatment Standards should apply across the board. Others thought that removal credits are difficult to implement or would negatively impact the reuse of sewage sludge. EPA notes that removal credits are specifically allowed by §307(b) of the Clean Water Act if certain conditions are met, and the Agency has no authority to abolish removal credits altogether.

Some commenters expressed concerns that sludge risk assessment analysis is very complicated. One noted that POTWs with multiple sludge use or disposal options would have to perform separate studies for each option.

Two commenters that favor the availability of removal credits argued that EPA has no authority to require POTWs to perform a health risk assessment in order to obtain removal credit authority because once the Round Two sludge regulations are promulgated, the requirement that removal credits not prevent sludge use and disposal would be satisfied for all remaining pollutants that EPA has decided not to regulate in sewage sludge. An opponent of the proposal argued that EPA could not allow the POTW to perform the study and that removal credits cannot be authorized unless EPA has established the allowable pollutant level in sewage sludge for the POTW's use or disposal practice.

#### c. Decision on Sewage Sludge Issue

*What is EPA's decision regarding sewage sludge and removal credits?*

Today's proposal would not provide for POTWs to apply for removal credit authority for pollutants not eligible for removal credits under Part 403. Instead, a POTW or industrial user can currently petition the Agency to establish a Part 503 standard or an amendment to Part 403, Appendix G—Table II for a pollutant along with an analysis of the impact of the pollutant on the use or

disposal of its sewage sludge. Upon promulgation of the Part 503 standard or listing of the pollutant in Part 403, Appendix G—Table II, the pollutant would be eligible for inclusion in an application for a removal credit.

*What would be the scope of the petitioner's analysis of the risk related to its sewage sludge?*

The petitioner's analysis would have to provide sufficient information on toxicity, persistence, concentration, mobility, and potential for exposure for EPA to consider in establishing concentrations of the pollutant in sludge that would not have an adverse effect on public health or the environment when sewage sludge is used or disposed. If a reference dose (RfD) upon which a human health endpoint is based and an ambient water quality criterion (AWQC) that protects aquatic life from the pollutant's effects are not available, the petitioner must provide information on the toxicity of the pollutant and its environmental properties consistent with existing methodologies cited in the 40 CFR Part 503 Technical Support Documents. This information must be sufficient for EPA to be able to create an RfD and AWQC and then to establish appropriate concentrations of the pollutant in sewage sludge to protect public health and the environment prior to promulgation of a new Part 503 numerical standard or listing in Part 403, Appendix G—Table II. In addition, sufficient toxicity information relating to the effects on other terrestrial animals and plant species would have to be provided for EPA to consider exposures of these species to the pollutant in order to craft protective numerical criteria for those exposure pathways. Sufficient data on the pollutant's fate effects and environmental transport properties are required to evaluate all relevant exposure pathways and to prepare appropriate numerical standards for each pathway. These data requirements are described in the preamble and the Technical Support Documents to the final Part 503 regulations published on February 19, 1993 (58 FR 9248). The preamble fully describes EPA's approach, which included an analysis of 14 pathways that could result in a pollutant in sewage sludge having an adverse effect on human health or the environment. All 14 pathways may not be applicable to the petitioner's specific situation, but the database submitted by the petitioner must establish both human health and environmental effects with respect to all pertinent pathways for the use or disposal practice employed by the POTW granting the removal credit. This information must

be sufficient for EPA to promulgate Part 503 numerical standards for those individual pollutants for which removal credits are being sought or findings by EPA that the concentration of these pollutants in sewage sludge after issuance of the removal credits will not create a significant human health or environmental impact.

The petitioner's submitted database can be limited to its particular circumstances, provided the promulgated Part 503 standard is made contingent on those circumstances. For example if the pollutant at issue is in sewage sludge that will be disposed in a surface disposal site, the petitioner need only submit sufficient data on the pollutant's properties relevant to surface disposal. The revision to the POTW's NPDES permit to incorporate the removal credit authority would also require the POTW not to exceed the determined sewage sludge concentration and would specify the associated management practices and reporting requirements.

The study need not be prepared by the petitioner itself, but may be performed by any party. Ultimately, however, it is the POTW that must submit the request for and be given the authority to grant the removal credit.

One commenter asked if the study would have to address the fate of the pollutant for incinerated sludge. As described in the preamble to the final Part 503 regulations, the study would have to determine the dose received by individuals living near the incinerator and would have to compare that dose to available human health criteria (58 FR 9303, February 19, 1993).

*Why is EPA not proposing to change the rule?*

First, very few POTWs expressed interest in removal credits since they became available in 1993 or in response to the May 1997 letter to stakeholders. And as discussed above, there was substantial opposition among some commenters to allowing POTWs to perform studies as conditions for granting removal credits for pollutants not regulated under either round one or two of the § 405(d) regulations. One commenter argued that allowing POTWs to perform the study would not adequately protect public health and the environment from chemicals that are discharged. The same commenter thought that POTW studies would be more likely to be biased. In response, EPA has decided not to amend Part 403 to include this proposal and notes that data provided in support of petitions to establish Part 503 standards would be peer reviewed and used in conjunction

with any risk assessment or other data collected by EPA.

It should be noted that a POTW or an industrial user can currently petition EPA to establish a standard for a particular pollutant, so that removal credits could then be available. EPA believes that this mechanism is the soundest way to develop additional opportunities for removal credit authority.

#### d. Background on Overflow Issue

*How do overflows affect a POTW's eligibility for removal credit authority?*

The Court of Appeals in *NRDC v. EPA* ruled that removal credits could only be available if the POTW removes a pollutant with a consistency that approximates the consistency with which an industry using the best available technology can remove the pollutant (790 F.2d at p. 292). EPA's 1984 revisions to the Part 403 regulations allowed removal credits to be based on the average removal by the POTW, a rate that the POTW would achieve only 50 percent of the time. The Court ruled that this was not sufficiently consistent removal to support the granting of removal credits.

The Court also ruled that the regulation's determination of consistent removal also failed to take into account the existence of Combined Sewer Overflows (CSOs). In response to the Court's decision, EPA reinstated the provision from its previous regulations regarding CSOs. Under those regulations, a removal credit is reduced by a percentage equal to the percentage of the hours in a year that the POTW's collection system is subject to CSOs. The preamble to the notice reinstating the former regulation did not discuss whether the reinstated regulation satisfied the Court's definition of consistency.

EPA issued its Combined Sewer Overflow (CSO) Control Policy on April 19, 1994 (59 FR 18688). The policy was developed in close consultation with and supported by representatives of POTWs, environmental groups and other stakeholders. An earlier CSO guidance memorandum contained in Appendix A to Part 403 is now obsolete, and EPA is proposing to remove it from the removal credit regulations.

EPA has convened a Federal Advisory Subcommittee to advise the Agency on its policy toward Sanitary Sewer Overflows (SSOs). The presence of SSOs and CSOs results in sewage being discharged to surface waters instead of receiving treatment at the POTW. Some members of the SSO Federal Advisory Subcommittee have suggested that

removal credits should not be available if the industrial user discharges upstream from an SSO.

There has been some confusion whether the references in 40 CFR 403.7(h) to "Overflows" apply to SSOs or only to CSOs. Although the definition of Overflow appears to encompass both CSOs and SSOs, a reference in the regulation to EPA's CSO guidance memorandum could suggest that the section applies only to CSOs.

#### e. Proposal Relating to Overflow Issue

*What did EPA propose in its 1997 letter to stakeholders regarding overflows and removal credits?*

EPA's 1997 letter contained the same proposal and options outlined below. Most commenters supported the draft proposal. A couple of commenters opposed restricting removal credits if the discharge could exit an overflow point untreated or if it did so more than one percent of the time, especially if the POTW is implementing EPA's CSO policy and any future SSO policy. Currently, removal credits can be granted in such situations if adjusted to account for the percentage of time during which overflows occur. EPA, however, questions whether removal credits should ever be available for pollutants that are not consistently treated, and is proposing that their availability be restricted if a POTW's collection system is subject to overflows.

*What is EPA proposing regarding overflows and removal credits?*

Today's proposal clarifies that the restrictions on the availability of removal credit authority for POTWs with overflows applies to POTWs with collection systems subject to either CSOs or SSOs. References in the regulation to obsolete guidance on the use of construction grants for CSO control would be removed by deleting Appendix A as well as deleting other references due to the changes in 40 CFR 403.7(h)(2) described below. EPA is proposing to make industrial users that are upstream of CSO or SSO outfalls ineligible for removal credits unless it can be established that their discharges will be consistently treated.

One way to ensure that an industrial user's waste will be consistently treated by the POTW is for it to cease discharging its waste when necessary to prevent its escaping during an overflow event. This option may be practical only for industrial users that need to introduce batch discharges to the POTW only periodically. This option is in the current regulations; today's proposal

clarifies that it applies to both CSOs and SSOs.

EPA is proposing to restrict removal credit authority where discharges exit CSO or SSO outfalls untreated. If any overflow point receives treatment (e.g., primary clarification at the outfall) that is demonstrated to consistently treat a percentage of a pollutant, then the POTW responsible for that outfall may apply for removal credit authority for that percentage using the procedures in 40 CFR 403.7(b) for determining consistent removal. If no treatment occurs at any overflow points downstream from an industrial user, that industrial user would not be eligible for a removal credit and would have to comply with the national categorical pretreatment standard. Consistent with this approach, today's proposal would delete the existing provision in 403.7(h)(2) which allows removal credits for discharges that are subject to overflows but reduces the credit by a percentage equal to the percentage of time in a year that the POTW is subject to overflows.

