

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[AD-FRL-7161-6]

RIN 2060-AJ87

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

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

**ACTION:** Proposed amendments.

**SUMMARY:** We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) final rule for new and existing publicly owned treatment works (POTW), pursuant to a settlement agreement with the Pharmaceutical Research and Manufacturers of America (PhRMA) regarding their petition for judicial review of the POTW NESHAP. We are proposing to rescind the applicability provision; adopt, for all industrial POTW treatment plants which are area sources of hazardous air pollutants (HAP), the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the Clean Air Act (CAA).

**DATES:** *Comments.* Comments must be received on or before April 22, 2002. If a public hearing is held, written comments must be received by May 6, 2002.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by April 1, 2002, a public hearing will be held on April 5, 2002.

**ADDRESSES:** *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-96-46, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-96-46, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby. You should

contact JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439-03), Research Triangle Park, NC 27711, telephone (919) 541-5671, to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

*Docket.* Docket No. A-96-46 for this regulation contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street SW., Washington, DC 20460, in Room M-1500, Waterside Mall (ground floor, central mall), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Lucas, Waste and Chemical Processes Group, Emission Standards Division (C439-03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-0884, facsimile number (919) 541-0246, electronic mail address "lucas.bob@epa.gov". For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representatives.

#### SUPPLEMENTARY INFORMATION:

##### Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: (Docket No. A-96-46). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it "Confidential Business Information." Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Bob Lucas, c/o OAQPS Document Control Officer

(C404-02), U.S. EPA, Research Triangle Park NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

#### Public Hearing

Persons interested in making an oral presentation or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins at the Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541-5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Collins to verify time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

#### Docket

The docket is an organized and complete record of all the information compiled by the EPA in the development of the POTW NESHAP and these amendments. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA). The regulatory text and other materials related to these proposed amendments are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

#### Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information

regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

### Regulated Entities

Categories and entities potentially regulated by this action:

Category	Standard industrial classification (SIC) codes	North American industrial classification system (NAICS) codes	Examples of potentially regulated entities
Federal Government .....	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal Governments .....	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly-owned treatment works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by these proposed amendments. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1580 of the final rule and in 40 CFR 63.1. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### Outline

The information presented in these proposed amendments is organized as follows:

- I. What is the background for this action?
- II. What changes to the current rule are we proposing as the result of our settlement agreement with the PhRMA?
- III. What is the basis for controlling POTW that are area sources?
- IV. What is the basis for exempting area source POTW from title V permitting?
- V. What are the impacts of the proposed amendments?
- VI. What are the administrative requirements?
  - A. Executive Order 12866, Regulatory Planning and Review
  - B. Executive Order 13132, Federalism
  - C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
  - D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  - E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - F. Unfunded Mandates Reform Act of 1995
  - G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  - H. Paperwork Reduction Act
  - I. National Technology Transfer and Advancement Act

### I. What Is the Background for This Action?

On October 26, 1999, we promulgated the NESHAP for new and existing POTW using our authority under the CAA. In the POTW NESHAP, we require air pollution controls on new or reconstructed treatment plants at POTW that are major sources of HAP. Section 112(a)(1) of the CAA defines a major source as:

\* \* \* any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The standards also define the requirements for industrial POTW. Industrial POTW treat regulated waste streams from an industry (e.g., pharmaceutical manufacturing) that may be subject to other NESHAP, and this treatment allows the industry to comply with the NESHAP. The standards include a provision in 40 CFR 63.1580(c) stating that if an industrial major source complies with the other NESHAP by using the treatment and controls at a POTW, then the POTW is considered to be a major source.

On March 23, 2001, we published final rule amendments that clarified and corrected errors in the promulgated rule. The PhRMA filed a timely petition for judicial review of the POTW NESHAP. The PhRMA expressed concern regarding the practical effect of the provision classifying an industrial POTW as a major source if the POTW receives wastewater for treatment from a major source. In particular, PhRMA was concerned that industrial POTW might be subject to permitting requirements which would otherwise not apply, and that such POTW might elect not to accept wastewater for treatment in these circumstances. We entered into settlement discussions with PhRMA and executed a settlement agreement with PhRMA on November

16, 2001. We are proposing these amendments to the POTW NESHAP pursuant to that agreement.

### II. What Changes to the Current Rule Are We Proposing as the Result of Our Settlement Agreement With the PhRMA?

In the settlement agreement we reached with PhRMA, we agreed to make the following three changes: (1) Rescind the applicability provision set forth in 40 CFR 63.1580(c); (2) adopt, for all industrial POTW treatment plants which are area sources of HAP, the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and (3) exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the CAA. Area sources of HAP are those stationary sources that emit, or have the potential to emit, less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAP.

