

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL-5541-4]

RIN 2040-AC57

Streamlined Procedures for Modifying Approved Publicly Owned Treatment Works Pretreatment Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to revise the procedures for modifying the requirements of approved Publicly Owned Treatment Works (POTW) Pretreatment Programs incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued to POTWs. The new regulations are designed to reduce the administrative burden and cost associated with maintaining approved pretreatment programs without affecting environmental protection.

DATES: Written comments on this proposed rule must be submitted on or before September 30, 1996. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 P.M. (Eastern time) September 30, 1996.

ADDRESSES: Commenters are requested to submit three copies of their comments to the Comment Clerk for the Pretreatment Program Amendments; Water Docket; MC-4101, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Commenters who would like acknowledgment of receipt 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.

This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

The public may inspect the administrative record for this rulemaking at EPA's Water Docket, 401 M Street, S.W., Washington, D.C. 20460, Room L-102 between the hours of 9 a.m. and 3:30 p.m. on business days. For access to docket materials, please call (202) 260-3027 for an appointment during the aforementioned hours. A reasonable fee will be charged for copying.

FOR FURTHER INFORMATION CONTACT: Louis Eby, EPA, Office of Wastewater

Management (OWM), Permits Division (4203), 401 M Street, S.W., Washington, D.C. 20460, (202) 260-6814.

SUPPLEMENTARY INFORMATION:

Electronic Submission of Comments

As EPA is experimenting with electronic commenting, commenters may want to submit both electronic comments and duplicate paper comments. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Regulated Entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the National Pretreatment Program. Regulated entities include:

Category	Examples of regulated entities
Local government	Publicly Owned Treatment Works with Approved Pretreatment programs.
State government	States that act as Pretreatment Program Approval Authorities.
Federal government	EPA Regional Offices that act as Pretreatment Program Approval Authorities.

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 is regulated by this action, you should carefully examine the applicability criteria in § 403.18 and other applicable criteria in Part 403 of title 40 of the Code of Federal Regulations. 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.

Information in this preamble is organized as follows:

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I. Background

EPA is today proposing to simplify the process for modifying the pretreatment program requirements included in POTW NPDES permits pursuant to Clean Water Act (CWA) sections 307 and 402 and 40 CFR Part 403.

A. Existing Approved POTW Pretreatment Program Requirements

POTWs that meet certain requirements must develop pretreatment programs to control industrial discharges into their sewage systems. CWA section 402(b)(8); 40 CFR 403.8(a). EPA or the State (in States approved by EPA to act as the pretreatment program "Approval Authority") must approve the POTW's pretreatment program request according to the procedures in 40 CFR 403.11.

Regulations at 40 CFR 403.8 and 403.9 describe the substantive content of and documentation required for the POTW's pretreatment program submission. Under 40 CFR 403.8(f), the POTW pretreatment program submission must reflect specified legal authorities, compliance assurance procedures, adequate funding, a local limit development demonstration, an enforcement response plan (ERP), and a list of significant industrial users. The entire approved pretreatment program is then incorporated as an enforceable condition of the POTW's NPDES permit. 40 CFR 122.44(j)(2) and 403.8(c). Under CWA sec. 402(j) and 40 CFR 403.11(f) and 403.14(c), the Approval Authority must ensure that the approved pretreatment program documentation is available to the public for inspection and copying.

B. Existing § 403.18 Program Modification Requirements

Regulations at 40 CFR 403.18 specify the procedures used to modify approved POTW programs. EPA promulgated

those procedures on October 17, 1988. 53 FR 40562, 40615. Section 403.18(a) requires the POTW to follow program modification procedures whenever there is a "significant change" in the approved POTW pretreatment program. Section 403.18(b) outlines specific procedures for Approval Authority review and approval of "substantial program modifications" and other non-substantial program modifications. Section 403.18(c) contains a list of nine changes which are "substantial program modifications" and gives the Approval Authority power to designate other modifications as substantial modifications. The nine specified substantial program modifications in the existing regulations are: (1) Changes to legal authorities, (2) changes resulting in less stringent local limits, (3) changes to the POTW's mechanism to control significant industrial users, (4) changes in the POTW's method for implementing categorical pretreatment standards, (5) decreases in the frequency of industrial user self monitoring or reporting, (6) decreases in the frequency of the POTW's inspection or sampling of the industrial user, (7) changes to the POTW's confidentiality procedures, (8) significant reduction in the POTW's resources, and (9) changes in the POTW's sewage sludge disposal and management practices.