*Will EPA consider other options for removal credits if POTWs have overflows?*

EPA is soliciting comment on whether to continue to allow removal credits for industrial users upstream of SSO and CSO outfalls regardless of whether any treatment occurs at the outfalls. Under the existing rule, the allowable credit is reduced by the percentage of time a POTW's collection system is subject to overflows. The percentage is calculated based on the number of hours that overflows occur during a year, and there is no limit on what that percentage may be. By authorizing removal credits for POTWs subject to overflows, the current rule reduces the possibility that the industrial user will be required to pretreat its discharge during periods when overflows are not occurring and the POTW would be able to treat it. Because the credit is reduced by the percentage of time the system overflows, the total authorized discharge would be the same as would be authorized in the absence of an overflow. On the other hand, an industrial user's discharge might receive no treatment during periods of overflow. To the extent that these untreated discharges occur during rain events, water quality impacts might be reduced by high flow conditions in the receiving water body.

EPA is soliciting comment on other approaches such as allowing removal credits for industrial users whose discharges would be expected to exit the collection system via SSOs or CSOs no more than one percent of the time.

Many categorical pretreatment standards are developed assuming that an industrial user will be in compliance with them 99% of the time if it employs the best available technology. Allowing removal credits where overflows are infrequent enough that the POTW will treat the industrial users 99% of the time is consistent with the methodology for developing the national standards. This approach, however, also could result in wastes receiving no treatment during the infrequent overflow events. On the other hand, it would also eliminate the need for redundant pretreatment by the industrial user of wastes that are eventually treated by the POTW, but only for those industrial users whose discharges are subject to overflows less than one percent of the time.

*J. Electronic Filing and Storage of Reports*

a. Background

*What are the current reporting and record keeping requirements?*

The Table below identifies the specific Pretreatment Regulations for reporting, signature, and records retention applicable to industrial users and Control Authorities.

TABLE A

CFR cite	Topic
403.6(a) .....	Category Determination Request.
403.12(b) .....	Baseline Monitoring Report.
403.12(d) .....	Report on compliance with categorical pretreatment standard deadline.
403.12(e) and (h) .....	Periodic reports on continued compliance.
403.12(f) .....	Slug Loading notification.
403.12(g)(2) .....	24-hour noncompliance reporting.
403.12(i) .....	Annual POTW reports.
403.12(l) .....	Signatory requirement for Industrial Users.
403.12(m) .....	Signatory requirement for POTWs.
403.12(o) .....	Record keeping requirements.
403.12(p)(1) .....	Notification of discharge of hazardous waste.
403.13(g) .....	Variance request.
403.16(c)(3) .....	Upset Provision.
403.17(c)(1-2) ..	Bypass notification.

When EPA promulgated these regulations, the Agency did not anticipate technologies for electronic reporting and electronic record storage. Consequently, the regulations do not specifically address use of electronic reporting technologies.

*Why should the regulations allow for an "electronic option"?*

EPA is evaluating all of its programs for regulatory and procedural barriers to allowing electronic reporting and storage of records in place of paper copies. The Agency believes electronic reporting will help reduce the paperwork burden associated with reporting and produce more cost-effective transactions. The Agency intends to promote the adoption of electronic reporting in environmental control programs and to ensure implementation in a manner that is both consistent across the Agency and compatible with the current electronic reporting practices in the private sector.

*What is EPA's current policy on electronic reporting?*

On September 4, 1996, EPA published a "Notice of Agency's General Policy for Accepting Filing of Environmental Reports via Electronic Data Interchange (EDI)" (61 FR 46684). The purpose of the notice was to announce the Agency's general approach for accepting electronic filing of environmental reports via EDI. As described in that notice, regulated facilities would be able to submit required reports electronically using EDI under certain conditions. First, the facility would enter into a terms and conditions agreement (TCA) with the Agency (as the recipient of the reports). Second, the individual responsible for submitting the report would use a Personal Identification Number (PIN) that would function as a signature on the reports. Finally, under the TCA, the facility would be required to adhere to security and audit/control requirements as described in the notice.

In the September 4 notice, the Agency noted that no specific reporting requirement could be satisfied via EDI until after EPA developed program-specific implementation guidelines. EPA also noted that additional security procedures might be necessary on a program-by-program basis.

*What is EDI?*

EDI is the transmission, in a standard syntax, of unambiguous information between computers of organizations that may be external to each other. EDI is the most common form of electronic commerce currently used in the private sector to transfer information and products. EDI functions by using a translator to send data from the sender's system through a third party's value added network (VAN) and the receiver's translator to the receiver's system. EPA is determining whether additional security measures, beyond those



required in the September 4 policy, are needed for the electronic submission of compliance reports using EDI. Today EPA invites comment on the use of EDI, and/or other appropriate forms of electronic reporting, under the pretreatment program regulations to satisfy any or all of the requirements listed in Table A.

#### *What about using the Internet?*

In addition to EDI, the Agency is exploring the electronic submission of compliance data via the Internet. Under the auspices of the Common Sense Initiative for Metal Finishing, the Regulatory Information Inventory and Team Evaluation (RIITE) program in cooperation with the Office of Solid Waste (OSW) and the Office of Wastewater Management (OWM) is conducting several pilot projects to test the feasibility of Internet-based reporting and forms. The RIITE Program is developing Internet forms for OSW requirements, as well as for the periodic reporting of continued compliance by industrial users, as required at 40 CFR 403.12(e). Several POTWs and Industrial Users in the RIITE group are engaged in a series of technical, security, and human factors tests using the 40 CFR 403.12(e) Internet form.

The RIITE project is exploring security and operational issues by allowing participants to sign forms electronically using digital signature/encryption standards. They may also test EDI-Internet scenarios. The results of the pilots will be used to identify legal and implementation issues associated with the Internet and, where appropriate, to expand the September 4 policy to incorporate procedures that address the Internet as an avenue for submission of environmental reports.

#### *What has the Agency done to address electronic storage of records?*

On November 12, 1996, the Agency recognized the acceptability of electronic record storage in the context of hazardous waste manifests required under the Resource Conservation and Recovery Act (RCRA). In a memorandum to the Safety-Kleen Corporation, the Office of Solid Waste noted that "Safety-Kleen Corp.'s automated manifest record keeping system, which uses a scanner and personal computer to generate and store electronic image files of completed and signed manifests, complies with both the current regulatory requirements addressing the retention of signed manifest copies by waste handlers and the RCRA statutory requirement that hazardous waste facilities provide

RCRA inspectors with access to their records for inspection and copying."

#### b. Stakeholder Comments

##### *What was the Stakeholder response regarding electronic reporting and record keeping?*

In response to EPA outreach, forty-six stakeholders commented on the feasibility of some form of electronic reporting and electronic storage of pretreatment records. While most commenters agreed with the concept of electronic reporting, they felt implementation would be a major hurdle due to availability and use of different software and hardware by permitting agencies and permittees. Two commenters cautioned EPA not to make electronic reporting mandatory, and several commenters raised concerns about signatory requirements.

With regard to electronic storage of data, several commenters expressed concerns over preservation of electronic records. One commenter stated that "storage may be adequate for three years, but magnetic records are not permanent and changes in hardware and software have made it impossible to retrieve digital data after more than about five years." This same commenter also discussed how over the years we have learned to preserve paper documents, but we have not yet learned to preserve "electronic files."

#### c. Electronic Reporting Proposal

##### *How does EPA plan to address electronic reporting and recordkeeping?*

EPA is not proposing to amend the regulations to provide for electronic reporting and recordkeeping at this time. Instead, EPA plans to separately propose changes to Parts 122, 123, and 403 to establish criteria or requirements to achieve reliable and secure transmission and storage of electronic data in the NPDES and pretreatment programs. EPA does not currently plan to require any entity to either submit or receive any reports electronically. The Agency merely wants to ensure that the option is available where there is a consensus to do so. Although EPA would not require electronic reporting, State and local authorities would retain discretion under applicable State and local law to require it, and EPA may consider some mandatory electronic reporting in the future.

One commenter suggested that a more complete database of Pretreatment Program information should be required to go along with the additional flexibility provided by this proposal. EPA is considering whether, in order to provide full public access to key

information relating to the Pretreatment Program impacts from larger POTWs (e.g., those having dry weather hydraulic flow rates in excess of 5 MGD), to require some mandatory electronic reporting of required annual report information. The timing of this requirement would be dependent upon the development of software and reporting protocols as well as provision of space in an EPA database. Other options for making annual report information publicly available would include mechanisms for posting to a web site by EPA, States, or POTWs.

For purposes of this rulemaking, EPA is soliciting comment on both the proposed voluntary reporting initiative, as well as the possible future mandatory reporting requirement of pretreatment-related information for larger POTWs. Commenters are encouraged to provide both technical opinions and data to support their position with regard to these initiatives. However, EPA would not promulgate a requirement for mandatory electronic reporting of pretreatment-related information without first proposing a more detailed set of protocols and requirements and receiving public comment on these. EPA also invites commenters to discuss any other viable options that would provide more ready access to POTW Pretreatment Program information for the public and Approval Authorities. Discussion of the appropriate size or other criteria that could be used to define POTWs subject to mandatory electronic reporting is specifically desirable.

EPA does not currently plan to propose particular information technology for electronic reporting of pretreatment information. Instead, EPA will propose regulatory revisions to recognize electronic reporting and to establish performance standards for its implementation. This will include requirements to ensure appropriate levels of data integrity, information security, and personal (individual) accountability for the person submitting an electronic report.

Some pretreatment reports may have greater potential for electronic reporting than others. The periodic submission of POTW annual reports (40 CFR 403.12(i)) and industrial user compliance reports (40 CFR 403.12(e)) presents electronic reporting opportunities that could result in significant savings in time and resources for the regulated community and oversight authorities. Other reports that may be particularly well suited to electronic reporting include slug loading reports, 24-hour noncompliance reports, and bypass and upset notifications. For these types of

intermittent reports, the speed of electronic reporting may improve use of the information. Other types of reports, such as the written authorization of representatives to sign reports (40 CFR 403.12(l)(3)), provide less opportunity for electronic reporting.