The CAA affords EPA the authority to adopt an alternative definition of "major source" in appropriate circumstances. Our original intent in adopting the alternate definition in 40 CFR 63.1580(c) of the POTW NESHAP was to make all industrial POTW subject to direct enforcement under the CAA, thereby providing additional assurance that they would adhere to the treatment and control limits of the applicable industrial NESHAP. The proposed amendments will still accomplish this goal since all POTW that meet our definition of industrial POTW will remain subject to direct enforcement and will be required to meet the control limits of the applicable industrial NESHAP.

### III. What Is the Basis for Controlling POTW That Are Area Sources?

As directed by section 112(k) of the CAA, we developed the Urban Air Toxics Strategy to control emissions of HAP from area sources in urban areas.

The Agency identified 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. In an action published in the **Federal Register** on July 19, 1999 (64 FR 38706), we identified POTW as one of the urban area source categories to be considered for additional regulation due to their contribution to HAP emissions in urban areas. At least six of the 33 urban area HAP (benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene chloride, tetrachloroethylene) may be emitted from POTW. Evaluating the feasibility of controlling HAP emissions from industrial POTW that are area sources is, therefore, one element in implementing our Urban Air Toxics Strategy.

Though POTW with significant HAP emissions are often associated with urban areas, today we are proposing a national rule. A national rule promotes regulatory consistency and assures that populations in smaller cities or rural areas that might be located near area sources will receive the same degree of protection. In addition, POTW serving urban areas can have rural locations. Therefore, a national rule was considered appropriate for POTW.

When EPA regulates HAP emissions from area sources, CAA section 112(d)(5) provides that we may set standards that provide for the use of generally available control technology (GACT). We have determined that GACT requirements for all existing industrial POTW which are area sources should be the same as the MACT requirements for those existing industrial POTW which are deemed to be major sources under the present rule. Thus, we are proposing to require that existing industrial POTW that are area sources must meet all requirements established by the applicable MACT standard for the industrial discharger. This approach assures that these requirements will be enforceable directly on an industrial POTW, without the need to classify any POTW, which itself emits HAP in area source quantities, as a major source.

Similarly, we have determined that GACT requirements for all new or reconstructed industrial POTW should be the same as MACT requirements for new or reconstructed industrial POTW which are deemed to be major sources under the present rule. This requires that such sources comply with the MACT requirements for the industrial discharger or for new or reconstructed non-industrial POTW, whichever are more stringent. Thus, we are proposing to establish GACT equal to MACT for all

industrial POTW. This eliminates the need for a definition of major source which is derived from the characteristics of the discharger rather than the POTW.

For new and existing non-industrial POTW which are area sources, we have determined that GACT should be no control. In addition, we are proposing to exempt such non-industrial area sources from the notification requirements in the current POTW NESHAP. In setting GACT at no control for non-industrial facilities, we considered the fact that the emissions of HAP from these facilities are typically low. Existing facilities do not have HAP controls, and the cost of adding HAP controls would be prohibitively high. With respect to new sources, the CAA provides that we may establish GACT requirements less stringent than the MACT floors which apply to major sources. Although we did adopt some limited control requirements for those new non-industrial POTW which are major sources, we do not believe that requiring such controls would be warranted for those new POTW which are only area sources.

#### **IV. What Is the Basis for Exempting Area Source POTW From Title V Permitting?**

We are proposing in these amendments to exempt those POTW which are regulated as area sources from any title V permitting requirements under the authority given to us under section 502(a) of the CAA. Major sources of HAP are subject to the Federal operating permit program established by title V of the CAA. Area sources may also be subject to title V permitting requirements, but we have statutory authority to waive these requirements. Section 502(a) of the CAA permits us to exempt one or more area source categories (in whole or in part) from the requirement to obtain a permit under 42 U.S.C. 7661a(a) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.

One important purpose of the operating permit program is to provide a mechanism by which the general regulatory requirements established by Federal standards can be translated into more specific requirements for affected sources. This function is largely superfluous in the case of industrial POTW because the industrial dischargers are themselves subject to the operating permit program, and wastewater treatment requirements under the applicable MACT standards

are one of the elements which must be incorporated in the operating permit for those industrial facilities. Thus, it is unnecessary to require that an area source industrial POTW obtain an operating permit to identify those wastewater treatment requirements which apply. The applicable requirements will already be clearly established in the permit obtained by the discharger.

In these circumstances, we believe it would be unnecessarily burdensome to require that an area source POTW obtain an additional operating permit. Therefore, unless the source is otherwise required to obtain an operating permit, we are proposing to exempt the owner or operator of industrial POTW area sources subject to these standards from any permitting requirements under title V of the CAA.

