

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2016-0490; FRL-9969-95-OAR]

RIN 2060-AS85

**National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Residual Risk and Technology Review**

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

**ACTION:** Final rule.

**SUMMARY:** This action finalizes the residual risk and technology review (RTR) conducted for the Publicly Owned Treatment Works (POTW) source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing revised names and definitions of the subcategories, revisions to the applicability criteria, revised regulatory provisions pertaining to emissions during periods of startup, shutdown, and malfunction (SSM), initial notification requirements for existing Group 1 and Group 2 POTW, revisions to the requirements for new Group 1 POTW, requirements for electronic reporting, and other miscellaneous edits and technical corrections. While we do not anticipate any emission reductions as a result of these revisions, the changes should provide clarity for sources determining applicability and ensuring compliance.

**DATES:** This final rule is effective on October 26, 2017.

**ADDRESSES:** The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0490. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov>, or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time

(EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Katie Hanks, Sector Policies and Programs Division (E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-2159; fax number: (919) 541-0516; and email address: [hanks.katie@epa.gov](mailto:hanks.katie@epa.gov). For specific information regarding the risk modeling methodology, contact Terri Hollingsworth, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5623; fax number: (919) 541-0840; and email address: [hollingsworth.terri@epa.gov](mailto:hollingsworth.terri@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois 60604; telephone number: (312) 353-6266; and email address: [ayres.sara@epa.gov](mailto:ayres.sara@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

- CAA Clean Air Act
- CBI confidential business information
- CDX Central Data Exchange
- CEDRI Compliance and Emissions Data Reporting Interface
- ERT Electronic Reporting Tool
- HAP hazardous air pollutants(s)
- HQ hazard quotient
- H<sub>2</sub>S hydrogen sulfide
- ICR Information Collection Request
- MACT maximum achievable control technology
- MGD million gallons per day
- MIR maximum individual risk
- NESHAP national emission standards for hazardous air pollutants
- NPDES National Pollutant Discharge Elimination System
- NTAA National Technology Transfer and Advancement Act
- PB-HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
- POTW Publicly Owned Treatment Works
- RFA Regulatory Flexibility Act

- RIN Regulatory Information Number
- RTR Risk and Technology Review
- SSM startup, shutdown and malfunction
- TOSHI Target Organ Specific Hazard Index
- UMRA Unfunded Mandates Reform Act

**Background information.** On December 27, 2016, the EPA proposed revisions to the POTW NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in *Response to Public Comments on the EPA's Residual Risk and Technology Review for the Publicly Owned Treatment Works Source Category* in Docket ID No. EPA-HQ-OAR-2016-0490. A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket.

**Organization of this document.** The information in this preamble is organized as follows:

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  - L. Congressional Review Act (CRA)

**I. General Information**

*A. Does this action apply to me?*

*Regulated entities.* Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

**TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION**

NESHAP and source category	NESHAP	NAICS <sup>1</sup> code
Sewage Treatment Facilities.	Subpart VVV .....	221320

<sup>1</sup> North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. The standards are directly applicable to the affected sources. Federal, state, local, and tribal governments are affected as discussed below. By definition, a POTW is owned by a municipality, state,

intermunicipal or interstate agency, or any department, agency, or instrumentality of the federal government (see 40 CFR 63.1595 of subpart VVV). To determine whether your facility is affected, you should examine the applicability criteria in the POTW NESHAP. Specifically, if a POTW is a Group 2 POTW<sup>1</sup> that is a major source of hazardous air pollutant (HAP) emissions or a Group 1 POTW regardless of the HAP emissions, and the POTW meets the criteria for development and implementation of a pretreatment program according to 40 CFR 403.8, then the POTW is affected by these standards. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this final action will also be available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at <http://www.epa.gov/stationary-sources-air-pollution/publicly-owned-treatment-works-potw-national-emission-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same Web site.

Additional information is available on the RTR Web site at <http://www.epa.gov/ttn/atw/rrisk/rtrpg.html>. This information includes an overview of the RTR program, links to project Web sites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

*C. Judicial Review and Administrative Reconsideration*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 26, 2017. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings

<sup>1</sup> As discussed below in section III.D of this preamble, the terms "Group 1 POTW" and "Group 2 POTW" are replacing the previous terms "industrial POTW" and "nonindustrial POTW." The "Group 1" and "Group 2" subcategories are described in the regulatory text at 40 CFR 63.1581.

brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC South Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

**II. Background**

*A. What is the statutory authority for this action?*

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. "Major sources" are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or

processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant

to CAA section 112(f).<sup>2</sup> For more information on the statutory authority for this rule, see the proposed rule published on December 27, 2016 (81 FR 95352).

*B. What is the POTW source category and how does the NESHAP regulate HAP emissions from the source category?*

**1. Definition of the POTW Source Category and the Affected Source**

The EPA promulgated the NESHAP for the POTW source category (henceforth referred to as the "POTW NESHAP") on October 26, 1999 (64 FR 57572). The standards are codified at 40 CFR part 63, subpart VVV. The POTW NESHAP was amended on October 21, 2002 (67 FR 64742). As amended in 2002, the POTW source category consists of new and existing POTW treatment plants that are located at a POTW that is a major source of HAP emissions and that meets the criteria for development and implementation of a pretreatment program as defined by 40 CFR 403.8 under the Clean Water Act (CWA). Additional information about the National Pretreatment Program can be found in the December 27, 2016, RTR proposal (81 FR 95374). The source category covered by this MACT standard currently includes thirteen facilities.

As used in this regulation, the term POTW refers to both any POTW that is owned by a state, municipality, or intermunicipal or interstate agency and, therefore, eligible to receive grant assistance under the Subchapter II of the CWA, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act. For more information see the December 27, 2016, RTR proposal (81 FR 95352). The source category includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources.

**2. Applicability of the 2002 POTW NESHAP**

The 2002 POTW NESHAP is subcategorized based on whether the POTW is providing treatment for wastewaters received from an industrial

<sup>2</sup> The U.S. Court of Appeals for the District of Columbia Circuit has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.").

user as the means by which that industrial user complies with another NESHAP. The 2002 POTW NESHAP defined an "industrial POTW" as "a POTW that accepts a waste stream regulated by another NESHAP and provides treatment and controls as an agent for the industrial discharger. The industrial discharger complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP." An "industrial POTW" is subject to the 2002 POTW NESHAP regardless of the HAP emissions (*i.e.*, the POTW does not have to be a major source). In contrast, a "non-industrial POTW" was defined in the 2002 POTW NESHAP as "a POTW that does not meet the definition of an industrial POTW as defined above." A "non-industrial POTW" must be a major source to be subject to the 2002 POTW NESHAP. For more information, see the December 27, 2016, RTR proposal (81 FR 95357).

**3. HAP Emitted and HAP Emission Points**

The amount and type of HAP emitted from a POTW is dependent on the composition of the wastewater streams discharged to a POTW by industrial users. The primary HAP emitted from the POTW that were identified as subject to the POTW NESHAP include acetaldehyde, acetonitrile, chloroform, ethylene glycol, formaldehyde, methanol, methylene chloride, tetrachloroethylene, toluene, and xylenes. The HAP present in the wastewater entering a POTW can biodegrade, adhere to sewage sludge, volatilize to the air, or pass through (remain in the wastewater discharge) to receiving waters. Emissions can occur at any point at the POTW, including collection systems and wastewater treatment units located at the POTW treatment plant.

**4. Regulation of HAP Emissions in the 2002 POTW NESHAP**

The POTW NESHAP specifies requirements for the industrial and non-industrial POTW subcategories. Under the 2002 POTW NESHAP, an existing "industrial POTW" must meet the requirements of the industrial user's NESHAP. A new or reconstructed "industrial POTW" must meet the requirements of the industrial user's

NESHAP or the requirements for new or reconstructed non-industrial POTW, whichever is more stringent.

There are no control requirements in the 2002 POTW NESHAP for existing "non-industrial POTW." However, new or reconstructed "non-industrial POTW" must equip each treatment unit up to, but not including, the secondary influent pumping station, with a cover. In addition, all covered units, except the primary clarifier, must route the air in the headspace above the surface of the wastewater to a control device that meets the requirements for closed-vent systems and control devices found in the NESHAP from Off-Site Waste and Recovery Operations (40 CFR part 63, subpart DD). As an alternative, a new or reconstructed "non-industrial POTW" can demonstrate that all units up to, but not including, the secondary influent pumping station emit a HAP fraction of 0.014 or less. The HAP fraction emitted is the fraction of HAP in the wastewater entering the POTW that is emitted to the atmosphere. For additional information, see the December 27, 2016, RTR proposal (81 FR 95357).