EPA is interested in comment on the appropriateness of electronic reporting and record storage to satisfy the various requirements identified in Table A. To ensure the continuing viability of self-monitoring and self-reporting under the CWA, EPA is particularly interested in and seeks comment on how to ensure personal responsibility and accountability in the individual submitting an electronic report. This concern is especially important in light of the regulatory provisions of 40 CFR 403.12(n) regarding fraud and false statements. In the upcoming NPDES rule, EPA plans to propose general electronic reporting criteria to address necessary security and accountability. Prior to promulgation of final regulations authorizing electronic reporting, the Agency will attempt to integrate the "lessons learned" from the ongoing projects described above, particularly, with respect to these issues. EPA is soliciting comments on electronic filing of reports and requests information on any forms of electronic commerce that can be utilized for environmental reporting and records storage. The Agency is also soliciting comment on the costs associated with the implementation of electronic reporting.

### K. General Permits

#### a. Existing Rule

##### *Are POTWs allowed to issue general permits to control industrial users?*

Currently, the Pretreatment Regulations do not prohibit the use of general permits to control the discharge of wastes from industrial users (IUs) to POTWs. POTWs may use general permits to control non-significant industrial users. Section 40 CFR 403.8(f)(1)(iii) requires POTWs to "Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance. \* \* \* In the case of Industrial Users identified as significant \* \* \*, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user." The preamble to the regulation at 55 FR 30082 (July 24, 1990) emphasizes the importance of POTWs evaluating SIUs on an individual basis to determine the need for individual requirements as necessary. This directive for site specific

requirements makes impractical the use of general permits to control SIUs.

##### *What benefits do general permits provide?*

Comments received in response to EPA's outreach efforts indicated that most POTWs believed it would be beneficial to be able to issue general permits to similar industries. As explained in the "USEPA NPDES Permit Writers' Manual" (EPA 833-B-96-003, December 1996), the use of general permits allows the permitting authority to allocate resources in a more efficient manner and to provide more timely permit coverage. For example, direct dischargers with common characteristics may be covered under a general permit without expending time and money to issue individual permits to each of these facilities. The use of a general permit also ensures consistency of permit conditions for similar facilities. In the pretreatment context, Control Authorities might benefit from the use of controls for discharges from SIUs to POTWs which are similar to the general permits used in the NPDES permit program (40 CFR 122.28).

#### b. Stakeholder Comments

##### *What changes did EPA suggest during its stakeholder outreach efforts?*

EPA suggested providing Control Authorities the ability to issue general permits. These general permits would be available to members of industrial user groups with substantially the same processes being used and the same wastewaters being discharged. General permits would not be able to be used in complex permitting situations where there are production-based standards, the combined wastestream formula is necessary, or where mass limits are necessary.

##### *How did stakeholders respond?*

The majority of commenters supported the proposal to allow Control Authorities to use general permits. One commenter pointed out that granting general permitting authority within the industrial Pretreatment Program has the potential to allow large scale paperwork and other personnel efficiencies to take place.

#### c. Today's Proposal

##### *What is EPA proposing?*

EPA is proposing to allow the use of general permits to regulate significant industrial users (SIUs) in certain circumstances. General permits could only be issued for SIUs that are covered by concentration-based standards or best management practices. All of the

facilities to be covered by a general permit must employ the same or substantially similar types of industrial processes; discharge the same types of wastes; require the same effluent limitations; and require the same or similar monitoring.

Because the development of mass limits involves calculations unique to each facility, general permits could not be used for SIUs subject to mass limits. For the same reason, general permits would not be available for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations or other calculated categorical Pretreatment Standard equivalents (40 CFR 403.6(e) and 40 CFR 403.15).

EPA is requesting comment on whether there are situations where the preceding restrictions might limit the use of general permits inappropriately. Commenters are encouraged to provide specific examples of industries or groups of facilities for which relaxation of one of these restrictions, in order to allow the use of a general permit, would be appropriate, and to discuss how the problem of adequately specifying requirements in a general permit for dissimilar facilities or those requiring site-specific calculations would be addressed.

For an individual SIU to be covered by a general permit, it must file a Notice of Intent to be covered by the general permit unless the POTW has established another mechanism that serves this function. Under such a mechanism, the industrial user should identify its production processes, types of waste generated and the monitoring location or locations at which all regulated wastewaters will be monitored.

This proposal would not relieve the SIU that is subject to the general permit from any reporting or compliance obligations under Part 403.

##### *How would POTWs implement general permits?*

A POTW would have to have the necessary legal authority if it wanted to issue general permits. General permits would have to be enforceable to the same extent as an individual permit. The POTW should also have enforcement authority against industrial users that fail to file the required Notice of Intent or other designated mechanism (e.g., an IU that fails to file is subject to enforcement for discharging without a permit as prescribed in the POTW's enforcement response plan).

The POTW would need to develop the general permit and provide notice that the permit is available. The general permit would need to specify exactly

what characteristics or conditions render an industrial user eligible for coverage under the general permit. The general permit would have to impose all of the conditions of individual permits listed in 40 CFR 403.8(f)(1)(iii)(A) to (E), except that the monitoring location may be identified as that listed in a facility's Notice of Intent or other mechanism designated by the POTW.

A POTW could make coverage by the general permit mandatory or optional. In either case, if an industrial user is to be covered by the general permit, it must file the Notice of Intent or meet other requirements established by the POTW to be covered by the general permit.

This modification should help POTWs by providing a cost-effective method to cover large numbers of similar facilities under a single permit. This is expected to reduce the administrative burden of issuing separate permits to similar facilities.

Today's proposal would not preclude Control Authorities from issuing individual permits where necessary. Today's proposal also would not restrict Control Authorities' existing authority to use general permits to regulate facilities that are not considered significant industrial users.

It is important to note that in the case where a Control Authority does not have the authority or procedures for issuing general permits in its approved program, a shift by the POTW to a general permit system for a given group of significant industrial users would be considered a substantial modification under 40 CFR 403.18(b)(3). The annual report would indicate which SIUs are covered by each general permit.

EPA is requesting comment concerning the mechanism POTWs should use for industrial users to request coverage under a general permit. The NPDES permit program requires facilities to file a notice of intent to be covered by a general permit. However, since NPDES permit issuance and processing procedures are very different from those used for the pretreatment program's control mechanisms, a mechanism other than a notice of intent may be appropriate for pretreatment general permits.

*L. Best Management Practices (40 CFR 403.5; 403.8(f); and 403.12(b), (e), and (h))*

#### a. Existing Rule

*What are best management practices?*

Best management practices (BMPs) may be generally defined as practices that are intended to keep pollutants out of a facility's wastestream or from

reaching a discharge point and may be contrasted with numeric effluent limits that regulate the pollutants in a wastestream. Although the Pretreatment Regulations do not define BMPs, the NPDES regulations at 40 CFR 122.2 define BMPs as schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

There are two distinct uses of BMPs as pretreatment limitations. These are local limits established by the POTW and categorical Pretreatment Standards established by EPA.

*What regulations address the use of BMPs as local limits?*

Currently, the Pretreatment Regulations do not address the use of BMPs as local limits. For example, 40 CFR 403.5(c) requires POTWs to develop "specific limits" and "specific effluent limits." It is not clear whether POTWs could satisfy this requirement by developing BMPs rather than numeric limits.

The question of whether a BMP falls within the meaning of "limit" or "local limit" arises throughout the regulations. For example, it is not clear whether the word "limit" includes BMPs for the purpose of the local permitting requirements under 40 CFR 403.8(f)(1)(iii)(C).

The "Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program" (EPA 833/B-87/202, December 1987) provides general information on the use of BMPs as local limits. Specifically, the guidance explains, "The development and implementation of numeric local limits is not always the only appropriate or practical method for preventing pollutant pass through and interference, or for protecting POTW worker health and safety. Control of chemical spills and slug discharges to the POTW through formal chemical or waste management plans can go a long way toward preventing problems. A local requirement for an IU to develop and submit such a plan can be considered as a type of narrative local limit and can be a useful supplement to numeric limits." The guidance then provides more detailed information on the different ways management plans can be applied.

*What regulations address the use of BMPs as categorical standards?*

Certain categorical Pretreatment Standards allow the use of BMPs in place of the established numeric effluent limit. For example, facilities may develop toxic organic management plans in lieu of sampling to demonstrate compliance with the total toxic organic limit in 40 CFR Part 433 (Metal Finishing category). The Pesticides Formulating, Packaging, and Repackaging (PFPR) regulation provides a pollution prevention alternative as an option that may be chosen rather than complying with the "zero discharge" limitations. See 40 CFR Part 455 (61 FR 57518, November 6, 1996).

Although the PFPR and some other categorical standard regulations provide for reporting compliance data related to BMPs, the current Part 403 Pretreatment Regulations do not. See 40 CFR 403.12(b), (d) & (e). The existing requirements focus on sampling data to demonstrate compliance with numeric limits rather than documentation to determine compliance with a BMP.

#### b. Stakeholder Comments

*What changes did EPA suggest during its stakeholder outreach efforts?*

EPA suggested that POTWs be allowed to use best management practices (BMPs) as local limits. This would provide POTWs the option currently available to NPDES permit writers under 40 CFR 122.44(k), which allows the use of BMPs in lieu of numeric effluent limits. EPA also suggested revising the reporting requirements for numeric limits so that they would encompass BMPs.

*How did the stakeholders respond?*

Most stakeholders indicated they supported the proposal. Some of the commenters provided examples of how they are already using BMPs to control certain wastewater discharges where they found it impractical to apply a numeric effluent limit. Some stakeholders, however, did not feel it was appropriate to provide this authority to POTWs. These comments will be addressed in the following section devoted to "Today's proposal."