Section 403.18(b)(1) describes the procedure for Approval Authority approval of "substantial program modifications." Under this section, the POTW submits specified documents; the Approval Authority uses the procedures in 40 CFR 403.11(b) through (f) to approve or disapprove the modification; and the approved modification is incorporated into the POTW's permit as a minor permit modification under 40 CFR 122.63(g).

The procedures in 40 CFR 403.11(b) through (f) are the same procedures the Approval Authority uses to approve the POTW's original pretreatment program submission. Under these procedures, the Approval Authority determines whether the submission is complete, issues public notice of the complete request for substantial program modification, approves or denies the submission within 90 days, and publishes notice of approval or disapproval.

To provide notice of the request for approval, the Approval Authority mails notices to specified individuals, publishes notice of the request in the largest daily newspaper within the jurisdiction served by the POTW, provides a 30-day public comment period, provides an opportunity to request a public hearing, and holds a

public hearing at the POTW's request or if there is significant public interest in doing so. 40 CFR 403.11(b)(1). To provide notice of the approval or disapproval decision, the Approval Authority notifies all persons who submitted comments or participated in the public hearing if held, and publishes notice in the same newspaper as the original notice of request for approval was published. 40 CFR 403.11(e).

Under the existing § 403.18(b)(2) procedures for approval of non-substantial program modifications, the POTW must notify the Approval Authority at least 30 days prior to implementation of a non-substantial modification. The modification is considered approved unless the Approval Authority decides within 90 days that the change is substantial and initiates the procedures for approval of substantial program modifications. Once again, the approved non-substantial change is incorporated into the NPDES permit as a minor permit modification under 40 CFR 122.63(g).

The Agency pursued several goals in promulgating § 403.18. One was to assure consistency with federal pretreatment requirements by requiring Approval Authorities to review "substantial modifications" and by providing opportunity for public comment. A second was to assure that changes are considered part of the Approved Pretreatment Program and, therefore, are enforceable. Under CWA section 309, EPA may enforce any requirement imposed in an approved pretreatment program.

C. Concerns With Existing Procedures

The existing procedures have created problems and raised concerns among Approval Authorities, POTWs, and industrial users. Concerns have been raised about the requirement for Approval Authorities to publish notice of the request to approve a modification and then a second notice of its approval. As described above, these notices are required to be in the largest daily newspaper within the jurisdiction served by the POTW and can be expensive. The notices have generally elicited little or no public comment.

It has been EPA's experience that interested parties with relevant comments were generally already aware of, and involved in, the modification process at the local level. Thus, the required Approval Authority notices frequently duplicate notice that has already been given by POTWs. By the time modifications are forwarded to Approval Authorities for review, issues have generally been worked out at the local level. While notice given by

POTWs may not be the same in every respect as that required by § 403.18, EPA has little evidence that the § 403.18 notices have resulted in a corresponding benefit.

The existing approval process also places a resource burden on many Approval Authorities. Some Approval Authorities have experienced a backlog of program modifications awaiting review. POTWs may be reluctant to implement the submitted modifications until the modifications are incorporated into the POTW's NPDES permit.