*C. What changes did we propose for the POTW source category in our December 27, 2016, RTR proposal?*

On December 27, 2016, the EPA published a proposed rule in the **Federal Register** for the POTW NESHAP, 40 CFR part 63, subpart VVV, that took into consideration the RTR analyses. In the proposed rule, we proposed that the risks are acceptable and the current standards provide an ample margin of safety to protect public health. Additionally, we did not identify any developments in practices, processes, and control technologies for the POTW source category as part of the technology review. During this rulemaking, we evaluated other revisions to the 2002 POTW NESHAP outside of the RTR. We proposed to revise the names and definitions of the industrial and non-industrial subcategories to be called Group 1 and Group 2 POTW. We also proposed to include requirements to limit emissions from collection systems and the POTW treatment plant; requirements for existing, new, or reconstructed Group 1 POTW to comply with both the requirements in the POTW NESHAP and those in the applicable NESHAP for which the POTW acts as a control agent; and HAP emission limits for existing Group 2 POTW. In addition, we proposed to clarify the applicability criteria; require initial notification for existing Group 1 and Group 2 POTW; revise regulatory provisions pertaining to emissions during periods of SSM; add

requirements for electronic reporting; and make other miscellaneous edits and technical corrections.

**III. What is included in this final rule?**

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the POTW source category. This action also finalizes other changes to the NESHAP, including revised names and definitions of the subcategories, clarified applicability criteria, revised regulatory provisions pertaining to emissions during periods or SSM, initial notification requirements for existing Group 1 and Group 2 POTW, requirements for new or reconstructed Group 1 POTW to comply with both the requirements in the POTW NESHAP and those in the applicable NESHAP for which the POTW acts as a control agent, requirements for electronic reporting, and other miscellaneous edits and technical corrections. As explained in section IV of this preamble, we are not taking final action at this time on several provisions that were proposed, including standards for pretreatment, the inclusion of collection systems in the major source determination, and the HAP fraction emission limit for existing Group 1 and Group 2 POTW.

*A. What are the final rule amendments based on the risk review for the POTW source category?*

We determined that risks resulting from emissions from the POTW source category are acceptable. Specifically, the maximum individual cancer risk (MIR) is 2-in-1 million based on allowable emissions and 1-in-1 million based on actual emissions, well below the presumptive limit of acceptability (100-in-1 million), and other health information indicates there is no appreciable risk of adverse chronic or acute non-cancer health effects due to HAP emissions from the source category. Additionally, emissions of 2-methylnaphthalene, the only HAP emitted from the POTW source category that is known to be persistent and bio-accumulative in the environment (PB-HAP), did not exceed the worst-case Tier I screening emission rate or any ecological benchmarks. Therefore, revisions to the standards are not necessary to reduce risk to an acceptable level or to prevent an adverse environmental effect. Further, considering risk and non-risk factors, we determined that the 2002 POTW NESHAP requirements provide an ample margin of safety to protect public health. Therefore, we are not finalizing revisions to the standards under CAA section 112(f)(2).

*B. What are the final rule amendments based on the technology review for the POTW source category?*

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

*C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?*

Consistent with *Sierra Club v. EPA*, 552 F.3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. We have revised Table 1 to Subpart VVV of Part 63 (the General Provisions applicability table) in several respects to eliminate the incorporation of those General Provisions that stated or were tied to the SSM exemption. These revisions to Table 1 are explained in detail in the proposed rule preamble at 81 FR 95780–95782. Further, in conjunction with the elimination of the incorporation of these General Provisions requirements, we have (1) added a general duty to minimize emissions in 40 CFR 63.1582(e) and 63.1586(e), see 81 FR at 95380 (col. 2–3); (2) incorporated performance testing requirements for control devices in 40 CFR 63.694, see 81 FR at 95781 (col. 1); (3) added language to Table 1 related to monitoring that is identical to 40 CFR 63.8(d)(3) (which is no longer incorporated) but with certain revisions to reflect the ending of the SSM plan requirement, see 81 FR at 95381 (col. 2); (4) made the recordkeeping requirements in 40 CFR 63.696(h) and 63.1589(d) applicable to periods that were previously covered by SSM-related provisions, see 81 FR 95381 (col. 2–3); and (5) amended the reporting requirements in 40 CFR 63.1590 which, in conjunction with the existing reporting requirements in 40 CFR 63.693 and 63.1590(a), will adequately provide for reporting that was previously governed by SSM-related provisions, see 81 FR at 95382.

*D. What other changes have been made to the NESHAP?*

**1. Applicability Criteria**

The EPA is not revising the applicability of 40 CFR part 63, subpart VVV as proposed on December 27, 2016. Instead, the EPA is finalizing minor clarifying changes to the applicability criteria that are in the 2002 POTW NESHAP. The renaming of the subcategories (from "industrial" to "Group 1" and from "non-industrial" to "Group 2) and the definitions of Group

1 and Group 2 POTW are being finalized as proposed, and as discussed below. However, for clarification, the EPA has removed the statements regarding ownership and operation of POTW in regards to which POTW are required to develop and implement a pretreatment program as defined by 40 CFR 403.8. This change clarifies that any Group 1 POTW (regardless of HAP emissions) or Group 2 POTW that is a major source of HAP is subject to the POTW NESHAP if the POTW also meets the criteria for development and implementation of a pretreatment program, regardless of whether the POTW, state, or other entity implements the pretreatment program.

## 2. Names and Definitions of the Subcategories

As proposed, the EPA is revising the names and definitions for the subcategories identified in the POTW NESHAP. The EPA is renaming an "industrial POTW treatment plant" as a "Group 1" POTW treatment plant and a "non-industrial POTW treatment plant" as a "Group 2" POTW treatment plant. The EPA expects that this clarification will address any confusion that could have been caused by the previous subcategory names "industrial POTW treatment plant" and "non-industrial treatment plant" because POTW in both subcategories treat wastewater from industrial users. The key difference between Group 1 and Group 2 is that a Group 1 POTW acts as an agent for an industrial user by accepting and controlling the industrial user's waste stream regulated under another NESHAP. By contrast, a Group 2 POTW may treat the waste stream from an industrial user, but does not act as the industrial user's agent to comply with another NESHAP.

## 3. Initial Notification Requirements for Existing Group 1 and Group 2 POTW

In the final rule (40 CFR 63.1586(a)), existing Group 1 and Group 2 POTW treatment plants must comply with the initial notification requirements in 40 CFR 63.1591(a) of subpart VVV. This notification requirement was not required for these existing sources in the 2002 POTW NESHAP, but was proposed in the December 27, 2016, proposal, and is consistent with notification requirements that were applicable to new or reconstructed Group 2 sources under the 2002 POTW NESHAP.

## 4. Requirements for New Group 1 POTW

The EPA is finalizing, as proposed, the requirement that new Group 1 POTW comply with both the requirements of the other NESHAP for

which they act as an agent of control for an industrial user and the requirements for new Group 2 POTW in this final rule. The requirements for new Group 2 POTW are unchanged from the 2002 POTW NESHAP and provide the option of complying with either (a) cover all primary treatment units and route emissions through a closed vent system to a control device or (b) meet a HAP fraction emission limit of 0.014 for emissions from all primary treatment units.

## 5. Requirements for Electronic Reporting

The EPA is finalizing electronic reporting requirements for new POTW consistent with the proposed rule. Specifically, new POTW must electronically submit all annual reports and certain performance test reports. The EPA believes that the electronic submittal of these reports will increase the usefulness of data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community.

## 6. Other Miscellaneous Edits and Technical Corrections

The EPA is finalizing the following technical corrections as proposed:

- Revising all references to "new or reconstructed POTW" to refer to "new POTW" because the definition of "new" includes reconstructed POTW.
- Combining text from 40 CFR 63.1581 and 63.1582 because the language was redundant and confusing. This includes revising 40 CFR 63.1581 to include all combined text and revising 40 CFR 63.1583(c) to include the text from the current 40 CFR 63.1582(c).
- Revising 40 CFR 63.1586(b)(1) to require covers "designed and operated to prevent exposure of the wastewater to the atmosphere" instead of "designed and operated to minimize exposure of the wastewater to the atmosphere." This clarification has also been made to the definition of "cover" in 40 CFR 63.1595.
- Revising 40 CFR 63.1587 to include compliance requirements that are currently found in 40 CFR 64.1584 and 63.1587, and deleting 40 CFR 63.1584.
- Clarifying the method for calculating the HAP fraction emitted and moving the detailed instructions for calculating the HAP fraction emitted from 40 CFR 63.1588(c)(4) to 40 CFR 63.1588(c)(3). The requirements remaining in 40 CFR 63.1588(c)(4) address monitoring for continuous compliance.

- Revising 40 CFR 63.1588(a)(3) to clarify that a cover defect must be repaired within 45 "calendar" days; currently the paragraph says "45 days."

- Adding definitions of existing source/POTW and new source/POTW to 40 CFR 63.1595 to clarify the date that determines whether a POTW is existing or new.

- Renaming the title of 40 CFR 63.1588 to "How do Group 1 and Group 2 POTW treatment plants demonstrate compliance?" from "What inspections must I conduct?" The new title better reflects the contents of this section.

- Removing the details on how to calculate the HAP fraction emitted from the definition of HAP fraction emitted. The procedure for how to calculate the HAP fraction emitted is provided within the text of the rule. Having a summarized version of this procedure in the definition could cause confusion.

- Revising two references to dates to insert the actual dates. The phrase "six months after October 26, 1999" was replaced with "April 26, 2000"; and the phrase "60 days after October 26, 1999" was replaced with "December 27, 1999." These changes do not result in a change in the date, but only clarify the specific dates being referenced.

- Clarifying that the reports required in 40 CFR 63.1589(b)(1) include the records associated with the HAP loading and not just the records associated with the HAP emissions determination.