#### c. Today's Proposal

*What is EPA proposing?*

EPA is proposing to clarify that best management practices developed by POTWs may serve as local limits required by 40 CFR 403.5(c)(3). The BMPs would be enforceable under 40 CFR 403.5(d). They would be included as local permit requirements under 40 CFR 403.8(f)(1)(iii)(C).

EPA is also proposing to modify 40 CFR 403.12(b), (e) & (h) to clarify the reporting requirements that apply when BMPs are used as Pretreatment Standards. This would include any documentation required by the Control Authority or the standards themselves to demonstrate compliance with BMPs that are included in national categorical standards, as well as any documentation required by the Control Authority to demonstrate compliance with BMPs that serve as local limits.

*When could POTWs develop BMPs?*

EPA anticipates that POTWs will elect to use BMPs instead of numeric local limits in circumstances similar to their use in the NPDES permits program. NPDES permits may require compliance with BMPs in cases where calculation of numeric effluent limitations is not feasible or as a supplement to numeric limits set in a guideline or as otherwise appropriate to meet the requirements of the Clean Water Act (40 CFR 122.44(k)). BMPs may be appropriate for regulating releases when the types of pollutants vary greatly over time, when chemical analyses are inappropriate or impossible, and when other discharge control options are inappropriate.

One commenter felt that BMPs should not be allowed "in lieu of" numeric limits; rather, BMPs should only be allowed in addition to numeric limits because BMPs could not be set for specific pollutants. Another commenter felt that BMPs could not be allowed as local limits because the Clean Water Act did not provide authority for them as local limits.

For the BMPs to be considered local limits under 40 CFR 403.5(c), they must protect against pass through and/or interference. This will require the POTW to evaluate the BMPs during the technical evaluation of its local limits. During the technical evaluation for local limits, the POTW will determine the maximum allowable headworks loadings (MAHL) for pollutants of concern. This MAHL will then be allocated to the different contributing sectors of the service area, such as domestic loadings, commercial loadings, industrial loadings and a safety factor. Based on these considerations, the POTW will decide how to control the different contributing sectors in order to protect against pass through and interference. Often the POTW simply allocates a portion of the loading to control industrial contributions; this is considered to be the maximum allowable industrial load (MAIL). The MAIL is then converted into the local limit which is often expressed as an across-the-board

concentration applicable to all industrial sources or all "users of the POTW." This is not the only way local limits can be developed. Another option available to the POTW is to apply the MAIL to all industrial and commercial sources and to use a mixture of BMPs and numeric limits to control industrial and commercial sources of pollutants. Whatever the allocation scenario, the BMPs are developed by the POTW to protect against pass through and interference, and are local limits.

*What input does EPA need on this proposal?*

EPA is requesting comment on the appropriateness of the use of best management practices as 40 CFR 403.5(c) limits. EPA is requesting examples of instances where BMPs may be more appropriate or may provide better environmental protection than numeric effluent limitations.

*M. Significant Noncompliance Criteria (40 CFR 403.8(f)(2)(vii))*

a. Existing Rule

*How is significant noncompliance currently defined?*

"Significant Noncompliance" (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report noncompliance; and (8) any other

violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

*What are the background and purpose of the SNC criteria?*

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among POTWs for publishing their lists of industrial users in noncompliance. The modification was modeled after the criteria under the NPDES program used in determining SNC violations for direct dischargers. By making the modifications, EPA also established more parity in tracking violations by direct and indirect dischargers.

*What happens when an industrial user facility is in SNC?*

POTWs are required to annually publish a list of industrial users in SNC at any time during the previous twelve months. The POTW must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. The Agency emphasizes that industrial users are liable for any violation of applicable Pretreatment Standards and requirements and strongly encourages Control Authorities to take some type of enforcement response for each such instance of noncompliance. In fact, the very underlying premise of the Enforcement Response Plan is that there will be some type of response for all instances of noncompliance. Whether an industrial user is identified as being in SNC does not determine the type of enforcement action that should be taken. Appropriate types of enforcement responses are addressed in the POTW's Enforcement Response Plan, although EPA guidance recommends that violations rising to the level of SNC be met with some type of formal enforcement action like an enforceable order ("Guidance For Developing Control Authority Enforcement Response Plans," EPA 832-B-89-102, September 1989).

b. Stakeholder Comments

*On what parts of the SNC criteria is EPA seeking comment?*

EPA is not proposing to amend the entire provision on SNC, nor is the Agency seeking comment on all of it. Instead, EPA is proposing limited changes and seeking comment on a number of options for a few specific

provisions. EPA considered the recommendations and issues related to SNC suggested by a number of commenters, including the WEF/AMSA workgroup. These issues are discussed below.

#### 1. Publication

Currently, POTWs are required to annually publish a list of industrial users which, at any time during the previous twelve months, were in significant noncompliance. This list must be published in the largest daily newspaper published in the municipality in which the POTW is located (40 CFR 403.8(f)(2)(vii)). The purpose of this provision is to notify the public of violations. The provision also offers a disincentive for violating because of the resulting "bad press."

Commenters have suggested a number of possible revisions to this provision. One would allow publication in any daily newspaper published in the municipality instead of the "largest daily newspaper." Such a modification may result in lower costs to the municipality but it may not be as effective in providing (1) notice to the public or (2) a deterrent effect on the industrial user. One commenter suggested requiring a press release to all daily papers discussing the publication and leaving the actual choice of where to publish up to the POTW. Another commenter suggested requiring the industrial users to pay for the publication.

Another option for amending this provision is focusing on the circulation of the newspaper. For example, the Agency could require publication in the newspaper with the largest circulation in the municipality in which the POTW is located. This could be a daily or weekly (or other frequency) paper. A number of commenters supported this approach, although one noted how difficult it would be to find out what a paper's circulation was. After considering these various suggestions, EPA is today proposing to modify this requirement to be consistent with the July 17, 1997, amendments to Part 403 regarding modifying POTW Pretreatment Programs (62 FR 38406). Under the newly amended 40 CFR 403.11(b)(1)(i)(B), publication can be in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. EPA believes that such a performance standard for the Control Authority appropriately balances the need to allow flexibility to select choices available in a particular community, with the need to ensure effective public notice and deterrence of "bad actors."

EPA is also seeking comment on an appropriate definition for "meaningful public notice" to ensure some level of consistency across the pretreatment programs. One option for defining the phrase is to tie it to the circulation of the paper. For example, circulation of the chosen paper must be to at least some specified percent of the POTW's service population.

A number of commenters expressed concern about where in a paper the notice could be found. One commenter suggested EPA should specify where the notice should be placed (e.g., somewhere more prominent than the Public Notice section). Because there is no existing requirement on where to publish the notice, POTWs are currently free to publish the notice in whatever section they feel is most appropriate.

EPA is seeking comment on this and any other appropriate modification to the publication requirements.

#### 2. Applicability

Under the existing regulations, SNC can apply to any industrial user. The WEF/AMSA workgroup recommended that SNC should only be applied to significant industrial users (SIUs). EPA supports this recommendation and is proposing to modify the regulations to apply SNC only to SIUs. This approach is consistent with the NPDES SNC policy which only applies to major dischargers. See "Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits," memorandum from Steven A. Herman, Assistant Administrator for the Office of Enforcement and Compliance Assurance, September 21, 1995. Additionally, this modification should cut down on administrative burdens and allow better resource targeting. POTWs have authority to designate industrial users as SIUs. This ensures the POTW's ability to address all potentially problematic users adequately. The Agency wants to make it clear that this change is focused on the POTW's publication and reporting requirements. EPA fully expects POTWs to take appropriate enforcement actions against any industrial user that violates a pretreatment standard or requirement. POTWs would, of course, have the option of publishing non-significant industrial users along with their SIUs in SNC.

One commenter was opposed to having SNC apply only to SIUs, noting that such an approach would appear to force larger users to shoulder the regulatory burden for all users. They were concerned that smaller users, who may in the aggregate have the potential

to harm the system, would go unaddressed. The distinction EPA is making today is not focused on the size of the facility; rather, we focus on those dischargers with the largest potential to impact the system. EPA continues to strongly encourage POTWs to use their authority under existing 40 CFR 403.3(t) to designate any industrial users as significant if they have the reasonable potential to adversely affect the POTW's operation or to violate any Pretreatment Standard or requirement. This includes considering smaller facilities that have the potential (either individually or collectively) to impact the system. Furthermore, all industrial users are required to comply with Pretreatment Standards and requirements, regardless of whether they are designated as SIUs. As noted previously, EPA expects appropriate enforcement to be taken for each violation by any industrial user.

EPA is seeking comment on whether parts of the SNC criteria should still apply to any industrial user. For example, the regulations could continue to require that any industrial user whose discharge (1) causes, alone or in combination with other discharges, pass through or interference (40 CFR 403.8(f)(2)(vii)(C)), (2) causes imminent endangerment to human health, welfare or the environment, or (3) has resulted in the POTW's exercise of its emergency authority (40 CFR 403.8(f)(2)(vii)(D)) be considered in SNC. Some commenters felt that this was not necessary since these industrial users should already be designated as SIUs and, therefore, subject to SNC. One commenter noted that POTWs should be able to use the provision under 40 CFR 403.8(f)(2)(vii)(H) ("any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program") to address these non-significant industrial users. Other commenters expressed concern that POTWs were not designating these types of dischargers as SIUs, and that if today's proposal were adopted, information on the compliance status of many industrial users with a reasonable potential for causing violations would be unavailable and the disincentive resulting from SNC designation would be lost. One option for addressing this issue is to add a specific note that in addition to all SIUs that meet the criteria, POTWs must include any non-significant industrial users who meet a subset of the criteria. One commenter proposed that POTWs be given a reviewable option of not including an industrial user as being in SNC even though it meets the criteria.