When program modifications have not been processed by the Approval Authority, there is also uncertainty about the requirements to which industrial dischargers are subject under federal law. As noted previously, EPA may enforce against industrial users any requirement included in an approved pretreatment program. The industrial user could be subject to state or federal enforcement action for the "old" requirements that are still part of the approved pretreatment program, while also being subject to enforcement by POTWs for "new" requirements that the POTW has implemented prior to processing by the Approval Authority. Modifications that result in new or more stringent local limits on industrial users that are developed pursuant to 40 CFR 403.5(c) are immediately enforceable against the industrial users under 40 CFR 403.5(d) regardless of whether 40 CFR 403.18 modification procedures have been commenced or completed.

Today's proposal is intended to address these problems. The new procedures will expedite POTW implementation of many program changes, while providing for review and approval of modifications that relax the POTW's approved program.

D. EPA Straw Proposal

EPA solicited preliminary input on a "straw proposal" from various stakeholders, including States, POTWs, trade associations and environmental groups. Today's proposals are an outgrowth of that process.

The straw proposal would have streamlined the program modification process by taking most pretreatment program requirements out of POTW NPDES permits. Under the straw proposal, only the POTW's legal authority, local limits and Enforcement Response Plan would have been specifically identified in the POTW's permit.

Other program requirements would have been incorporated by general reference to the pretreatment regulations in 40 CFR Part 403. The straw proposal would have required the POTW to

maintain a publicly available up-to-date Program Description of what it was doing to satisfy Part 403 rather than to submit modified program descriptions to the Approval Authority as is currently required. Several commenters objected strongly to the program description requirement.

II. Description of Proposed Rule

While structured similar to the straw proposal, today's proposal would not remove the Approved Program from the POTW's NPDES permit and would not require the program description discussed above. Today's proposal addresses the concern that the Approved Program needs to remain in the permit because Part 403 standing alone may not be sufficiently specific to create objective, enforceable requirements that could be directly implemented by (and enforced against) the POTW as a permit condition. EPA is interested in comments on how it might implement the pretreatment regulations directly without the need to incorporate the entire Approved Programs in POTW permits. EPA is particularly interested in comments on how the regulations might be clarified or made more specific so that they could be directly implemented by and enforced against POTWs.

Today's proposal would revise 40 CFR Part 403 in three ways: (1) The number of changes that are considered substantial modifications would be reduced; (2) substantial modifications could be implemented after one public notice in certain circumstances, provided that no substantive comments are received on the notice; and (3) the period of notice that POTWs must provide of non-substantial modifications and the time for review by Approval Authorities will both be 45 days. EPA is also soliciting comment on additional revisions. These proposals and alternatives are discussed below.

A. Types of Modifications Considered Substantial

Under today's proposal, only modifications to the POTW's pretreatment program legal authority and local limits that relax the requirements applicable to industrial users in the POTW's existing approved program would continue to be processed as substantial modifications. This means that only for these modifications would Approval Authorities be required to follow the detailed public notice procedures of 40 CFR 403.11, prior to Approval Authority action on the proposed modification.

EPA believes that the POTW's legal authority and local limits are the local

pretreatment program elements of greatest interest because they are the federal requirements with which the industrial users of the POTW must comply. EPA is proposing that only changes that relax those requirements be subject to substantial modification procedures, because changes that are more stringent than the POTW's current permit requires do not require an immediate change to the POTW's permit and requiring public notice procedures might delay their implementation.

To put this concept in perspective, it is important to understand that a POTW is always free to do more than is required by the Approved Pretreatment Program in its NPDES permit. Subject to any constraints of local law and the notice requirements of 40 CFR 403.5, it is free to impose more restrictive requirements on its industrial users. However, if a POTW modifies its legal authority or local limits so as to relax the requirements applicable to its industrial users, the modification would be considered substantial and subject to the corresponding approval procedures.

Although most modifications that relax legal authority and local limits would continue to be substantial modifications, EPA is further proposing that three subsets of these categories be considered non-substantial modifications. The first are changes to POTW legal authority that are less prescriptive but which directly reflect a revision to the federal pretreatment regulations (e.g., when the federal regulations are streamlined). These modifications would have already undergone public notice and comment when promulgated by EPA.