- Removing the definition of "Reconstruction" in 40 CFR 63.1595 as "Reconstruction" is already defined in the General Provisions of 40 CFR 63.2.

## E. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on October 26, 2017.

The compliance date for existing Group 1 POTW is found in the applicable NESHAP for which the industrial user is subject to wastewater requirements. The compliance date for existing Group 2 POTW constructed or reconstructed on or before December 1, 1998, remains April 26, 2000. While we do not expect any additional existing Group 1 or Group 2 POTW beyond the 13 identified, we have chosen to include an additional compliance date of October 26, 2018 for existing Group 1 and Group 2 sources to submit their initial notification. We understand from public comments that POTW are evaluating their potential emissions and additional POTW may find they are subject to the rule. These POTW are only required to submit a notification that they are subject to the rule, and the additional time given for compliance of

this notification submittal will provide time for completion of the necessary emission calculations. The 13 existing sources that are subject to the rule and were previously identified have already met this notification requirement and do not need to resubmit a notification. New sources constructed or reconstructed after December 27, 2016, must comply with all of the standards immediately upon the effective date of the standard, October 26, 2017, or upon startup, whichever is later. While we did not identify any new sources that are subject to the rule since the original rule was published in 1999, we are including a transition period until October 26, 2020 for any new sources constructed or reconstructed between December 1, 1998, and December 27, 2016, to comply with the revisions in this rule.

*F. What are the requirements for submission of annual reports and performance test data to the EPA?*

As we proposed, the EPA is finalizing the requirement for owners and operators of POTW to submit electronic copies of certain required performance test reports and annual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

The EPA Web site that stores the submitted electronic data, WebFIRE, is easily accessible and provides a user-friendly interface. By making records, data, and reports addressed in this rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts its CAA-required technology reviews. As a result of having reports readily accessible, our ability to carry

out comprehensive reviews will increase and be achieved within a shorter period of time.

We anticipate fewer or less substantial Information Collection Requests (ICRs) in conjunction with prospective CAA-required technology reviews may be needed, which results in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the agency's ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Air agencies, as well as the EPA, can benefit from more streamlined and automated review of the electronically submitted data. Standardizing report formats allows air agencies to review reports and data more quickly. Having reports and associated data in electronic format facilitates review through the use of software "search" options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies and the EPA can access reports wherever and whenever they want or need, as long as they have access to the Internet. The ability to access and review reports electronically assists air agencies in determining compliance with applicable regulations more quickly and accurately, potentially allowing a faster response to violations, which could minimize harmful air emissions. This benefits both air agencies and the general public.

For a more thorough discussion of electronic reporting required by this rule, see the discussion in the preamble of the proposal. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, air agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations and enhancing the public's access to this important information.

**IV. What is the rationale for our final decisions and amendments for the POTW source category?**

For each decision or amendment, this section provides a description of what we proposed and what we are finalizing,

the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. Comments not discussed in this preamble, comment summaries, and the EPA's responses can be found in the comment summary and response document available in the docket (Docket ID No. EPA-HQ-OAR-2016-0490).

*A. Residual Risk Review for the POTW Source Category*

Pursuant to CAA section 112(f), we conducted a residual risk review and presented the results of the review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the December 27, 2016, RTR proposal (81 FR 95372). The residual risk review for the POTW source category included assessment of cancer risk, chronic non-cancer risk, and acute non-cancer risk due to inhalation exposure, as well as multipathway exposure risk and environmental risk. The results of the risk assessment are presented briefly in this preamble and in more detail in the residual risk document, *Residual Risk Assessment for Publicly Owned Treatment Works Source Category in Support of the October 2017 Risk and Technology Review Final Rule*,<sup>3</sup> which is available in the docket for this rulemaking.

The results indicated that maximum inhalation cancer risk to the individual most exposed is 2-in-1 million based on allowable emissions and 1-in-1 million based on actual emissions, which is well below the presumptive limit of acceptability (*i.e.*, 100-in-1 million). In addition, the maximum chronic noncancer target organ specific hazard index (TOSHI) due to inhalation exposures is less than 1. The evaluation of acute noncancer risk, which was conservative, showed a hazard quotient at or below 1 for all but one POTW. Based on the results of the screening analyses for human multipathway exposure to, and environmental impacts from, PB-HAP, we also concluded that the cancer risk to the individual most exposed through ingestion is below the level of concern and no ecological benchmarks are exceeded. The facility-wide cancer and noncancer risks were estimated based on the actual emissions from all sources at the identified POTW (both MACT and non-MACT sources). The results indicated the cancer risk to

<sup>3</sup> This report is an update to the residual risk report provided at proposal, *Residual Risk Assessment for Publicly Owned Treatment Works Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule*, available in the docket.

the individual most exposed is no greater than 10-in-1 million and the noncancer TOSHI is less than 1. Considering the above information, as well as other relevant non-health factors under the Benzene NESHAP analysis codified in CAA 112(f)(2)(B), we proposed that the risk is acceptable and the requirements in the 2002 POTW NESHAP provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

The risk assessment conducted for the POTW proposal estimated cancer, chronic noncancer, and acute noncancer risk for six of the 13 facilities in the source category and is summarized and referenced above. We confirmed the existence of seven additional POTW subject to the rule that were identified through public comments. For these seven POTW, we conducted a facility-wide risk assessment of potential cancer and chronic noncancer health effects. The results of this assessment indicate that all seven POTW have a facility-wide noncancer TOSHI less than 1, four of the POTW have a facility-wide cancer risk estimated less than 1-in-1 million, and three of the POTW have a facility-wide cancer risk estimated at or above 10-in-1 million. The highest facility-wide MIR was 60-in-1 million driven by formaldehyde from internal combustion engines which are covered under the NESHAP for the Stationary Reciprocating Internal Combustion Engines source category. For this POTW with the highest facility-wide MIR, the facility-wide emissions of formaldehyde are 22 tpy while the source category emissions of formaldehyde are 0.0026 tpy, which indicates that almost 100 percent of the estimated cancer risk is from emissions sources that are not part of the POTW source category. This ratio of source category emissions relative to facility-wide emissions of formaldehyde is the same for the other two POTW with facility-wide cancer risk estimated at or above 10-in-1 million. Therefore, it is reasonable to conclude that all 13 POTW have estimated cancer risk close to or below 1-in-1 million from source category emissions and we retain our proposed determination that risk is acceptable. Further, as discussed in the December 27, 2016, RTR proposal (81 FR 95373), we retain our determination that, considering the costs, economic impacts and technological feasibility of additional standards to reduce risk further, the 2002 POTW NESHAP provides an ample margin of safety to protect public health and prevents an adverse environmental effect. Details of this risk assessment are described in the

*Residual Risk Assessment for the Publicly Owned Treatment Works Source Category in Support of the October 2017 Risk and Technology Review Final Rule* found in the docket for this rulemaking.

Most of the commenters on the proposed risk review supported our risk acceptability and ample margin of safety determinations for the POTW NESHAP. Some commenters requested that we make changes to our residual risk review approach. However, we evaluated the comments and determined that no changes to our risk assessment methods or conclusions are warranted. A summary of these comments and responses are in the comment summary and response document, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2016-0490).

Since proposal, our risk assessment has been broadened to include additional POTW; however, the conclusions of our risk assessment and our determinations regarding risk acceptability, ample margin of safety, and adverse environmental effects have not changed. For the reasons explained in the proposed rule and discussed above, we determined that the risks from the POTW source category are acceptable, and that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

#### *B. Technology Review for the POTW Source Category*

As described in the December 27, 2016, RTR proposal (81 FR 95373), and as provided by CAA section 112(d)(6), our technology review focused on identifying developments in the practices, processes, and control technologies for the POTW source category. We concluded that there are two different control options that may be used at a POTW to reduce HAP emissions: pretreatment programs and add-on controls (*i.e.*, covers or covers vented to a control device). While we proposed specific revisions to the standards, none of those revisions were the result of any identified developments in practices, processes, or control technologies beyond the programs and controls already in use at the time of the promulgation of the original 40 CFR part 63, subpart VVV rulemaking.

*Comment:* We received various comments related to the information evaluated for the proposal. Two commenters stated that there is no technical basis that requires the EPA to revise the standards since there have

been no technology advances since 1998 that warrant a change in the original MACT analysis. Several commenters provided additional information on specific control technologies, including biofilters, caustic scrubbers, and carbon absorbers. One of these commenters stated that biofilters are not reliable control devices in the context of a POTW because they are designed for stable operating conditions. In contrast, another commenter provided information that biofilters might have the ability to reduce HAP in addition to hydrogen sulfide (H<sub>2</sub>S) and volatile organic compounds (VOC). Additional comments on the technology review can be found in section 3 of the response to comments document in the docket for this rule (EPA-HQ-OAR-2016-0490).