When the Control Authority exercises this option, it must explain its reasoning in its annual report and the Approval Authority may veto that decision.

Another commenter raised the issue of applying SNC to all categorical industrial users even if they are not SIUs. As noted earlier in the preamble, EPA is proposing to allow Control Authorities to exempt certain "non-significant" categorical industrial users from the definition of SIU.

EPA is seeking comment on these issues and on today's proposed language.

### 3. Daily Maximum or Average Limit Violations

Currently 40 CFR 403.8(f)(2)(vii)(A), (B), and (C) address violations of daily maximum or longer-term average limits.

Commenters have recommended revising these subparagraphs to address a broader range of violations, not just daily maximum or monthly average limits. EPA is proposing to modify the provisions to address Pretreatment Standards (defined under 40 CFR 403.3(j)). (EPA has included language addressing both Pretreatment Standards and Pretreatment Requirements under subsection (C) where the provision is not specifically tied to a numeric limitation.) This is important since some local limits may be expressed as instantaneous limits or narrative limits. Furthermore, the revised language addresses other types of requirements like operational standards. This is generally consistent with EPA's recent revision to its NPDES SNC policy where EPA broadened the criteria to address non-monthly average limit violations. EPA supports this approach and is proposing to modify the regulation accordingly. EPA notes, however, that the WEF workgroup recommended against applying this to instantaneous limits. EPA is seeking comment on this issue and on today's proposed language.

Under the NPDES SNC policy, when a parameter has both a monthly average and a non-monthly average limit, a facility is only considered in SNC for the non-monthly average if the monthly average is also violated to some degree (but less than SNC). EPA is seeking comment on whether such a caveat is also appropriate for the pretreatment program.

### 4. Technical Review Criteria

Under the existing regulations, technical review criteria (TRC) are numeric thresholds used to define a subcategory of SNC based on the magnitude of an effluent violation. A TRC violation occurs where 33 percent or more of all of the measurements for

each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC. TRC equals 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH (40 CFR 403.8(f)(2)(vii)(B)).

The WEF/AMSA workgroup recommended revising the use of TRC to consider the impact of analytical variability and "method detection limit" methodologies. Members raised questions about the technical and scientific basis for the TRC with respect to pretreatment violations. They also recommended that TRC violations be assessed only when the criteria are exceeded by a magnitude greater than the precision of the test. For example, if the methodology is 0.01 mg/l and the TRC level is 0.13, a reading of 0.14 would not be considered an exceedance of the criteria.

The existing provision is consistent with the NPDES approach which has generally been accepted over the years as an indicator of a "significant" level of exceedance which should be reviewed for enforcement purposes. Because the TRC is derived from the Quarterly Noncompliance Report (QNCR) language under the NPDES program, EPA looked at the record for the QNCR for information on its basis. The NPDES criteria were developed by the Regions and reviewed by the States and the Compliance Task Force of the Association of State and Interstate Water Pollution Control Administrators. EPA chose the TRC to provide simple criteria that could be applied to effluent data without requiring additional information on production levels, monitoring frequencies, analytical methods, or the basis for a limit. Such criteria are easy to apply to all violations and are easy for the public and permittee to understand. Furthermore, EPA made it clear that it did not intend the TRC to be related to the notion that a well-operated treatment plant varies somewhat in performance and may exceed its permit limit some percent of the time.

The TRC is merely a criterion that defines effluent violations which must be reported on the QNCR. EPA used the concept of a "well-operated treatment plant" to establish some regulatory limits for the Best Available Technology Economically Achievable (BAT) (see examples 48 FR 32469 and 48 FR 11839) that ensure that the plant operates and maintains the proper technology. Variations in measurements due to analytical methods, treatment system operation, and other sources inherent in this data set, are already considered in

the development of the BAT limitation for national categorical standards. In fact, EPA noted that "sound regulatory policy dictates that (BAT) levels be chosen that lessen the necessity for analytical disputes without setting the limits so high that inadequate treatment is allowed" (48 FR 11839). Similar considerations may be made for water quality based effluent limits in NPDES permits to deal with limits below detection levels and the statistical basis for permit limits. See EPA's "Technical Support Document for Water Quality-based Toxics Control," 1991. The TRC is not intended to be an additional allowance for variability in treatment or effluent monitoring; rather, it represents one characteristic (magnitude) of effluent violations which EPA considers to be of concern and serves as a threshold for mandatory reporting of effluent violations (50 FR 34652).

The same considerations apply to the TRC as it is applied to categorical standards in the pretreatment program and may be relevant for local limits. EPA believes the magnitude of an effluent violation is a significant factor and needs to be addressed under the pretreatment program. At the same time, EPA recognizes that there may be significant, site-specific variability in the development and implementation of local limits, so that a single multiplicative factor may not be appropriate for applying TRC in every case.

EPA is not proposing to amend the TRC (other than as discussed above under section 3 "Daily maximum or average limit violations") today. However, EPA is seeking comment on this issue, particularly as it relates to local limits. EPA is interested in suggestions for workable alternatives to the current TRC provisions that would ensure that the magnitude of a violation continues to be incorporated in the definition of significant noncompliance, and that would not unduly increase the workload on either the Control Authority or the Approval Authority.

### 5. Late Reports

The existing regulations require that dischargers who submit reports 30 days late be considered in SNC. This is consistent with the NPDES SNC approach for late reports.

SNC for late reports is a very contentious issue. Some commenters stated that reporting is important in and of itself and it serves a vital role in ensuring adequate implementation and oversight of the pretreatment program. Some commenters thought reporting was critical, but Control Authorities need more flexibility in determining

when a late report resulted in SNC. Other commenters stated reporting was important but it should not be equated with effluent violations. The WEF/AMSA workgroup recommended that EPA provide Control Authorities with greater flexibility but did not offer specific recommendations.

Many commenters did offer specific suggestions for amending this provision. One option would be to tie SNC to a pattern of late reporting, rather than requiring a single late report to trigger SNC status. The regulation could leave it to the Control Authority to determine what constitutes a "pattern of late reporting" warranting SNC, or, alternatively, the regulation could specify a numeric criterion, such as when 33 percent or more of the required reports in a specified reporting period are more than 30 days late. This would be consistent with the current provisions regarding when TRC violations trigger SNC.

Another approach would be to tie SNC to whether the late reports indicated that a monitoring or numeric limitation violation had occurred. For example, the regulation could allow the Control Authority to waive SNC when a late report showed no violations. This might also be tied to a requirement that the Control Authority receive and document a satisfactory response from the SIU in accordance with its Enforcement Response Plan. Such waiver authority might also be limited in its frequency of use (e.g., to no more than once in a two or five year period) or in the degree of lateness for which it could be used (e.g., only for reports received within six months).

Another option might be to limit the types of late reports that may be considered SNC (e.g., only those specifically required under 40 CFR 403.12). Still another option would be to extend the time period. This could be done by allowing 45 or 60 days before a late report becomes SNC. Another alternative would be to retain the 30 day period before a late report becomes SNC, but to require newspaper publication only for reports that are more than 45 days late.

Another approach would be to provide the Control Authority with total discretion in determining whether reporting violations constituted SNC. A variation on this approach would be to allow Control Authorities a reviewable option of not including an SIU as being in SNC for a late report. Under this approach, when Control Authorities exercised this option, they would have to explain their reasoning in their annual report and the Approval Authority could challenge that decision.

Some combination of these options may also be considered.

In considering revisions to the late reporting criterion for SNC, EPA notes that implementation of the Pretreatment Program relies heavily on a self-policing and self-reporting system. This self-reporting is important to enforcement. If a failure to report becomes routine, the entire program can be weakened. At the same time, EPA appreciates the concerns of commenters who believe that an occasional late report does not rise to the level of significance of most of the other SNC criteria, especially if it shows no substantive violations.

Consequently, EPA is seriously considering revising the late reporting criterion for SNC. However, because of the wide variety of suggestions that have been offered, EPA is not proposing a specific change at this time. EPA believes it needs more time to consider all of these options before making a final decision. EPA is thus soliciting comment on all of the options discussed here, or combination of these options, that stakeholders would recommend. Based on its further considerations and comments received, EPA may include a revision, consistent with the options discussed here, to the late reporting criterion for SNC in the final rule.

EPA wishes to emphasize that the discussion in this section and the changes being considered relate solely to late reporting as a criterion for SNC status. EPA reminds commenters that all late reports, even those that are only one day late, are a violation of pretreatment regulations.

#### 6. Rolling Quarters

Section 40 CFR 403.8(f)(2)(vii)(A) and (B) concern violations evaluated over a six-month period. EPA's policy is that these criteria should be evaluated on a rolling quarter basis (i.e., a POTW should evaluate an industrial user's performance at the end of a quarter using data from the previous six months). EPA does not necessarily need to amend the regulations to change its policy.

The WEF/AMSA workgroup suggested using a static six-month period. Some commenters have suggested using a static six-month calendar period (e.g., January–June and July–December). Others have suggested using a rolling six-month period that begins with a violation.

Sampling once every six months is only a minimal requirement and industrial users are free to sample more often. Several commenters expressed concern over SNC determinations based on only one data point and others expressed concern over resampling.

However, if a violation is detected, 40 CFR 403.12(g)(2) already requires the industrial user to resample and submit the results within 30 days of becoming aware of the violation. It would seem prudent for SIUs to sample early in any quarter so that, if there is a violation, they can take action to correct any problem and have enough time to resample and demonstrate compliance. EPA expects SNC determinations based on one data point will be rare.