The second category that EPA proposes be treated as non-substantial modifications are revisions to local limits for the conventional pollutant pH down to the minimum of 5.0 specified in 40 CFR 403.5(b). Approval Authorities have generally not found grounds to object to POTWs changing their minimum pH limit to equal the federal minimum.

The third category is modifications to local limits resulting from reallocations of the Maximum Allowable Industrial Loading (MAIL) for a given pollutant that do not increase the total MAIL for that pollutant. Some POTWs' local limits are expressed in terms of a MAIL for a pollutant, which is then allocated to individual industrial users as limits on the total mass of the pollutant that each user may discharge. Those mass limits are placed in the industrial users' permits or other individual control mechanisms and are enforceable under 40 CFR 403.5(d). Under today's proposal, those POTWs could reallocate

the MAIL to individual industrial users without seeking approval as long as the MAIL is not increased.

Under today's proposal, therefore, a modification to a local limit would be a substantial modification only when it increases the pollutant loadings that industrial users are allowed to discharge to the POTW. This could be an increase in a concentration limit applicable to all industrial users, or an increase in the MAIL for a pollutant. When POTWs allocate the MAIL to individual industrial users, they generally maintain a safety factor so that new industrial users coming on line can be given a mass allocation out of the existing MAIL. Such an allocation to a new industrial user would not constitute a substantial modification. Today's rule would specify that a reallocation of an existing MAIL would not be a substantial modification. Only where the total mass of a pollutant that industrial users could be authorized to discharge is increased would the modification be considered substantial.

Although today's proposal would authorize changes to Enforcement Response Plans (ERPs) to be processed as non-substantial modifications, the Agency is particularly interested in comment on this issue. EPA is also generally interested in comments on whether fewer or more categories of modifications should be processed as substantial modifications.

B. Public Notice Procedures for Substantial Modifications

Section 403.18(b)(1) currently requires the issuance of one public notice of a proposed modification and a second public notice once the modification is approved. Both notices must comply with the procedures in § 403.11 (b)-(f). Under today's proposed § 403.18(b)(2), however, the Approval Authority would not need to publish a second notice of decision if the following conditions were met: (1) The first notice states that the modification will be approved without further notice if no comments are received; (2) the Approval Authority receives no substantive comments on that notice; and (3) the modification request is approved without change. EPA believes that, in such circumstances, the original request for approval would also serve as the "notice of approval or disapproval" required by § 403.11(e). This provision would relieve the Approval Authority of the obligation to publish a second notice of approval in circumstances where it is clearly unnecessary.

EPA issued guidance on the implementation of 40 CFR 403.18 in a Memorandum dated July 22, 1993, from

Cynthia Dougherty, then Director of the Permits Division in the Office of Wastewater Management. That guidance stated that modifications could be adopted without the second notice in the above described circumstances. Today's proposal would codify that guidance.

The EPA guidance also suggested that Approval Authorities could consider local notice by the POTW to be adequate notice of receipt of request for approval and notice of decision under § 403.11 (b)-(f). EPA is not proposing any regulatory changes covering local notice because the Agency continues to believe this option is available under the existing regulations.

Approval Authorities are ultimately responsible for publishing the notice. EPA does not require POTWs to provide the notices. Today's proposal would leave POTWs and Approval Authorities free to negotiate arrangements for the publication of the required notice. In the absence of voluntary adequate notice by the POTW, the Approval Authority would still be required to provide the notice.

In order for a local POTW public notice to eliminate the need for an Approval Authority notice, the local notice must meet the requirements of § 403.11(b)(1). EPA is interested in receiving public comment on the sufficiency of this approach as well as any other comment concerning whether it is appropriate to consider local notice sufficient to satisfy the requirements of § 403.11.

EPA would appreciate comment on other ways that the § 403.11 procedures may be made more appropriate for pretreatment program modifications. In particular, EPA solicits comments on the appropriateness of the detailed public notice procedures in § 403.11(b)(1).