*Response:* The EPA conducted a literature review and evaluated available studies and publications on the use of add-on controls and process modifications that are used to reduce emissions from POTW wastewater collection and treatment operations. As noted by the commenters, these technologies include biotrickling filters, the use of covers and ducting of the headspace vent stream to caustic scrubbers and carbon adsorbers, and biofiltration/biofilters. These types of technologies have been used historically at POTW where they provide a relatively high degree of H<sub>2</sub>S control for the purpose of preventing odor. As documented in the technology review memorandum and reflected in the comments received on the proposed rule, the efficacy of these technologies to reduce HAP emissions is highly variable and dependent on site-specific operating parameters. Our conclusion is that the experience with biofilters for controlling organics at POTW is at the experimental and pilot scale and that this technology has not been demonstrated to be commercially available and effective for controlling the range of HAP emitted by POTW. Thus, we do not consider this technology to be a development in practices, processes, or control technologies for purposes of this technology review. Scrubbers are generally not used to control emissions of organic constituents, and while carbon adsorbers may be effective at HAP control in certain applications, as used in POTW, they are generally not designed for HAP control. Nevertheless, 40 CFR part 63, subpart VVV allows flexibility for POTW to develop site-specific control strategies to meet any applicable requirements, and such strategies could include the use of biologic filters and carbon adsorbers

that can achieve the required control levels.

As stated in section III.B of this preamble, we did not identify any developments in practices, processes, or control technology with respect to programs and controls already in use when the 2002 POTW NESHAP was promulgated that warrant revisions to the standards as part of the technology review of the POTW NESHAP.

### C. Applicability Criteria

The 2002 POTW NESHAP established three criteria (40 CFR 63.1580(a)(1), (2), and (3)) for determining what POTW are subject to the rule. Specifically, the following criteria must all be true: (1) You own or operate a POTW that includes a POTW treatment plant; (2) the POTW is a major source of HAP emissions, or an industrial POTW regardless of the HAP emissions; and (3) the POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8. The EPA proposed to revise the applicability criteria in order to clarify the original intent of the rule. Specifically, we proposed to revise the first and second criteria in 40 CFR 63.1580(a)(1) and (2) to state that your POTW is subject to the POTW NESHAP if “(1) You own or operate a POTW that is a major source of HAP emissions; or (2) you own or operate a Group 1 POTW regardless of whether or not it is a major source of HAP.” As stated in the proposal, we proposed this revision because we found several instances where a POTW might not realize they are subject to the standards, or where the applicability criteria could be misinterpreted to exclude facilities that are covered by the rule. See 81 FR 95377.

The third applicability criterion in the 2002 POTW NESHAP states that “(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).” We proposed revising the third criterion in 40 CFR 63.1580(a)(3) to state “You are subject to this subpart if your POTW has a design capacity to treat at least 5 million gallons of wastewater per day (MGD) and treats wastewater from an industrial user, and either paragraph (a)(1) or (a)(2) is true.” This proposed revision removed the requirement that a POTW must already have a pretreatment program in place in

order to be subject to the rule. The proposed revisions were intended to clarify the intent of the rule, which was to limit applicability to POTW that treat at least 5 MGD and wastewater from industrial users.

*Comment:* We received numerous comments that raised specific concerns related to these proposed changes. First, commenters disagreed that the proposed changes were necessary and stated that the proposed changes created confusion and changed the scope of affected sources. One commenter stated that the applicability of 40 CFR part 63, subpart VVV has been well-defined for over 17 years, and if sources are confused, the EPA has methods to correct any confusion without making rule changes.

Several commenters specifically objected to the proposed change that removed pretreatment from the third applicability criterion and made it a requirement of the rule. These commenters stated that removing pretreatment as an applicability criterion and making it a requirement changes the source category that the EPA intended to control. One state commented that this proposed change would cause an additional 12 POTW in their state to become subject to the rule. The commenter explained that because the state (not the POTW) implements the National Pollutant Discharge Elimination System (NPDES) pretreatment program, the original rule does not apply to any POTW in that state.

*Response:* As stated in the proposal, the EPA did not intend to expand the applicability criteria from the 2002 POTW NESHAP. After consideration of the comments received, we agree that implementing the proposed changes to rule applicability could have caused confusion among the regulated community without a demonstrable environmental benefit. Therefore, at this time, we are not making any substantive change to the 2002 POTW NESHAP third applicability criterion and are not adopting the proposed applicability criterion of 5 MGD. However, it is important to note that the requirements in the National Pretreatment Program do establish a 5 MGD threshold for applicability.

In response to the apparent potential for misinterpretation of the regulatory text that is reflected in the state’s comment, we are making one minor change to clarify our interpretation and the intent of 40 CFR 63.1580(a)(3). In developing the 2002 POTW NESHAP, we wrote the rule to apply to POTW that receive a significant amount of HAP-containing waste from industrial or commercial facilities. In developing the

rule language, we sought to define such POTW by using a regulatory criterion that was already established and well understood in the industry. We selected the criterion that the POTW be subject to a pretreatment program under the NPDES program because this criterion would encompass industrial and commercial wastes with HAP that pass through the POTW untreated and that could present a safety or health concern to POTW workers. In adopting this criterion, we did not limit applicability based on the entity that administers the program. In other words, the criterion encompasses every POTW that receives a waste stream that is subject to pretreatment standards, regardless of whether the standards are prescribed by the POTW itself or by a state or federal regulatory body. Thus, to make sure that the regulatory text is properly read, we have revised 40 CFR 63.1581(a)(3) to make clear that a POTW is subject to this rule if either (1) the POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8, or (2) the POTW meets the general criteria for development and implementation of a pretreatment program, even if does not develop and implement the pretreatment program itself. Specifically, we have removed the parenthetical text in 40 CFR 63.1580(a)(3) that limited the first part of the third criterion to POTW owned or operated by a municipality, state, or intermunicipal or interstate agency and limited the second part of the third criterion to POTW owned or operated by a department, agency, or instrumentality of the federal government.

### D. Emissions From Collection Systems

In the 2016 proposal, we stated that HAP emissions from collection systems should be included when determining whether the POTW is a major source, and therefore, subject to the rule. Specifically, we stated that the 2002 applicability criteria in 40 CFR 63.1580(a)(2) provided that emissions from the entire POTW source category must be considered when determining whether the POTW is a major source of HAP emissions, and not just the emissions from the POTW treatment plant (*i.e.*, the portion of the POTW designed to provide treatment of municipal sewage or industrial waste).

*Comment:* Several commenters opposed including emissions from collection systems in the determination of whether a POTW is a major source. The commenters stated that collection systems/sewers may include hundreds or thousands of miles of sewers and other equipment, are not always under



the jurisdiction of the POTW, and are typically owned by another entity.

We also received comments that stated the inclusion of emissions from collection systems for major source determination is inconsistent with the federal definition of a major source. One commenter stated that expansion of the major source definition to include collection sewers as part of the affected source is not authorized under section 112 of the CAA. The commenter also stated that the equipment that collect and convey wastewater to a POTW treatment plant do not reasonably constitute a "building, structure, facility, or installation" as specified in the definition of a stationary source in section 112(a)(3) of the CAA, are clearly not within a contiguous area under common control, and should not be considered a single source. Commenters noted that the determination of a major source of HAP emissions should be limited to emission sources within the fence line of each treatment plant, which would be consistent with the fact that the emission fraction requirement of the proposed POTW NESHAP is limited to emissions within the treatment plant. Further, one commenter contended that excluding collection system emissions in POTW major source determinations is also supported by *Alabama Power Co. v. Costle* and EPA's response to that decision.

Commenters also noted that the emission data reviewed by the EPA in developing the proposed rule represented the HAP emissions from the POTW treatment plant only. One commenter noted that the risk assessment did not include emissions from collection systems. Several commenters disagreed with the EPA's statement in the preamble to the proposed rule that collection systems may have significant HAP emissions. Some commenters suggested that emissions from collection systems are insignificant and in some cases collection systems are operated under a vacuum to control odors. However, none of the commenters provided data to demonstrate the level of HAP emissions from collection systems.

*Response:* Considering these comments, the EPA is not taking final action at this time on any changes to the emission sources that must be considered when determining if a POTW is a major source of HAP emissions. Specifically, the EPA is not taking action on whether emissions from collection systems should be included in the total HAP emissions from a POTW. The determination of source boundaries is a site-specific and

often a complex determination. Facilities work with their permitting authority to consider factors such as whether activities and equipment are in a contiguous area and whether they are under common control. In contemplating the comments, the EPA has decided that we do not have enough information on individual POTW, including information on the jurisdiction of the control of collection system equipment or information on whether this equipment should be considered contiguous with the POTW treatment plant. Also, data on HAP emissions from collection systems are not well understood, and we are not aware of accepted methods for measuring or calculating emissions from collection systems at this time. In addition, we understand that these source boundary determinations have already been made for the approximately 16,000 POTW through Title V applicability assessment. For these reasons, we are not taking final action at this time to change these determinations. We may take action in the future if we obtain additional information on source boundary issues (*i.e.*, common control, contiguous area), HAP emissions, and other information related to the issues described above.

With respect to new sources, we expect new sources to consult their permitting authorities on these matters as they plan for new construction. The EPA considers these determinations on source boundaries to be appropriately under the jurisdiction of the permitting authority. Accordingly, to avoid regulatory disruption, this final rule takes no action to change the definition of POTW. The definition of POTW remains the same as originally promulgated and continues to include ". . . any intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment." Likewise, we are not taking final action at this time to revise the originally promulgated definition of the affected source. The definition of affected source continues to mean the "group of all equipment that comprise the POTW treatment plant."

