

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7394-7]

RIN 2060-AJ66

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, amendments.

SUMMARY: On October 26, 1999, we promulgated the national emission standards for hazardous air pollutants (NESHAP) for publicly owned treatment works (POTW). In this action, we are promulgating amendments which were proposed pursuant to a settlement agreement with the Pharmaceutical Research and Manufacturers of America (PhRMA) regarding their petition for judicial review of the POTW NESHAP. The amendments will rescind an applicability provision; adopt, for all industrial POTW treatment plants that are area sources of hazardous air pollutants (HAP), the same NESHAP requirements that apply to industrial POTW treatment plants that are major sources of HAP; and exempt industrial POTW treatment plants that are area sources of HAP from the permit requirements in section 502(a) of the Clean Air Act (CAA).

EFFECTIVE DATE: October 21, 2002.

ADDRESSES: *Docket.* The administrative record compiled by EPA for this final rule, including public comments on the

proposed rule, is located in public docket No. A-96-46 at the following address: Air and Radiation Docket and Information Center, Mail Code 6102T, U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Washington DC 20460. The docket may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Materials related to the final amendments are available upon request from the Air and Radiation Docket and Information Center by calling (202) 566-1742. The FAX number for the Center is (202) 566-1741. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final amendments, 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*.

SUPPLEMENTARY INFORMATION:

Public Comments. The amendments for the POTW NESHAP were proposed on March 22, 2002 (67 FR 13496), and two comment letters were received on the proposed amendments. The comment letters are available in Docket No. A-96-46. The regulatory text and other materials related to the final

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 the final amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's 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.

Judicial Review. Under CAA section 307(b), judicial review of the final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before December 20, 2002. Only those objections to the final amendments which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceeding we bring to enforce such requirements.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC ^a	NAICS ^b	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.

^a Standard Industrial Classification.

^b North American Information Classification System.

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 the final 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 POTW NESHAP 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 final amendments are organized as follows:

- I. What is the background for this action?
- II. What changes to the existing rule are we adopting?
- III. What were the comments received on the proposed amendments?
- IV. What are the administrative requirements?
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act (RFA), as Amended by the Small Business

- Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
- D. Unfunded Mandates Reform Act of 1995
- E. Executive Order 13132, Federalism
- F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act of 1995
- J. Congressional Review Act

I. What Is the Background for This Action?

On October 26, 1999 (64 FR 57572), we promulgated the NESHAP for new and existing POTW using our authority under the CAA. In the POTW NESHAP, we required 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 (66 FR 16140), 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 that 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 14, 2001.

On March 22, 2002 (67 FR 13496), we proposed amendments to the POTW NESHAP pursuant to the agreement with PhRMA. We received two public comment letters on the proposed amendments. The commenters were the Association of Metropolitan Sewerage Agencies (AMSA) and PhRMA. Copies of these letters are found in docket A-96-46. All of the comments have been carefully considered. Because none of the comments submitted requested any substantive changes to the proposed amendments, the final amendments

remain unchanged from those which we proposed.

II. What Changes to the Existing Rule Are We Adopting?

In the settlement agreement we reached with PhRMA, we agreed to propose 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 that are area sources of HAP, the same NESHAP requirements that apply to industrial POTW treatment plants that are major sources of HAP; and (3) exempt industrial POTW treatment plants that 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 gives us 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 final amendments will still accomplish this goal because 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 Were the Comments Received on the Proposed Amendments?

Two comment letters were received on the proposed amendments. This section summarizes the comments and provides our response.

The comments on the proposed amendments to the POTW NESHAP supported the following amendments to the POTW NESHAP for area source POTW: the proposal to set generally available control technology under the CAA section 112(k) urban air toxics program at no control for area source new or existing non-industrial POTW and to exempt these area source POTW from the POTW NESHAP notifications requirements at 40 CFR 63.1590; the proposal to require area source industrial POTW to comply with the same maximum achievable control technology (MACT) requirements as are required for major source industrial POTW, accompanied by an exemption

from the CAA's title V permitting requirements.

One of the commenters did raise some additional issues. The AMSA questioned whether we have the statutory authority to apply regulations under the urban air toxics section of the CAA (section 112(k)) to rural area source POTW. The AMSA did not oppose our use of a national standard in this particular instance, but stated that it might oppose such a construction of the CAA in the context of a future rulemaking.

We find nothing in the statute to prevent the application of rules promulgated pursuant to CAA section 112(k) to the entire nation. We believe that we have the authority, in appropriate circumstances, to limit such a rule to particular geographic regions, but we do not believe that such an approach would have been appropriate for this situation. As for the effect our construction of the CAA might have in a future rulemaking, that is a hypothetical question beyond the scope of this proceeding.

The AMSA also suggested that we consider adding a provision to the POTW NESHAP amendments to encourage the discharging industry and the receiving POTW to enter into a written agreement in which the parties clearly state that the POTW will fulfill the discharging industry's NESHAP wastewater treatment obligations. We believe that the POTW NESHAP clearly defines an industrial POTW treatment plant. We think that a detailed written agreement between the discharging party and the POTW will generally be beneficial, and we encourage the routine use of such agreements. While we believe that the parties will elect to make a specific contractual agreement in most instances, the final rule does not require such an agreement for a POTW to be considered an industrial POTW.

IV. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

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 of 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 obligation 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 the final amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

An Information Collection Request (ICR) document was prepared for the October 26, 1999 POTW NESHAP 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 Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672. 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. The final amendments will not require additional burden on the affected entities.

C. 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 of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code; (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 EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA also determined that the amendments will not impose a significant economic impact on a substantial number of small entities. The amendments impose no new requirements on new or existing POTW treatment plants. In addition, by eliminating title V permit requirements, these amendments decrease the compliance costs for a few smaller facilities. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. 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, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires us 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 us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The regulatory revisions in the final amendments have no associated costs and do not contain requirements that apply to small governments or impose obligations upon them. Therefore, the final amendments are not a "significant" regulatory action within the meaning of Executive Order 12866 and do 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 final amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (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 the States, or on the distribution of power and

responsibilities among the various levels of Government.”

The final amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The amendments apply only to POTW and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to the final amendments.

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

Executive Order 13175, (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.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The amendments impose no new requirements on new or existing POTW. Thus, Executive Order 13175 does not apply to the final amendments.

G. 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule amendments are not subject to Executive Order 13045 because they are not an economically significant regulatory action as defined

by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

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

The final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

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 final amendments do not involve any additional technical standards. Therefore, the requirements of the NTTAA do not apply to this action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final amendments in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). The final

amendments will be effective on October 21, 2002.

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: October 11, 2002.

Christine Todd Whitman,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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.*

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 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(b)” to read as follows:

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

General provisions reference	Applicable to subpart VVV	Explanation
* * * * *	* * * * *	* * * * *
§ 63.1(c)(2)(i)	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(b)	Yes	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.
* * * * *	* * * * *	* * * * *