Some commenters expressed concern over being published in the newspaper for being in SNC for two years where violations were shown in October, November, and/or December. Again, EPA believes that additional sampling can often balance the initial violation during the next quarter (January through March) if the user has returned to compliance, therefore, there would be no SNC violation and no requirement to publish. A September 9, 1991, memorandum from Michael B. Cook, Director of EPA's Office of Wastewater Enforcement and Compliance, also discusses this issue. "If a facility has been determined to be in SNC based solely on violations which occurred in the first quarter of the 15-month evaluation period (i.e., the last quarter of the previous pretreatment year) and the facility has demonstrated consistent compliance in the subsequent four quarters, then the POTW is not required to republish the industrial user (IU) in the newspaper if the IU was published in the previous year for the same violations" ("Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users," EPA memorandum to Water Management Division Directors, Regions I–X and Approved Pretreatment State Coordinators, September 9, 1991). In other words, where the pretreatment year is a calendar year, and an IU had a violation in December 1996 causing it to be in SNC, it would have to be published in the newspaper in 1997. If that same IU did not violate any Pretreatment Standard or requirement from January through December 1997, it would not need to be published in 1998. If there were any violations of any Pretreatment Standards or requirements in 1997 (regardless of the nature or magnitude), the IU would be required to be published in the newspaper in 1998.

EPA is seeking comment on whether it should go further in allowing Control Authorities to waive the second publication where that second publication is based solely on the violations occurring in the last quarter of the previous pretreatment year. Such a waiver would not be available where an SNC determination is based on

violations in the first quarter. For example, (assuming the POTW uses a calendar year) where an IU does monthly sampling and has one daily maximum violation for zinc in September, October, November, and December (1996) and January (1997), the IU would have to be published in 1996 for the violations from September through December, and would be published in 1997 for violations from October through January. The second publication is not based solely on violations of the last quarter of the previous year because SNC has been determined using data from the first quarter of the pretreatment year. The pretreatment year is based on the annual report. Again, note that EPA fully expects POTWs to take appropriate enforcement for all the violations in these examples. The only issue being discussed is whether the POTW should publish the user twice for the same violation. This waiver authority could also be subject to Approval Authority approval. Another option would be to base SNC determinations for violations occurring in the first quarter on only three months of data. Thus, if the SNC criteria were exceeded based on either the first three months or the first six months of data, the facility would be placed in SNC that year. This would eliminate any possibility of a facility being placed in SNC twice for the same violations.

EPA uses the rolling quarter approach in the NPDES program. Some commenters said this approach is too complicated while others said that once the policy is explained, it is quite easy to use. Several commenters expressed concern that the rolling quarter policy was not being used consistently across the country. One option that would alleviate this problem is to amend the regulations to codify the rolling quarter approach making it mandatory for all programs.

EPA is proposing no specific change but is considering the options discussed above. EPA is seeking comment on this issue.

#### c. Today's Proposal and Request for Comments

##### *What modifications to 40 CFR 403.8(f)(2)(vii) is EPA proposing?*

EPA is proposing three modifications to the SNC provision today. First, EPA is proposing to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. Second, EPA is proposing to amend the SNC criteria

so that they must only be applied to significant industrial users. Third, EPA is proposing to amend 40 CFR 403.8(f)(2)(vii)(A), (B), and (C) to address more than just daily maximum and monthly average limits.

#### *N. Miscellaneous Changes*

##### 1. Signatory Requirements for Industrial User Reports and POTW Reports (40 CFR 403.12(l) and (m))

###### a. Existing Rule

Sections 40 CFR 403.12(l)(1)(ii) and 40 CFR 122.22(a)(1)(ii) contain identical requirements for when a plant manager may sign a report required for the Pretreatment and NPDES permitting programs as a responsible corporate officer. Currently, in order to sign on behalf of a company, the manager must manage a facility with more than 250 employees or \$25 million in sales or expenditures. On December 11, 1996, EPA proposed to revise 40 CFR 122.22(a)(1)(ii) to replace the numeric criteria for designating an appropriate signer with more flexible narrative criteria (61 FR 65270). Rather than specify the resource levels the signer must manage, the revised criteria would specify the authority and responsibilities a manager must have in order to sign the report. The revision would require the manager to have the authority to make capital investment decisions and assure long term environmental compliance. In the preamble to the proposal, EPA noted that those who are eligible under the current numeric criteria would remain eligible under the proposed rule. In response to comments received on the proposal, EPA intends to require that the manager have the responsibility for making major capital investment recommendations rather than the unilateral authority to make such decisions.

Section 403.12(i) also requires reporting; however, in this case the report concerns the status of Pretreatment Program activities and it is submitted annually by the POTW to the Approval Authority. Section 403.12(m) requires this report to be signed by "a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW."

###### b. Today's Proposal

EPA is proposing to revise the signatory requirements for industrial users at 40 CFR 403.12(l)(1)(ii) to adopt the same language that EPA plans for requirements for direct dischargers at 40 CFR 122.22(a)(1)(ii).

EPA is also proposing to revise the signatory requirements for POTW reports at 40 CFR 403.12(m) so the requirement will be more consistent with signatory requirements in the current 40 CFR 122.22(a). EPA is proposing to modify the existing regulatory language to allow the duly authorized employee to be an individual or position having responsibility for the overall operation of the facility or activity such as the position of POTW Director, Plant Manager, or Pretreatment Program Manager. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to the report being submitted.

##### 2. Net/Gross Calculation (40 CFR 403.15)

###### a. Existing Rule

Net/gross calculation allows consideration of pollutants in intake water in development of technology-based limitations. EPA modified 40 CFR 403.15, Net/Gross calculation, in 1988 so that this provision would be consistent with the NPDES provision for net/gross which had been revised earlier. See discussion at 53 FR 40602-40605. The NPDES provision (40 CFR 122.45 (g)) is an "or" test regarding application of effluent standards on a net basis versus control systems meeting standards in the absence of pollutants in the intake water; that is, meeting either condition allows consideration of adjustment. However, the actual language EPA used to modify 40 CFR 403.15 in 1988 resulted in an "and" test in which both conditions would have to be met. As there are no categorical guidelines which specify application on a net basis, in effect this was a prohibition on the use of the net/gross provision in the Pretreatment Program.

###### b. Today's Proposal

EPA is proposing to revise the language in section 40 CFR 403.15 to be consistent with the NPDES regulations and with the intent of the 1988 modification package. Categorical Pretreatment Standards can be adjusted on a "net" basis if either the applicable Pretreatment Standards allow for this calculation or the industrial user demonstrates its control system meets those Pretreatment Standards.

##### 3. Requirement To Report All Monitoring Data (40 CFR 403.12(g))

###### a. Existing Rule

EPA changed 40 CFR 403.12(g) in 1988 to require all monitoring by industrial users to be reported. This was



done to prevent an industrial user that performs extra sampling from selecting the most favorable monitoring result to report to the Control Authority. At the time of this change (1988), only categorical industrial users (CIUs) were required by the regulations to report on a regular basis, and therefore, this requirement was limited to CIUs. In 1990, 40 CFR 403.12(h) was added to the regulations, and required all significant noncategorical industrial users to also sample and report. However, at the time this change was made, the regulations at 40 CFR 403.12(g) were not updated to require all significant industrial users (SIUs), categorical and noncategorical, to report all monitoring results to the Control Authority.

#### b. Today's Proposal

Today, EPA is proposing to change 40 CFR 403.12(g)(5) to require all SIUs to report all monitoring results for regulated parameters at the point of compliance, obtained using procedures specified in 40 CFR Part 136, to the Control Authority.

### 4. Notification by Industrial Users of Changed Discharge (40 CFR 403.12(j))

#### a. Existing Rule

In 1988, the regulations were changed to add 40 CFR 403.12 (j) requiring all industrial users to promptly notify the POTW of any substantial change in volume or character of pollutants in the user's discharge to the POTW. This notification requirement did not include the Control Authority, which, in some cases, is not the POTW.

#### b. Today's Proposal

Today, EPA is proposing to expand this requirement so the industrial user must notify the Control Authority of any substantial change in volume or character of pollutants in the user's discharge to the POTW, and in cases where the Control Authority and the POTW are different organizations, the industrial user would notify both the Control Authority and the POTW of any substantial change in volume or character of pollutants in the user's discharge to the POTW.

### III. Regulatory 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 review by the Office of Management and Budget (OMB) 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 a "significant regulatory action" under the terms of Executive Order 12866. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not covered 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 the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, 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 does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule provides options for streamlining procedures to provide Approval Authorities, Control Authorities and industrial users with additional flexibility to run their pretreatment programs in a more cost-

effective and independent manner. Accordingly, the requirements of section 1(a) Executive Order 12875 do not apply to this rule. Nevertheless, to ensure that the proposed regulatory changes would meet the needs of the regulated community, EPA sought the involvement of those persons who are intended to benefit from or expected to be burdened by this proposal before issuing a notice of proposed rulemaking. These outreach efforts are described in detail in the introduction to this preamble.

#### C. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect 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.

This rule is not subject to E.O. 13045 because it is not an economically significant rule under the guidelines provided by E.O. 12866 and it does not establish an environmental standard intended to mitigate health or safety risks. The proposed amendments to 40 CFR Part 403 would reduce the technical and administrative burden for Approval Authorities, Control Authorities and industrial users. As such, the proposed rule does not impose any new or amended standards for discharged wastewater or the sludge resulting from treatment by a POTW. With respect to the effects on children, the collection, treatment and disposal of wastewater occurs in a restricted system (e.g., buried sewer lines and fenced wastewater treatment plants) that children are unlikely to come in contact with on a routine basis. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

#### D. Executive Order 13084

Under Executive Order 13084, 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 these 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 the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of 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 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." There are no pretreatment programs administered by Indian tribal governments. The proposed rule will neither "significantly or uniquely" affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, 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, section 205 of the UMRA 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.