#### *E. Pretreatment Requirements*

As stated in section IV.C of this preamble, the EPA proposed removing pretreatment from the applicability criteria and making it a control requirement for new and existing sources. We proposed adding pretreatment requirements in the rule because pretreatment would reduce HAP emissions from the entire source category (*i.e.*, collection systems and the treatment plant) by limiting the quantity

of HAP in the wastewater before it is discharged to the collection system. The intent of this requirement was to reduce the pollutant loading into the POTW in order to reduce emissions throughout all stages of treatment.

*Comment:* Several commenters objected to the EPA requiring a pretreatment program for HAP emissions. Commenters disagreed with the EPA's contention that a pretreatment program will reduce emissions of HAP by reducing the presence of toxic gases. Specifically, commenters noted that a "pretreatment program under CAA Section 112 is not the same as a pretreatment program under the Clean Water Act (CWA)", as 40 CFR 403 authorizes POTW to set pretreatment requirements for air contaminants for worker and plant safety, and to prevent interference and pass through. One commenter contended that the proposed rule expands the CAA regulatory framework into the CWA National Pretreatment Program without a legal basis.

Additionally, several commenters opposed requiring POTW to develop local limits and expressed concerns about the way in which local limits should be determined. Instead, commenters suggested that the EPA establish wastewater concentration limits for HAP to identify pollutants that may need local limits. One commenter stated that the EPA should either "regulate industrial users directly for HAP or provide technically-based wastewater concentrations for HAP that POTW could use for screening (where analytical methods exist under 40 CFR part 136)" to determine the need for establishing local limits.

Commenters also expressed concerns about the costs related to requiring pretreatment programs wherein POTW evaluate and set local limits for volatile organic HAP. The commenters stated that developing local limits to identify pollutants of concern, as well as identify potential pretreatment controls, would require significant time and that the significant costs these requirements would impose on POTW have not been quantified or justified. In contrast, one commenter stated that categorical limits set by the EPA pursuant to the CWA for certain industries could merit consideration, but additional analysis is required.

*Response:* In response to these comments, we are not taking final action at this time to require pretreatment as a control requirement for the revised NESHAP. As explained in section IV.C of this preamble, we are not changing the applicability criteria for 40 CFR part 63, subpart VVV. The existence of a

pretreatment program under the CWA will continue to be one of the three rule applicability criteria.

The EPA Office of Water is responsible for administering the pretreatment program and updates the requirements of the pretreatment program based on the best available technology and taking into account cost effectiveness. As the pretreatment requirements are modified through future updates, additional HAP reductions may occur. Because all of the POTW that are subject to the rule already have pretreatment programs, specifically requiring pretreatment under the NESHAP would not reduce HAP emissions further, but could cause confusion and increase compliance costs. Thus, we are not finalizing any revisions at this time to impose additional pretreatment requirements prior to discharging a wastewater stream to a receiving POTW. Pretreatment will continue to be handled under the authority of the CWA. By retaining the existing regulatory structure of the NESHAP, the EPA avoids redundancy and confusion in having pretreatment requirements included in both air and water permits.

#### *F. HAP Fraction Emitted for Existing Group 1 and Group 2 Sources*

In the 2016 proposal, we proposed that existing Group 1 and Group 2 POTW operate with an annual rolling average HAP fraction emitted from primary treatment units of 0.08 or less. As stated in the proposal, we believed that the existing POTW we knew about could meet this standard without the need for additional control.

*Comment:* We received numerous comments that opposed the proposed HAP fraction emission limit, and we received additional data to suggest the proposed 0.08 HAP fraction limit was not appropriate and did not accurately account for variability in HAP loading at individual POTW.

Several commenters objected that merely doubling the single largest HAP fractions from the two available sources was not a scientifically or statistically valid method for setting the emission limit and stated that the EPA had provided no support for using the 2x factor to account for variability of emissions. For example, the commenters collectively pointed out that the two POTW on which the proposed standard was based were operating at half capacity, that the available data represent merely a snapshot in time, that other potentially regulated POTW might emit higher HAP fractions, and that the specific combination of HAP measured by the

two POTW might not be representative of HAP emitted by other POTW. One commenter suggested that due to the uncertainty associated with such a small data set, the EPA should use a larger multiplier for setting a standard.

Additionally, commenters stated that the EPA had underestimated the cost of achieving compliance with the 0.08 HAP fraction emitted standard. Specifically, commenters stated that in order to comply, they would incur capital and operating costs, in addition to the recordkeeping and reporting costs that the EPA accounted for in the proposal. One commenter stated that they would potentially need to install covers and controls in order to meet the HAP fraction emitted limit, which would be an expense of \$20 to \$30 million with negligible emission reductions. Two commenters argued that the compliance cost for the proposed standard was not warranted given the low public health risk that the EPA estimated. Commenters further recommended that the EPA gather more complete data from the universe of affected sources, conduct statistical analysis of those data, and determine a suitable standard based on an acceptable level of risk and variability of the data.

*Response:* After reviewing public comments and re-evaluating our analysis, we are not taking final action to adopt the 0.08 HAP fraction emitted limit for existing Group 1 and Group 2 POTW at this time. The proposed HAP fraction emitted limit did not reflect the performance or application of a specific control technology. At proposal, we envisioned this limit as an enforceable numerical limit that would ensure performance consistent with that being achieved by existing sources. However, after consideration of the information provided in public comment, we now recognize that we do not have the comprehensive data on existing POTW that are necessary to conduct a sufficiently robust analysis. The HAP fraction emitted by different POTW is influenced by individual HAP vapor pressures, pollutant loadings, HAP concentrations, sample measurement and analytical techniques, and ambient conditions, which differ from POTW to POTW. Testing of influent loadings is limited by applicable test methods, by compounds identified by dischargers, and by the HAP for which air permits require sampling. Without sufficient data, we cannot determine an appropriate HAP fraction emitted limit, considering the variability in operating conditions that is likely to occur across even well-operated POTW. Moreover, at this time, we are unable to analyze the

control costs for all affected sources or the emissions reductions that might be achieved. For all of these reasons, we are not taking final action on the proposed 0.08 HAP fraction at this time, but we may in the future consider promulgating a limit if we obtain further information on the issues discussed above.

#### *G. New and Existing Group 1 POTW*

In addition to proposing a HAP fraction for existing Group 1 POTW, we also proposed other changes to the requirements for Group 1 POTW.

The 2002 POTW NESHAP required existing Group 1 POTW to comply only with the requirements of the other NESHAP for which they are acting as an agent of control for the industrial user. We proposed that existing Group 1 POTW must meet both the requirements of the other NESHAP for which they are acting as an agent of control for an industrial user and the proposed requirements for existing Group 2 POTW in the POTW NESHAP (*i.e.*, the proposed 0.08 HAP fraction emitted limit discussed in IV.F, above).

The 2002 POTW NESHAP required new and reconstructed (which we are now referring to as "new") Group 1 POTW to comply with the more stringent of the following: (1) The requirements of the other NESHAP for which they are acting as an agent of control for the industrial user; or (2) the requirements applicable to new Group 2 POTW, which allowed the POTW to choose to meet either a requirement to (a) cover all equipment and route emissions through a closed vent system to a control device; or (b) meet a HAP fraction emission limit of 0.014 for emissions from all primary treatment units. We proposed that new Group 1 POTW comply with the other NESHAP for which they are acting as an agent of control for an industrial user and the requirements for new Group 2 POTW in the 2002 POTW NESHAP. (Note that we did not propose, and are not finalizing, any revisions to the requirements for new Group 2 POTW.)

##### 1. Existing Group 1 POTW

*Comment:* We received comments from one of the existing Group 1 POTW that expressed concern that by imposing the HAP fraction emitted limit on the existing Group 1 POTW with no alternative compliance option, the EPA had ignored existing POTW with covers and controls already in place. The commenter stated that new Group 1 POTW have the option of either installing covers or complying with the HAP fraction limit. However, the EPA did not provide that flexibility to

existing Group 1 POTW, thereby imposing an additional HAP fraction limit without a cover option and more onerous recordkeeping and reporting requirements. The commenter stated that the EPA should provide existing Group 1 POTW that already use covers the option of adding controls in lieu of complying with a HAP fraction limit.

Response: The EPA is not taking final action on the proposed changes for existing Group 1 sources at this time. As explained in section IV.F of this preamble, we are not setting a HAP fraction limit for existing Group 1 or Group 2 POTW at this time; therefore, no additional requirements are being added for existing Group 1 POTW in the POTW NESHAP. Thus, as required by the 2002 POTW NESHAP, an existing Group 1 POTW must comply with the control requirements as specified in the appropriate NESHAP for the industrial user(s).

## 2. New Group 1 POTW

We did not receive any comment on our proposed revision to the requirements for new Group 1 POTW. We proposed, and are finalizing, that new Group 1 POTW must (1) meet the requirements of the other NESHAP for which they act as an agent of control for an industrial user and (2) either (a) cover all equipment and route emissions through a closed vent system to a control device or (b) meet a HAP fraction emission limit of 0.014 for emissions from all primary treatment units. See 81 FR 95375 for our rationale for this change. Because we received no adverse comment on our proposal, we are finalizing these requirements as proposed.