#### **V. What Are the Impacts of the Proposed Amendments?**

We do not expect any change in the environmental impacts of the final POTW NESHAP as a result of these proposed amendments to apply GACT to POTW. All facilities regulated under the present rule must meet identical control requirements under these proposed amendments. Furthermore, EPA anticipates that there will be no increase in the regulatory burden because there are no additional sources that will be subject to the standards. Indeed, we believe that the proposed amendments, by exempting industrial POTW which are area sources from title V requirements, which would apply to them under the present rule, will relieve affected sources, State and local agencies, and the EPA Regional Offices from an unnecessary regulatory burden.

#### **VI. What Are the Administrative Requirements?**

##### *A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735, October 4, 1993), EPA 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 Executive 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.

Pursuant to the terms of Executive Order 12866, it has been determined that these proposed amendments are not a "significant regulatory action" because they will not have an annual effect on the economy of \$100 million or more.

#### *B. Executive Order 13132, Federalism*

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

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed amendments.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on the proposed

amendments from State and local officials.

#### *C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments impose no new requirements on new or existing POTW treatment plants. Thus, Executive Order 13175 does not apply to this action.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed amendments from tribal officials.

#### *D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation.

The proposed amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed amendments have been determined to be not "economically significant" as defined under Executive Order 12866.

#### *E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The proposed amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because they are not a significant regulatory action under Executive Order 12866.

#### *F. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 EPA has determined that the proposed amendments do 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 1 year. The regulatory revisions proposed here have no associated costs and do not contain requirements that apply to small governments or impose obligations upon them. This action is not a "significant" regulatory action within the meaning of Executive Order 12866 and does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's proposed amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

*G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

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

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed amendments would not have a significant impact on a substantial number of small entities as they impose no new requirements on new or existing POTW treatment plants. Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. Under the RFA, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and has not been prepared.

*H. Paperwork Reduction Act*

An Information Collection Request (ICR) document was prepared for the

October 26, 1999 POTW final rule by the EPA and was submitted to and approved by OMB. A copy of this ICR (OMB control number 2060-0428) may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at [farmer.sandy@epa.gov](mailto:farmer.sandy@epa.gov), or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

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

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. These proposed amendments will not require additional burden on the affected entities.

*I. National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement 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) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The proposed amendments do not involve any additional technical standards. Therefore, the requirements

of the NTTAA do not apply to this action.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

**Christine Todd Whitman,**  
*Administrator.*

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

**PART 63—[AMENDED]**

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

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

**Subpart VVV—[Amended]**

2. Section 63.1580 is revised to read as follows:

**§ 63.1580 Am I subject to this subpart?**

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

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

(2) The affected source is located at a POTW which is a major source of hazardous air pollutant (HAP) emissions, or at any industrial POTW regardless of whether or not it is a major source of HAP; and

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

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

**Note to Paragraph (b):** See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) general provisions in subpart A of this part for the definitions of major source and area source.

(c) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW

treatment plant, as defined in § 63.1595, apply.

3. Section 63.1586 introductory text is revised to read as follows:

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

There are no control requirements for an existing non-industrial POTW treatment plant. There are no control requirements for any new or reconstructed area source non-industrial POTW treatment plant which is not a major source of HAP. The control requirements for a new or reconstructed major source non-industrial POTW treatment plant which is a major source of HAP are as follows:

\* \* \* \* \*

4. Section 63.1590 is amended by revising paragraph (a)(1) introductory text to read as follows:

**§ 63.1590 What reports must I submit?**

(a)(1) If you have an existing non-industrial POTW treatment plant, or a new or reconstructed area source non-

industrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed non-industrial POTW treatment plant which is a major source of HAP, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

\* \* \* \* \*

5. Section 63.1591 is amended by revising paragraph (a) to read as follows:

**§ 63.1591 What are my notification requirements?**

(a) If you have an industrial POTW treatment plant or a new or reconstructed non-industrial POTW which is a major source of HAP, and your State has not been delegated authority, you must submit notifications

to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

\* \* \* \* \*

6. Section 63.1592 is revised to read as follows:

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

(a) Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which do and do not apply to POTW treatment plants.

(b) Unless a permit is otherwise required by law, the owner or operator of an industrial POTW which is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

7. Table 1 to subpart VVV is amended by revising the entries “§ 63.1(c)(2)(i)” and “§ 63.9(a)” to read as follows:

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

General provisions reference	Applicable to subpart VVV	Explanation
* * * * *	* * * * *	* * * * *
§ 63.1(c)(2)(i) .....	Yes/No .....	State options regarding title V permit. Unless required by the State, area sources subject to subpart VVV are exempted from permitting requirements.
* * * * *	* * * * *	* * * * *
§ 63.9(a) .....	Yes/No .....	Applicability of notification requirements. Existing major non-industrial POTW treatment plants, and existing and new or reconstructed area non-industrial POTW treatment plants are not subject to the notification requirements.
* * * * *	* * * * *	* * * * *