Before 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 proposed rulemaking is basically "deregulatory" in nature and reduces burden on the affected State, local, and tribal governments and the private sector. EPA further believes 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 the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Additional flexibility is granted to all POTWs which will provide opportunities for reducing the burden of administering their pretreatment programs. Thus, this rule is not subject to the requirements of section 203 of UMRA. Nevertheless, EPA conducted a wide outreach effort and actively sought the input of representatives of State, local and tribal governments in the process of developing the proposed regulation. Agency personnel have communicated with State and local representatives in a number of different forums.

#### *F. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA generally is required to prepare a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if the Administrator for the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. EPA has concluded that today's proposal would not, if promulgated as proposed, have a significant economic impact on a substantial number of small entities for the reasons explained below.

As previously explained, the modifications to the pretreatment regulations EPA is proposing today would reduce the regulatory costs to POTWs and industrial users of complying with pretreatment requirements. The proposed changes provide certain POTWs and industrial users with less costly alternatives to the current requirements.

For example, EPA is proposing to amend the requirements that apply to all POTW pretreatment programs. Among these are a modification that would allow a POTW, in specified circumstances, to control contributions from industrial users through general permits rather than more costly individual permits or control mechanisms. Another change would allow the POTW to sample and analyze wastewater from Significant Industrial Users once during the User's permit term rather than annually as now required in cases where the pollutant is not reasonably expected to be present.

The proposal would also authorize a POTW to relieve an industrial user of its sampling and analyzing requirements if the user demonstrated and certified that the pollutant was not expected to be present in quantities greater than present in background influent concentration to the industrial process.

In addition, the cost of the three, new one-time requirements imposed upon those POTWs or industrial users that elect to exercise the flexibility provided in the proposed regulatory changes does not represent a significant increase over current costs. These new requirements include an evaluation of impacts of proposed alternative pH requirements and documentation of the derivation of equivalent limits in cases where categorical industrial users receive mass limits in lieu of concentration limits or receive equivalent concentration limits for flow-based standards.

EPA calculates that, if exercised, these new, one-time requirements would impose a total annual burden and cost to the POTWs of 1,224 person-hours and \$22,000. These costs do not reflect the savings that would be realized as a result of providing this flexibility in setting limits for industrial users. EPA estimates that 138 POTWs will elect to exercise these options in any given calendar year and that the pro rata cost will be \$159 per POTW, which represents less than nine additional person-hours per year per POTW. In any event, EPA does not believe that any POTW or industrial user would choose a proposed regulatory alternative over current requirements if the cost of the alternative were greater than the cost of complying with the present regulations.

Therefore, the Administrator certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

#### G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document (EPA ICR No. 0002.10) has been prepared by EPA and will amend the current ICR (EPA ICR No. 0002.08). A copy may be obtained from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260-2740.

The information collection requirements pertaining to the existing Pretreatment program regulations in 40 CFR Part 403 were approved by the Office of Management and Budget (OMB) under control number 2040-0009 on October 18, 1996. These requirements will remain in effect until October 31, 1999 or until OMB provides new ICR authority. 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.

The proposed regulatory changes in today's rulemaking are designed to reduce the overall burden from technical and administrative requirements that affect industrial users, local Control Authorities and Approval Authorities. The estimated savings in annual burden hours and costs to the affected respondents (i.e., industrial users and POTWs) and governmental entities is 15,199 hours and \$3,530,000.

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.

Although the proposed regulatory changes provide greater flexibility to regulated entities, it is necessary to collect certain types of information to assure that Pretreatment program requirements continue to be met and that the final benefit meets EPA's stated goal of providing better environmental results at less cost.

The proposed regulatory changes cover a variety of technical and administrative changes. Several of the proposed changes are voluntary, but, if adopted, would impose an additional one-time increase in burden on the affected entity. Other changes will result in reduced annual cost and burdens on a continuing basis. Other proposed changes would have no measurable effect on either cost or burden, but provide procedural clarifications and provide greater flexibility with respect to complying with the regulations. While impossible to quantify, the benefits to be derived by respondents as a result of this flexibility can be significant. The following table provides summary information on the current estimated changes in burden that would accrue if the proposed regulations are adopted as a final rule:

BILLING CODE 6560-50-P

OVERALL BURDEN CHANGE								
A	B	C	D	E = C*D	F	G = E*F	H	I = E*H
	Impact <sup>1</sup>	Total Respondents	% Affected	Number of Respondents Affected	Burden per Response	Change in Burden	Recordkeeping per Response	Change in Recordkeeping Burden
Proposed Regulatory Change								
Specific Prohibition Regarding pH <sup>2</sup>	I	1535	1.00%	15	16	240	2	30
Equivalent Mass Limits for Concentration Limits <sup>2</sup>	I	10561	1.00%	106	8	848	2	212
Equivalent Concentration Limits for Flow Based Standards <sup>2</sup>	I	420	4.00%	17	8	136	2	34
POTW Oversight of Significant Industrial Users	D	14928	1.00%	149	-22	-3278	-4	-596
Slug Control Plans	D	31962	50.00%	15981	-0.5	-7990.5	0	0
Sampling for Pollutants Not Present	NC	14928	25.00%	3732	0	0	0	0
Non-significant Categorical Industrial Users	D	14928	1.00%	149	-9	-1341	-2	-298
Use of Grab and Composite Samples	NC	n/a	n/a	n/a				
Removal Credits	NC	n/a	n/a	n/a				
Electronic Filing and Storage of Reports	NC	n/a	n/a	n/a				
General Permits	D	31962	2.00%	639	-4	-2556	-1	-639
Best Management Practices	NC	n/a	n/a	n/a				
SNC Definition	NC							
TOTAL BURDEN CHANGE						-13941.5 hrs		-1257 hrs
TOTAL BURDEN AND RECORDKEEPING CHANGE	-15198.5 hrs							

<sup>1</sup> Impact: I = increase in burden; D = decrease in burden; NC = no change in burden.

<sup>2</sup> These requirements are a one-time additional burden that would be imposed upon those POTWs or industrial users that elect to exercise the flexibility provided in the proposed regulatory changes. The reported number of respondents is the total number of facilities in the National Pretreatment Program that EPA estimates would be affected.

With the exception of those facilities described in the above footnote, all other burden changes reported are annual figures. All calculations are derived from historical data obtained from EPA's Permit Compliance System or statistical data on affected industrial facilities published at the time the various effluent guidelines regulating those facilities were promulgated in the Federal Register.

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 St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number (EPA ICR No. 0002.10) in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 22, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by August 23, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act—Voluntary Standards

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required 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 standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

The proposed rulemaking does not involve developing any technical standard based upon performance or design-specific technical specifications and related management systems practices. EPA is not aware of any voluntary consensus standards

organizations (e.g., American Society for Testing and Materials) that would be involved in any activities that affect the proposed streamlining procedures outlined in this proposed rulemaking. All of the proposed changes are administrative or procedural changes that do not involve application of voluntary consensus standards. The Agency does not believe that this proposed rule addresses any technical standards subject to the NTTAA. A commenter who disagrees with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

List of Subjects in 40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 7, 1999.

Carol Browner, Administrator.

For the reasons set out in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for Part 403 continues to read as follows:

Authority: 33 USC 1251 et seq.

2. Section 403.3 is amended by redesignating paragraphs (e) through (u) as paragraphs (f) through (v); by revising newly designated paragraphs (u) and (l)(2); and by adding a new paragraph (e) to read as follows:

§ 403.3. Definitions.

(e) Control Authority. The term "Control Authority" refers to: (1) The POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 40 CFR 403.11; or (2) the Approval Authority if the submission has not been approved.

(l) \* \* \*

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (l)(1)(ii) or (l)(1)(iii) of this section, but otherwise alters, replaces,

or adds to existing process or production equipment.

\* \* \* \* \*

(u) Significant Industrial User. (1) Except as provided in paragraph (u)(2) of this section, the term Significant Industrial User means:

(i) All industrial users subject to Categorical Pretreatment Standards under § 403.6 and 40 CFR chapter I, subchapter N; except that a Control Authority may determine that the following facilities are not significant: (A) facilities that never discharge untreated concentrated wastes that are subject to the Categorical Pretreatment Standard as identified in the Development Document for the standard, and never discharge more than 100 gallons per day (gpd) of other process wastewater, and

(B) industrial users subject only to certification requirements after having met Baseline Monitoring Report requirements.

(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with § 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (u)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with § 403.8(f)(6), determine that such industrial user is not a Significant Industrial User.

\* \* \* \* \*

3. Section 403.5 is amended by revising paragraph (b)(2) and adding a new paragraph (c)(4) to read as follows:

§ 403.5 National Pretreatment Standards: Prohibited Discharges.

\* \* \* \* \*

(b) \* \* \*

(2)(i) Pollutants which will cause corrosive structural damage to the POTW; and

(ii) Discharges with pH lower than 5.0, unless the works is specifically

designed to accommodate such Discharge; except that a POTW with an Approved Pretreatment Program may allow temporary excursions below 5.0 for dischargers that continuously monitor pH provided it:

(A) Maintains a publicly available, written technical evaluation that supports the POTW's finding that the temporary pH excursions do not have the potential to cause corrosive structural damage to the POTW or other violations of paragraphs (a) and (b) of this section. The evaluation shall address the site-specific factors concerning pH and structural corrosion, including the characteristics of nondomestic wastewater and receiving flow, the design and materials of construction of the POTW, and the fate of pH in the discharge;

(B) Performs adequate oversight of the temporary pH excursions to prevent corrosive structural damage to the POTW and other violations of paragraphs (a) and (b) of this section; and

(C) Reports in its annual report under § 403.12(i) its oversight actions and findings regarding nondomestic dischargers with temporary pH excursions.

(D) Has legal authority to grant such temporary excursions in accordance with § 403.8(f)(1) and makes them effective through an Industrial User control mechanism.