## V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

### A. What are the affected facilities?

The EPA estimates, based on the responses to the 2015 ICR, the 2011 and 2014 National Emissions Inventory (NEI), and public comments received, that there are 13 POTW that are engaged in treatment of industrial wastewater and are currently subject to the POTW NESHAP. Two of these facilities are considered Group 1 POTW, while the remaining eleven are considered Group 2 POTW. All 13 currently subject to the POTW NESHAP have already met the notification requirements for existing Group 1 and Group 2 POTW. The EPA is not currently aware of any planned new Group 1 or Group 2 POTW that will be constructed or any existing Group 1 or Group 2 POTW that will be reconstructed.

### B. What are the air quality impacts?

The EPA estimates that annual organic HAP emissions from the 13 POTW subject to the rule are approximately 35 tpy. We expect no emissions of inorganic HAP from this category. The EPA does not anticipate any additional emission reductions from the final changes to the rule, and there are no anticipated new or reconstructed facilities.

### C. What are the cost impacts?

The 13 entities subject to this proposal will incur only minimal costs related to familiarizing themselves with this rule—estimated to be a one-time total cost of \$790 for all 13 entities. For further information on the requirements of this rule, see section IV of this preamble. For further information on the costs associated with the requirements of this rule, see the document titled *Economic Impact Analysis for the National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Risk and Technology Review*, in the docket. The memorandum titled *Technology Review Memorandum for the Publicly Owned Treatment Works Source Category*, in the docket for this action, presents costs estimated associated with the regulatory options that were not selected for inclusion in this final rule (Docket ID No. EPA-HQ-OAR-2016-0490).

### D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. For this rule, the EPA estimated the annual cost of recordkeeping and reporting as a percentage of reported sewage fees received by the affected POTW. For the revisions promulgated in this final rule, costs are expected to be less than 0.001 percent of collected sewage fees, based on publicly available financial reports from the fiscal year ending in 2015 for the affected entities.

In addition, the EPA performed a screening analysis for impacts on small businesses by comparing estimated population served by the affected entities to the population limit set forth by the U.S. Small Business Administration. The screening analysis found that the population served for all affected entities is greater than the limit qualifying a public entity as a small business.

More information and details of the EPA's analysis of the economic impacts, including the conclusions stated above, are provided in the technical document,

*Final Economic Impact Analysis for the Publicly Owned Treatment Works National Emissions Standards for Hazardous Air Pollutants Risk and Technology Review*, which is available in the docket for this final rule (Docket ID No. EPA-HQ-OAR-2016-0490).

### E. What are the benefits?

We do not anticipate any significant reductions in HAP emissions as a result of these final amendments. However, we think that the amendments will help to enhance the clarity of the rule, which can improve compliance and minimize emissions.

### F. What analysis of environmental justice did we conduct?

We examined the potential for any environmental justice concerns that might be associated with this source category by performing a demographic analysis of the population close to the six POTW that were modeled for source category risk.<sup>4</sup> In this analysis, we evaluated the distribution of HAP-related cancer and non-cancer risks from the POTW source category across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks. The methodology and the results of the demographic analyses are included in a technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near POTW Facilities*, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2016-0490). The results for various demographic groups are based on the estimated risks from actual emissions levels for the population living within 50 kilometers (km) of the facilities.

The results of the POTW source category demographic analysis indicate that actual emissions from the source category expose no person to a cancer risk at or above 1-in-1 million or to a chronic non-cancer TOSHI greater than 1. Therefore, we conclude that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. However, this final rule may provide additional benefits to these demographic groups by improving the compliance and implementation of the NESHAP. The demographics of the population living within 50 km of POTW can be found in Table 2 of the document titled *Risk and Technology*

<sup>4</sup> See section IV.A of this preamble for an explanation of the residual risk assessment.

*Review—Analysis of Socio-Economic Factors for Populations Living Near Publicly Owned Treatment Works*, available in the docket for this final rule (Docket ID No. EPA-HQ-OAR-2016-0490).

*G. What analysis of children's environmental health did we conduct?*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The results of the POTW source category demographic analysis indicate that actual emissions from the source category expose no person to a cancer risk at or above 1-in-1 million or to a chronic non-cancer TOSHI greater than 1. Therefore, the analysis shows that actual emissions from the POTW source category are not expected to have an adverse human health effect on children.

**VI. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1891.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information to be collected includes the initial notification that the POTW is subject to the rule. However, as stated in this preamble, the 13 sources that we already know about

have already met this initial notification requirement and are not required to submit an additional notification. The information will be used to identify sources subject to the standards.

*Respondents/affected entities:* The respondents to the recordkeeping and reporting requirements are owners and operators of POTW. The NAICS code for the respondents affected by the standard is 221320 (Sewage Treatment Facilities), which corresponds to the United States Standard Industrial Classification code 4952 (Sewerage Systems).

*Respondent's obligation to respond:* Respondents are obligated to respond in accordance with the notification requirements under 40 CFR 63.1591(a).

*Estimated number of respondents:* Zero.

*Frequency of response:* One response.  
*Total estimated burden:* 0 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$0 (per year), includes \$0 annualized capital or operation and maintenance costs.

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 in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities affected in this regulated industry. See the technical document, *Final Economic Impact Analysis for the National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Risk and Technology Review*, which is available in the docket for this final rule (Docket ID No. EPA-HQ-OAR-2016-0490) for more detail.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It 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.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. As discussed in section II.B.1 of this preamble, we have identified only 13 POTW that are subject to this final rule and none of those POTW are owned or operated by tribal governments. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and B and sections IV.A and B of this preamble and the *Residual Risk Report* memorandum contained in the docket for this rulemaking.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section III.A.6 of this preamble and in the corresponding

technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Publicly Owned Treatment Works*, available in the docket for this action. The proximity results indicate, for eight of the 11 demographic categories, that the population percentages within 5 km and 50 km of source category emissions are greater than the corresponding national percentage for those same demographics. However, the results of the risk analysis presented in section III.A.6 of this preamble and in the corresponding technical report indicate that actual emissions from the source category expose no person to a cancer risk at or above 1-in-1 million or to a chronic non-cancer TOSHI greater than 1.

#### L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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

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

Dated: October 16, 2017.

E. Scott Pruitt,  
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

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

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

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

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

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

##### Applicability

Sec.

63.1580 Am I subject to this subpart?  
63.1581 Does the subpart distinguish between different types of POTW treatment plants?

##### Requirements for Group 1 POTW Treatment Plants

63.1582 [Reserved]

63.1583 What are the emission points and control requirements for a Group 1 POTW treatment plant?

63.1584 [Reserved]

63.1585 How does a Group 1 POTW treatment plant demonstrate compliance?

##### Requirements for Group 1 and Group 2 POTW Treatment Plants

63.1586 What are the emission points and control requirements for a Group 1 or Group 2 POTW?

63.1587 When do I have to comply?

63.1588 How do Group 1 and Group 2 POTW treatment plants demonstrate compliance?

63.1589 What records must I keep?

63.1590 What reports must I submit?

63.1591 What are my notification requirements?

63.1592 Which General Provisions apply to my POTW treatment plant?

63.1593 [Reserved]

63.1594 Who enforces this subpart?

63.1595 List of definitions.

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

Table 2 to Subpart VVV of Part 63—  
Compliance Dates and Requirements

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

##### Applicability

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

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

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

(2) The affected source is located at a Group 2 POTW which is a major source of HAP emissions, or at any Group 1 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, or your POTW meets the general criteria for development and implementation of a pretreatment program.

(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 commence construction or reconstruction of your POTW treatment plant after December 1, 1998, then the requirements for a new POTW apply.

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

Yes, POTW treatment plants are divided into two subcategories: Group 1 POTW treatment plants and Group 2 POTW treatment plants, as described in paragraphs (a) through (c) of this section.

(a) Your POTW is a Group 1 POTW treatment plant if an industrial user complies with its NESHAP by using the treatment and controls located at your POTW treatment plant. Your POTW treatment plant accepts the regulated waste stream and provides treatment and controls as an agent for the industrial user. Group 1 POTW treatment plant is defined in § 63.1595.

(b) Your POTW is a Group 2 POTW treatment plant if your POTW treats wastewater that is not subject to control by another NESHAP or the industrial user does not comply with its NESHAP by using the treatment and controls located at your POTW treatment plant. “Group 2 POTW treatment plant” is defined in § 63.1595.

(c) If, in the future, an industrial user complies with its NESHAP by using the treatment and controls located at your POTW treatment plant, then your Group 2 POTW treatment plant becomes a Group 1 POTW treatment plant on the date your POTW begins treating that regulated industrial wastewater stream.

##### Requirements for Group 1 POTW Treatment Plants

§ 63.1582 [Reserved]

##### § 63.1583 What are the emission points and control requirements for a Group 1 POTW treatment plant?

(a) The emission points and control requirements for an existing Group 1 POTW treatment plant are specified in the appropriate NESHAP for the industrial user(s).

(b) The emission points and control requirements for a new Group 1 POTW treatment plant are both those specified by the appropriate NESHAP which apply to the industrial user(s) who discharge their waste for treatment to the POTW, and those emission points and control requirements set forth in § 63.1586(b) or (c), as applicable.