C. Procedures for Non-substantial Modifications

As a consequence of reducing the number of substantial modifications, today's proposal would expand the category of non-substantial modifications. Under the existing regulation, non-substantial modifications are deemed approved unless, within 90 days from their submission, the Approval Authority decides to review them as substantial modifications. Under today's proposal, non-substantial modifications would not be deemed approved but would require affirmative approval by the Approval Authority. The proposal would not require the Approval Authority to comply with any specific public notice procedures prior to

approving or disapproving a non-substantial modification.

EPA is soliciting comment on whether specific public notice requirements should be required for non-substantial modifications. For example, evidence of notice by the POTW might be required. Regardless of the public notice provided at the time of the modification, the public could still challenge an inadequate program when the POTW's NPDES permit is proposed for renewal. One commenter has suggested that the public should be educated as to the importance of Pretreatment Program requirements, so that public input will occur in response to notice of program modifications. EPA is interested in receiving comments on how this could be accomplished.

EPA is also soliciting comment on whether some modifications should be reported retroactively by the POTW to the Approval Authority in the POTW's annual report rather than in advance. Modifications that would not need to be submitted in advance might include, for example, modifications that do not result in the POTW doing less than its existing NPDES permit specifically requires.

D. Time for Review of Non-substantial Modifications

Under today's proposal, the time period for submittal of non-substantial program modifications to the Approval Authority prior to implementation would be extended from 30 to 45 days. The Approval Authority would be directed to notify the POTW within this 45-day period of its decision to approve or disapprove the modification, rather than the 90 days currently allowed under existing § 403.18(b)(2).

EPA is proposing this change in response to comments that the existing procedure for submittal of non-substantial program changes can be disruptive to approved pretreatment program operations. Because the Approval Authority has a longer period of time in which to decide whether to initiate substantial modification procedures, POTWs have chosen to wait until the 91st day to implement the change to avoid the risk that the Approval Authority may seek review of a change the POTW considered non-substantial. To avoid these results, EPA proposes to require the Approval Authority to approve or disapprove a proposed non-substantial modification within the same 45 day period of time the POTW must wait to implement the program change.

EPA solicits comment on the issue of whether non-substantial modifications should continue to be deemed approved

if not disapproved within 45 days. Under the existing regulations, non-substantial modifications submitted by the POTW are deemed approved unless the Approval Authority disapproves them within the specified time. 40 CFR 403.18(b)(2). Because the proposed list of non-substantial modifications includes categories that were previously considered substantial, it might not be appropriate for them to be deemed approved if the Approval Authority does not act upon them.

In the alternative, only certain categories of non-substantial modifications could be deemed approved if not disapproved by the Approval Authority within 45 days. For example, decreases in frequency of industrial self-monitoring and reporting, and decreases in the frequency of industrial user inspections and sampling could be implemented only after they are actually approved by the Approval Authority. Other modifications could be implemented after 45 days if the Approval Authority does not respond. (This approach, however, would not change any applicable public notice requirements of local law otherwise applicable to the POTW.)

E. Changes to Industrial User Inventory

EPA is proposing today to allow POTWs to submit changes to their industrial user inventory at the time they submit their Annual Report. Current regulations require that such changes be submitted as non-substantial modifications, and also require that the industrial user inventory be updated in the POTW's Annual Report to the Approval Authority.

EPA believes that it is appropriate to eliminate the double reporting currently required by the regulation. There is little value in requiring Approval Authorities to approve changes to SIU designations in advance. All industrial users that are subject to national categorical pretreatment standards currently must be designated as Significant Industrial Users (SIUs), so there is no flexibility in such designations. On the other hand, POTWs already have considerable flexibility in designating non-categorical industrial users as SIUs, and should be able to exercise that flexibility without receiving prior approval. Moreover, most requirements relative to POTW regulation of SIUs are annual requirements, so Approval Authorities should be able to provide adequate oversight even if notification of the changes to the IU inventory is not immediate. EPA invites comment on this approach.