\* \* \* \* \*

(c) \* \* \*

(4) POTWs may develop and enforce best management practices (BMPs) that accomplish the environmental protection goals required by paragraphs (c)(1) and (c)(2) of this section. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this Part and section 307(d) of the Act.

\* \* \* \* \*

4. Section 403.6 is amended by redesignating paragraphs (c)(5) through (c)(7) as paragraphs (c)(7) through (c)(9); by revising paragraph (b), newly designated paragraph (c)(7), paragraph (d) and the first sentence of paragraph (e) introductory text; and by adding paragraphs (c)(5) and (c)(6) to read as follows:

**§ 403.6 National pretreatment standards: Categorical standards.**

\* \* \* \* \*

(b) *Deadline for Compliance with Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate

subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(l). New Sources shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

(c) \* \* \*  
\* \* \* \* \*

(5) When a categorical Pretreatment Standard is expressed in terms of pollutant concentrations that are directly applicable as limits on the Industrial User, the Control Authority may convert the limits to mass limits if the Industrial User is utilizing control measures at least as effective as the model treatment technologies that serve as the basis for that particular Standard and the Industrial User is employing water conservation methods and technologies that substantially reduce water use.

(6) When the limits in a categorical Pretreatment Standard are concentration-based and are required to be expressed only in terms of mass based on the facility's process wastewater flow, the Control Authority may apply the promulgated concentration standard set in the applicable categorical standard in cases where the Industrial User's effluent flow is so variable as to make mass limits impractical.

(7) Equivalent limitations calculated in accordance with paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) of this section are deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. The Control Authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its individual control mechanism, the Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

\* \* \* \* \*

(d) *Dilution Prohibited as Substitute for Treatment.* Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) *Combined wastestream formula.* Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority or by the Industrial User with the written concurrence of the Control Authority.

\* \* \* \* \*

5. Section 403.7 is amended by revising paragraph (h) to read as follows:

**§ 403.7 Removal Credits.**

\* \* \* \* \*

(h) *Compensation for overflow.* "Overflow" means the intentional or unintentional discharge of flow from the collection system before the POTW Treatment Plant. POTWs which Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraph (h)(1) or (h)(2) of this section. However, this paragraph (h) shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;

(1) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur in the collection system to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(i) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during

circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (h)(1)(iii) of this section, to insure that Industrial Users are containing, ceasing or reducing operations during an Overflow event; and

(iii) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, State Director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

(2) The Consistent Removal claimed is limited to the percentage of the pollutant consistently removed at the applicable Overflow point.

\* \* \* \* \*

6. Section 403.8 is amended by redesignating paragraphs (f)(2)(vi) and (f)(2)(vii) as paragraphs (f)(2)(vii) and (f)(2)(viii); by revising paragraphs (f)(1)(iii) introductory text, (f)(1)(iii)(C), (f)(2)(v), newly designated paragraphs (f)(2)(vii), (f)(2)(viii) introductor text, (f)(2)(viii)(A), (f)(2)(viii)(B) and (f)(2)(viii)(C), and by revising paragraph (f)(6); by adding paragraphs (f)(1)(iii)(F) and (f)(2)(vi); and by removing the period at the end of paragraph (f)(1)(iii)(E) and adding a semi-colon in its place. The added and revised text reads as follows:

**§ 403.8 POTW pretreatment programs: Development and implementation by the POTW.**

\* \* \* \* \*

- (f) \* \* \*
- (1) \* \* \*

(iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial

Users identified as significant under § 403.3(u), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user except as follows. At the discretion of the Control Authority, for facilities covered by concentration-based standards or best management practices, this control may include use of general permits if all of the facilities to be covered involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations, and require the same or similar monitoring. Unless the POTW provides otherwise, to be covered by the general permit the Industrial User must file a Notice of Intent that identifies its production processes, the types of wastes generated, and the location for monitoring all wastes covered by the general permit. General permits may not be used for facilities subject to mass limits or for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (§§ 403.6(e) and 403.15). Both individual control mechanisms and general permits must be enforceable and contain, at a minimum, the following conditions:

\* \* \* \* \*

(C) Effluent limits, including best management practices, based on applicable general Pretreatment Standards in Part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

\* \* \* \* \*

(F) Requirements to control slug discharges, if determined by the POTW to be necessary.

\* \* \* \* \*

(2) \* \* \*

(v) Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample effluent from each Significant Industrial User at least once a year except under the following circumstances. Where a Categorical Industrial User has demonstrated through sampling and other technical factors that pollutants regulated through categorical standards are not expected to be present in quantities greater than the background influent concentration to the industrial process, the Control Authority may reduce its sampling frequency to once during the term of the Categorical Industrial User's permit.

(vi) Evaluate, as necessary, whether each such Significant Industrial User

needs a plan or other action to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the Control Authority's regulations, local limits or permit conditions. The results of such activities shall be available to the Approval Authority upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (A) Description of discharge practices, including non-routine batch discharges;
- (B) Description of stored chemicals;
- (C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;

(D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment necessary for emergency response.

(vii) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under 40 CFR 403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

(viii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of national Pretreatment Standards. These procedures shall include provision for at least annual public notification, in a newspaper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice, of Significant Industrial Users which, at any time during the previous twelve months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, a Significant Industrial User is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the Pretreatment Standard for the same pollutant parameter;

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numerical Pretreatment Standard multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).

(C) Any other violation of a Pretreatment Standard or Pretreatment Requirement that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(6) The POTW shall prepare and maintain a list of its industrial users meeting the criteria in 40 CFR 403.3(u)(1). The list shall identify the criteria in 40 CFR 403.3(u)(1) applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to 40 CFR 403.3(u)(1)(i) (A) and (B) or (u)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to 40 CFR 403.9 or as a non-substantial modification pursuant to 40 CFR 403.18(d). Modifications to the list shall be submitted to the Approval Authority pursuant to 40 CFR 403.12(i)(1).

7. Section 403.12 is amended by removing and reserving paragraph (a); by removing paragraph (b)(5)(iii); by redesignating paragraphs (b)(5)(iv) through (b)(5)(viii) as paragraphs (b)(5)(iii) through (b)(5)(vii); by redesignating paragraphs (g)(4) and (g)(5) as paragraphs (g)(5) and (g)(6); by revising paragraphs (b)(5)(ii), (b)(6), (e)(1), (g)(1), (g)(2), (g)(3), (h), (j), (l)(1)(ii) and (m) and newly designated paragraph (g)(6); and by adding paragraphs (g)(4) and (q) to read as follows:

**§ 403.12 Reporting requirements for POTWs and industrial users.**

(a) [Reserved]

(b) \* \* \*

(5) \* \* \*

(ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration

(or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the standards themselves to determine compliance with the standard.

\* \* \* \* \*

(6) *Certification.* A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (l) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

\* \* \* \* \*

(e) \* \* \*

(1) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the User shall submit documentation required by the Control Authority or the standard to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted. The Control Authority may also authorize the Industrial User

subject to a categorical Pretreatment Standard, with the exception of 40 CFR Part 414, to forego sampling of a pollutant if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Industrial User certifies on each report, with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR \_\_\_\_\_, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e).

\* \* \* \* \*

(g) *Monitoring and analysis to demonstrate continued compliance.* (1) The reports required in paragraphs (b), (d), (e) and (h) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under paragraphs (b)(6) and (d) of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(2) If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:

(i) The Control Authority performs sampling at the Industrial User at a



frequency of at least once per month, or (ii) The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

(3) The reports required in paragraphs (b), (d), (e) and (h) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the individual control mechanism file for that facility or facilities. For those industrial users that do not operate on a 24-hour per day schedule, the samples must be collected at equally spaced intervals during the period that process wastewater is being discharged. Multiple grab samples for cyanide and volatile organic compounds that are collected during a 24-hour period may be composited in the laboratory prior to analysis using protocols specified in 40 CFR Part 136 and appropriate EPA guidance. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

(4) For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraphs (b) and (d) of this section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for new facilities; for existing facilities where historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by (e) and (h), the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

\* \* \* \* \*

(6) If an Industrial User subject to the reporting requirement in paragraph (e) or (h) of this section monitors any regulated pollutant at the point of compliance more frequently than required by the Control Authority, using the procedures prescribed in paragraph (g)(5) of this section, the results of this monitoring shall be included in the report.

\* \* \* \* \*

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority must require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where the local standard requires compliance with a best management practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical industrial user.

\* \* \* \* \*

(j) *Notification of changed discharge.* All Industrial Users shall promptly notify the Control Authority (and the POTW if the POTW is not the Control Authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under paragraph (p) of this section.

\* \* \* \* \*

- (l) \* \* \*
(1) \* \* \*

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit position-related duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long term environmental

compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

\* \* \* \* \*

(m) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (i) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or activity such as the position of POTW Director, Plant Manager, or Pretreatment Program Manager. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to the report being submitted.

\* \* \* \* \*

(q) *Sampling of non-significant categorical industrial users.* For a facility described in 40 CFR 403.3(u)(1)(i)(A) or (B), the Control Authority may establish alternative reporting requirements that would take the place of the reporting requirements in 40 CFR 403.12(e). This alternative report must be submitted at least once per year, and must contain the following certification:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR \_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_: (1) The facility described as \_\_\_\_\_ met the definition of a non-significant facility as described in 40 CFR 403.3(u)(1)(i)(A) or (B), and (2) the facility complied with all applicable pretreatment standards. This compliance certification is based upon the following information:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

8. Section 403.15 is revised to read as follows:

§ 403.15 Net/Gross calculation.

(a) *Application.* Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make

application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (b) of this section are met.

(b) *Criteria.* (1) Either (i) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance

with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

\* \* \* \* \*

#### **Appendix A to Part 403 [Removed and Reserved]**

9. Appendix A to Part 403—Program Guidance Memorandum is removed and reserved.

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