(c) If your existing or new Group 1 POTW treatment plant accepts one or more specific regulated industrial waste streams as part of compliance with one or more other NESHAP, then you are subject to all the requirements of each appropriate NESHAP for each waste stream.

(d) At all times, the POTW must operate and maintain any affected source, including associated air

pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the POTW to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

**§ 63.1584 [Reserved]**

**§ 63.1585 How does a Group 1 POTW treatment plant demonstrate compliance?**

(a) An existing Group 1 POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all requirements specified in the appropriate NESHAP. Requirements may include performance tests, routine monitoring, recordkeeping, and reporting.

(b) A new Group 1 POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all requirements specified in the appropriate NESHAP and by meeting the requirements specified in § 63.1586, as applicable, as well as the applicable requirements in §§ 63.1588 through 63.1595.

**Requirements for Group 1 and Group 2 POTW Treatment Plants**

**§ 63.1586 What are the emission points and control requirements for a Group 1 or Group 2 POTW?**

(a) An existing Group 1 or Group 2 POTW treatment plant must comply with the initial notification requirements in § 63.1591(a).

(b) *Cover and control standard.* Except as provided in paragraph (c) of this section, new Group 1 and Group 2 POTW treatment plants must install covers on the emission points up to, but not including, the secondary influent pumping station or the secondary treatment units. These emission points are treatment units that include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except

primary clarifiers, must have the air in the headspace underneath the cover ducted to a control device in accordance with the standards for closed-vent systems and control devices in § 63.693 of subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-site Waste and Recovery Operations of this part, except you may substitute visual inspections for leak detection rather than Method 21 of appendix A-7 of part 60 of this chapter. Covers must meet the following requirements:

(1) Covers must be tightly fitted and designed and operated to prevent exposure of the wastewater to the atmosphere. This includes, but is not limited to, the absence of visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

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

(c) *HAP fraction emitted standard.* As an alternative to the requirements in paragraph (b) of this section, a new Group 1 and Group 2 POTW treatment plant may comply by demonstrating, for all emission points up to, but not including, the secondary influent pumping station or the secondary treatment units, that the annual rolling average HAP fraction emitted (calculated as specified in § 63.1588(c)(3)) does not exceed 0.014. You must demonstrate that for your POTW treatment plant, the sum of all HAP emissions from these units divided by the sum of all HAP mass loadings to the POTW treatment plant results in an annual rolling average of the HAP fraction emitted of no greater than 0.014. You may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard.

(d) At all times, the POTW must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the POTW to make any further efforts to reduce emissions if the requirements of the applicable standard have been met. Determination of whether a source is

operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

**§ 63.1587 When do I have to comply?**

Sources subject to this subpart are required to achieve compliance on or before the dates specified in table 2 of this subpart.

**§ 63.1588 How do Group 1 and Group 2 POTW treatment plants demonstrate compliance?**

(a) If you are complying with § 63.1586(b) by using covers, you must conduct the following inspections:

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

(2) You must perform an initial visual inspection within 60 calendar days of becoming subject to this NESHAP and perform follow-up inspections at least once per year, thereafter.

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

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

(c) To comply with the HAP fraction emitted standard specified in § 63.1586(c), you must develop, to the satisfaction of the Administrator, an Inspection and Monitoring Plan. This Inspection and Monitoring Plan must include, at a minimum, the following:

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

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

(i) Be approved by the Administrator for use at your POTW;

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

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

(3) A method to demonstrate that your POTW treatment plant meets the HAP fraction emitted standard specified in § 63.1586(c), *i.e.*, the sum of all HAP emissions from paragraph (c)(2) of this section divided by the sum of all HAP mass loadings from paragraph (c)(1) of this section results in a fraction emitted of 0.014 or less to demonstrate compliance with § 63.1586(c). The Inspection and Monitoring Plan must require, at a minimum, that you perform the calculations shown in paragraphs (c)(3)(i) through (viii) of this section within 90 days of the end of each month. This calculation shall demonstrate that your annual rolling average of the HAP fraction emitted is 0.014 or less when demonstrating compliance with § 63.1586(c).

(i) Determine the average daily flow in million gallons per day (MGD) of the wastewater entering your POTW treatment plant for the month;

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

(iii) Using the information in paragraphs (c)(3)(i) and (ii) of this section, determine a total annual flow-weighted loading in pounds per day (lbs/day) of each HAP entering your POTW treatment plant;

(iv) Sum up the values for each individual HAP loading in paragraph (c)(3)(iii) of this section and determine a total annual flow-weighted loading

value (lbs/day) for all HAP entering your POTW treatment plant for the current month;

(v) Based on the current month's information in paragraph (c)(3)(iii) of this section along with source testing and emission modeling, for each HAP, determine the annual emissions (lbs/day) from all wastewater units up to, but not including, secondary treatment units;

(vi) Sum up the values in paragraph (c)(3)(v) of this section and calculate the total annual emissions value for the month for all HAP from all wastewater treatment units up to, but not including, secondary treatment units;

(vii) Calculate the HAP fraction emitted value for the month, using Equation 1 of this section as follows:

$$f_{e\text{monthly}} = \sum E / \sum L \text{ (Eq. 1)}$$

Where:

$f_{e\text{monthly}}$  = HAP fraction emitted for the previous month

$\sum E$  = Total HAP emissions value from paragraph (c)(3)(vi) of this section

$\sum L$  = Total annual loading from paragraph (c)(3)(iv) of this section

(viii) Average the HAP fraction emitted value for the month determined in paragraph (c)(3)(vii) of this section, with the values determined for the previous 11 months, to calculate an annual rolling average of the HAP fraction emitted.

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

(d) Prior to receiving approval on the Inspection and Monitoring Plan, you must follow the plan submitted to the Administrator as specified in § 63.1590(f).

#### § 63.1589 What records must I keep?

(a) To comply with the cover and control standard specified in § 63.1586(b), you must prepare and maintain the records required in paragraphs (a)(1) through (4) of this section:

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

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

(3) If repair of the defect is delayed as described in § 63.1588(a)(3), you must also record the reason for the delay and the date you expect to complete the repair.

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

(b) To comply with the HAP fraction emitted standard specified in § 63.1586(c), you must prepare and maintain the records required in paragraphs (b)(1) through (3) of this section:

(1) A record of the methods and data used to determine your POTW treatment plant's annual HAP loading and HAP emissions as determined in § 63.1588(c)(1) and (2) as part of your Inspection and Monitoring Plan;

(2) A record of the methods and data used to determine that your POTW treatment plant meets the HAP fraction emitted standard of 0.014 or less, as determined in § 63.1588(c)(3) as part of your Inspection and Monitoring Plan; and

(3) A record of the methods and data that demonstrates that your POTW treatment plant is in continuous compliance with the requirements of § 63.1588(c)(4) to calculate annual emissions as specified in your Inspection and Monitoring Plan.

(c) The POTW must record the malfunction information specified in paragraphs (c)(1) through (3) of this section.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure, record the date, time, and duration of the failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment,

an estimate of the tons per year of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.1583(d) or § 63.1586(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(d) Any records required to be maintained by this part that are submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

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

(a) An existing Group 1 POTW must meet the reporting requirements specified in the appropriate NESHAP for the industrial user(s).

(b) A new Group 1 or Group 2 POTW must submit annual reports containing the information specified in paragraphs (b)(1) through (4) of this section, if applicable. You must submit annual reports following the procedure specified in paragraph (b)(5) of this section. For new units, the initial annual report is due 15 months after your POTW becomes subject to the requirements in this subpart and must cover the first 12 months of operation after your POTW becomes subject to the requirements of this subpart. Subsequent annual reports are due by the same date each year as the initial annual report and must contain information for the 12-month period following the 12-month period included in the previous annual report.

(1) The general information specified in paragraphs (b)(1)(i) and (ii) of this section must be included in all reports.

(i) The company name, POTW treatment plant name, and POTW treatment plant address, including county where the POTW is located; and  
(ii) Beginning and ending dates of the reporting period.

(2) If you use covers to comply with the requirements of § 63.1586(b), you must submit the following:

(i) The dates of each visual inspection conducted;

(ii) The defects found during each visual inspection; and

(iii) For each defect found during a visual inspection, how the defects were repaired, whether the repair has been completed, and either the date each

repair was completed or the date each repair is expected to be completed.

(3) If you comply with the HAP fraction emitted standard in § 63.1586(c), you must submit each value of the annual rolling average HAP fraction emitted as calculated in § 63.1588(c)(3)(vii) for the period covered by the annual report. Identify each value by the final month included in the calculation.

(4) If a source fails to meet an applicable standard, report such events in the annual report. Report the number of failures to meet an applicable standard. For each instance, report the start date, start time, and duration of each failure, as well as a list of the affected sources or equipment. If you comply with the cover and control standard in § 63.1586(b), for each failure, the report must include the percent control achieved. If you comply with the HAP fraction emitted standard in § 63.1586(c), for each failure, the report must include the HAP fraction emitted. You must include an estimate of the tons per year of each regulated pollutant emitted over the emission limit and a description of the method used to estimate the emissions in the report.