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 not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 12875

Under Executive Order 12875 [58 FR 58093 (October 28, 1993)], entitled "Enhancing the Intergovernmental Partnership," the Agency is required to develop an effective process to permit elected officials and other representatives of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals.

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. Following informal consultation, in May 1994, EPA circulated a draft proposal to interested persons, including States, POTWs and organizations. EPA received approximately 20 comments, which have been addressed in today's rule. Several presentations outlining possible revisions to the pretreatment regulations were made to a number of stakeholder groups, including Regional, State and POTW personnel. These groups were encouraged to provide formal input to the proposed regulatory streamlining process. In addition, notice of the availability of the draft proposal for

review and comment was provided in the September, 1994 issue of the "Water Environment & Technology," the principal publication of the Water Environment Federation. Copies of all comments received, relating to this rulemaking, will be included in the docket to the proposed rule.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

—Small governmental jurisdictions—any government of a district with a population of less than 50,000.

—Small business—any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.

—Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field (e.g., private hospitals and educational institutions).

Under section 605(b) of the Act, if an agency can certify that a rule will not have a "significant impact on a substantial number of small entities," then no further analysis under the Act is required.

The only "small entity," as defined under the Regulatory Flexibility Act (RFA), potentially affected by the proposed rulemaking would be a small governmental jurisdiction having a population of less than 50,000. Most POTWs with Approved Pretreatment Programs serve communities with populations greater than 50,000 citizens. There is no known negative impact that will be imposed by this rulemaking on any small communities and their subordinate POTWs. Therefore, I certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The proposed regulations are designed specifically to streamline the regulatory process and will not impose any additional information collection requirements on either the Approval Authorities or the POTWs. Therefore, EPA did not prepare an Information Request document for approval by the Office of Management and Budget.

Should any reviewers feel that the proposed rulemaking will require

additional information collection activities, they should send their comments regarding the burden estimate or any other aspect pertaining to collection of information, including suggestions for reducing this burden to Director, Regulatory Information Division; EPA; 401 M St., S.W. (Mail Code 2137); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on any information collection requirements generated by this proposal.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rulemaking is basically "deregulatory" in nature and does not impose any additional burdens on the affected State, local or tribal governments. As the preceding preamble language clearly demonstrates, EPA actively is soliciting comments on any and all alternatives to the proposed changes in the regulations governing modification of a POTW's pretreatment program. To the extent enforceable duties arise as a result of today's proposed rule, such enforceable duties do not result in a significant regulatory action being imposed upon governmental entities or the private sector.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As previously stated, EPA believes that the rule will reduce the regulatory burden on all governmental agencies operating POTWs. This overall reduction will be applied across the board to all POTWs, with attendant benefits being provided to both large and small governments. Although EPA can not document the effects for each and every POTW, smaller governments may benefit the most from the proposed modifications as the avoided compliance costs attendant with modifying their programs may be a larger percent of their total operating budget than those costs borne by the larger POTWs.

In compliance with E.O. 12875 and section 203 of the UMRA, 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.

This proposed rule will provide flexibility to the regulated community. It does not impose any new requirements so costs to the regulated community should remain unchanged or be minimal. Therefore, EPA has determined that an unfunded mandates statement is unnecessary.

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 16, 1996.

Fred Hansen,
Acting Administrator.

For the reasons set out in the preamble, chapter I of title 40 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 citation for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(l)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100-4).

2. Section 403.3 is amended by redesignating paragraphs (j) through (u) as paragraphs (k) through (v) and by adding a new paragraph (j) to read as follows:

§ 403.3 Definitions.

* * * * *

(j) The term *Maximum Allowable Industrial Load* means the total mass of a pollutant that all industrial users of a POTW may discharge pursuant to a limit developed under § 403.5(c).

* * * * *

2a. In addition § 403.3 is amended in newly designated paragraph (u)(1) introductory text by removing the reference "(t)(2)" and adding in its place "(u)(2)"; and in newly designated paragraph (l)(2) by removing the references "(k)(1)(ii), or (k)(1)(iii)" and adding in its place "(l)(1) (i) or (iii)"; and in newly designated paragraph (u)(2) by removing the reference "(t)(1)(ii)" and adding in its place "(u)(1)(ii)".

3. Section 403.8 is amended by revising paragraphs (c) and (f)(6) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. The POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA to incorporate the approved Program as enforceable conditions of the Permit. The modification of a POTW's NPDES

Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedures in § 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

* * * * *

(f) * * *

(6) The POTW shall prepare a list of its industrial users meeting the criteria in § 403.3(u)(1). The list shall identify the criteria in § 403.3(u)(1) applicable to each industrial user and, for industrial users meeting the criteria in § 403.3(u)(1)(ii), shall also indicate whether the POTW has made a determination pursuant to § 403.3(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 § 403.9 or as a non-substantial modification pursuant to § 403.18(b)(2). Modifications to the list shall be submitted to the Approval Authority pursuant to § 403.12(i)(1).

* * * * *

4. Section 403.12 is amended by redesignating paragraph (i)(4) as paragraph (i)(5), revising paragraph (i)(3), and adding a new paragraph (i)(4) to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(i) * * *

(3) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

(4) A summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority; and

* * * * *

5. Section 403.18 is revised to read as follows:

§ 403.18 Modification of POTW Pretreatment Programs.

(a) *General.* Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's submission, as approved under § 403.11.

(b) *Approval procedures.* POTW Pretreatment Program modifications shall be accomplished as follows:

(1) *Substantial modifications.* (i) Substantial modifications mean:

(A) Modifications that relax POTW legal authorities (as described in

§ 403.8(f)(1)), except for modifications that directly reflect a revision to this part 403 and are reported pursuant to paragraph (b)(2) of this section; or

(B) Modifications that relax local limits, except for the following, which are reported pursuant to paragraph (b)(2) of this section: Modifications to local limits for pH, and reallocations of the Maximum Available Industrial Loading of a pollutant that do not increase the total headworks loadings for the pollutant.

(ii) For substantial modifications:

(A) The POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (see § 403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

(B) The Approval Authority shall approve or disapprove the Modification based on the requirements of § 403.8(f) and using the procedures in § 403.11(b) through (f), except as provided in paragraph (b)(1)(ii)(C) of this section.

(C) The Approval Authority need not publish a notice of decision under § 403.11(e) provided: The notice of

request for approval under § 403.11(b)(1) states that the request will be approved if no comments are received by a specified date notice; no substantive comments are received; and the request is approved without change.

(2) *Non-substantial modifications.* (i) Non-substantial modifications mean:

(A) Modifications to legal authorities as described in § 403.9(f)(1) not subject to paragraph (b)(1)(i)(A) of this section;

(B) Modifications to local limits not subject to paragraph (b)(1)(i)(B) of this section;

(C) Modifications to the POTW's control mechanism (as described in § 403.8(f)(1)(iii));

(D) Modifications to the POTW's Enforcement Response Plan;

(E) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(F) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(G) Modifications to the POTW's confidentiality procedures;

(H) Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels);

(I) Changes in the POTW's sludge disposal and management practices; and

(J) Any other modifications not specified in paragraph (b)(1) of this section that would result in the POTW not being in compliance with its Approved Program.

(ii) For non-substantial modifications:

(A) The POTW shall notify the Approval Authority of the non-substantial modification at least 45 days prior to implementation by the POTW, in a statement similar to that provided for in paragraph (b)(1)(ii)(A) of this section.

(B) Within 45 days after the submission of the POTW's statement, the Approval Authority shall notify the POTW of its decision to approve or disapprove the non-substantial modification.

(3) All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

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