(5) You must submit the report to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method. Beginning on October 28, 2019 or once the reporting form has been available in CEDRI for 1 year, whichever is later, you must submit subsequent annual reports to the EPA via CEDRI. (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>)). You must use the appropriate electronic report template on the CEDRI Web site for this subpart or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the CEDRI Web site (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>). The date report templates become available in CEDRI will be listed on the CEDRI Web site. The reports must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. If you claim that some of the information required to be submitted via CEDRI is confidential business information (CBI), you shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI Web site, including information claimed to

be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(c) If you own or operate a control device used to meet the cover and control standard in § 63.1586(b), you must submit the notifications and reports required by § 63.697(b), including a notification of performance tests; a performance test report; a malfunction report; and a summary report. These notifications and reports must be submitted to the Administrator, except for performance test reports. Within 60 calendar days after the date of completing each performance test (as defined in § 63.2) required by subpart DD of this part, you must submit the results of the performance test following the procedure specified in paragraphs (c)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test, you must submit the results of the performance test to the EPA via CEDRI. Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the XML schema listed on the EPA's ERT Web site.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13 of subpart A of this part, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (b)(1) of this section is CBI, you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/



OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(d) You must comply with the delay of repair reporting required in § 63.1588(a)(3).

(e) You may apply to the Administrator for a waiver of recordkeeping and reporting requirements by complying with the requirements of § 63.10(f). Electronic reporting to the EPA cannot be waived.

(f) To comply with the HAP fraction emitted standard specified in § 63.1586(c), you must submit, for approval by the Administrator, an Inspection and Monitoring Plan explaining your compliance approach 90 calendar days prior to beginning operation of your new POTW or by April 24, 2018, whichever is later.

(g) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering

effects from such an event within the period of time beginning five business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

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

(a) You must submit an initial notification that your POTW treatment plant is subject to these standards as specified in paragraphs (a)(1) and (2) of this section.

(1) If you have an existing Group 1 or Group 2 POTW treatment plant, you must submit an initial notification by October 26, 2018.

(2) If you have a new Group 1 or Group 2 POTW treatment plant, you must submit an initial notification upon startup.

(b) The initial notification must include the information included in paragraphs (b)(1) through (4) of this section.

(1) Your name and address;

(2) The address (i.e., physical location) of your POTW treatment plant;

(3) An identification of these standards as the basis of the notification and your POTW treatment plant's compliance date; and

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

(c) You must submit a notification of compliance status as required in § 63.9(h), as specified below:

(1) If you comply with § 63.1586(b) and use covers on the emission points and route air in the headspace underneath the cover to a control device, you must submit a notification of compliance status as specified in § 63.9(h) that includes a description of the POTW treatment units and installed covers, as well as the information required for control devices including the performance test results.

(2) If you comply with § 63.1586(c) by meeting the HAP fraction emitted standard, submission of the Inspection and Monitoring Plan as required in § 63.1588(c) and § 63.1590(f) meets the requirement for submitting a notification of compliance status report in § 63.9(h).

(d) You must notify the Administrator, within 30 calendar days of discovering that you are out of compliance with an applicable requirement of this subpart, including the following:

(1) The requirement to route the air in the headspace underneath the cover of all units equipped with covers, except primary clarifiers, to a control device as specified in § 63.1586(b).

(2) The HAP fraction emitted standard as specified in § 63.1586(c).

(3) The requirement to operate and maintain the affected source as specified in § 63.1586(d).

(4) The requirement to inspect covers annually and repair defects as specified in § 63.1588(a).

(5) The requirement to comply with the inspection and monitoring requirements of § 63.695(c) as specified in § 63.1588(b).

(6) The procedures specified in an Inspection and Monitoring Plan prepared as specified in § 63.1588(c).

(7) The requirements specified in an appropriate NESHAP for which the Group 1 POTW treatment plan treats regulated industrial waste as specified in § 63.1583(a) or (b), as applicable.

**§ 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 a Group 1 POTW treatment plant which is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

**§ 63.1593 [Reserved]**

**§ 63.1594 Who enforces this subpart?**

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable state, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a state, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the Administrator of U.S. EPA and cannot be delegated to the state, local, or tribal agency.

(1) Approval of alternatives to the requirements in §§ 63.1580, 63.1583, and 63.1586 through 63.1588.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

**§ 63.1595 List of definitions.**

As used in this subpart:

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

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

*Existing source or existing POTW* means a POTW that commenced construction on or before December 1, 1998, and has not been reconstructed after December 1, 1998.

*Fraction emitted* means the fraction of the mass of HAP entering the POTW wastewater treatment plant which is emitted prior to secondary treatment.

*Group 1 POTW* means a POTW that accepts a waste stream regulated by another NESHAP and provides treatment and controls as an agent for the industrial user. The industrial user complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, subpart FF—National Emission Standard for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.

*Group 2 POTW* means a POTW that does not meet the definition of a Group 1 POTW. A Group 2 POTW can treat a waste stream that is either:

- (1) Not specifically regulated by another NESHAP, or
- (2) From an industrial user that complies with the specific wastewater requirements in their applicable

NESHAP prior to discharging the waste stream to the POTW.

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

*New source or new POTW* means any POTW that commenced construction or reconstruction after December 1, 1998.

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

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

*Secondary treatment* means treatment processes, typically biological, designed to reduce the concentrations of dissolved and colloidal organic matter in wastewater.

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

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

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.1	.....	Applicability.
§ 63.1(a)(1)	Yes .....	Terms defined in the Clean Air Act.
§ 63.1(a)(2)	Yes .....	General applicability explanation.
§ 63.1(a)(3)	Yes .....	Cannot diminish a stricter NESHAP.

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

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.1(a)(4) .....	Yes .....	Not repetitive. Doesn't apply to section 112(r).
§ 63.1(a)(5) .....	Yes .....	Section reserved.
§ 63.1(a)(6)–(8) .....	Yes .....	Contacts and authorities.
§ 63.1(a)(9) .....	Yes .....	Section reserved.
§ 63.1(a)(10) .....	Yes .....	Time period definition.
§ 63.1(a)(11) .....	Yes .....	Postmark explanation.
§ 63.1(a)(12)–(14) .....	Yes .....	Time period changes. Regulation conflict. Force and effect of subpart A.
§ 63.1(b)(1) .....	Yes .....	Initial applicability determination of subpart A.
§ 63.1(b)(2) .....	Yes .....	Section reserved.
§ 63.1(b)(3) .....	No .....	Subpart VVV specifies recordkeeping of records of applicability determination.
§ 63.1(c)(1) .....	Yes .....	Requires compliance with both subparts A and subpart VVV.
§ 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.
§ 63.1(c)(2)(ii)–(iii) .....	No .....	State options regarding title V permit.
§ 63.1(c)(3) .....	Yes .....	Section reserved.
§ 63.1(c)(4) .....	Yes .....	Extension of compliance.
§ 63.1(c)(5) .....	No .....	Subpart VVV addresses area sources becoming major due to increase in emissions.
§ 63.1(d) .....	Yes .....	Section reserved.
§ 63.1(e) .....	Yes .....	Title V permit before a relevant standard is established.
§ 63.2 .....	Yes .....	Definitions.
§ 63.3 .....	Yes .....	Units and abbreviations.
§ 63.4 .....	Yes .....	Prohibited activities and circumvention.
§ 63.4(a)(1)–(3) .....	Yes .....	Prohibits operation in violation of subpart A.
§ 63.4(a)(4) .....	Yes .....	Section reserved.
§ 63.4(a)(5) .....	Yes .....	Compliance dates.
§ 63.4(b) .....	Yes .....	Circumvention.
§ 63.4(c) .....	Yes .....	Severability.
§ 63.5 .....	Yes .....	Preconstruction review and notification requirements.
§ 63.5(a)(1) .....	Yes .....	Construction and reconstruction.
§ 63.5(a)(2) .....	Yes .....	New source—effective dates.
§ 63.5(b)(1) .....	Yes .....	New sources subject to relevant standards.
§ 63.5(b)(2) .....	Yes .....	Section reserved.
§ 63.5(b)(3) .....	Yes .....	No new major sources without Administrator approval.
§ 63.5(b)(4) .....	Yes .....	New major source notification.
§ 63.5(b)(5) .....	Yes .....	New major sources must comply.
§ 63.5(b)(6) .....	Yes .....	New equipment added considered part of major source.
§ 63.5(c) .....	Yes .....	Section reserved.
§ 63.5(d)(1) .....	Yes .....	Implementation of section 112(l)(2)—application of approval of new source construction.
§ 63.5(d)(2) .....	Yes .....	Application for approval of construction for new sources listing and describing planned air pollution control system.
§ 63.5(d)(3) .....	Yes .....	Application for reconstruction.
§ 63.5(d)(4) .....	Yes .....	Administrator may request additional information.
§ 63.5(e) .....	Yes .....	Approval of reconstruction.
§ 63.5(f)(1) .....	Yes .....	Approval based on State review.
§ 63.5(f)(2) .....	Yes .....	Application deadline.
§ 63.6 .....	Yes .....	Compliance with standards and maintenance requirements.
§ 63.6(a) .....	Yes .....	Applicability of compliance with standards and maintenance requirements.
§ 63.6(b) .....	Yes .....	Compliance dates for new and reconstructed sources.
§ 63.6(c) .....	Yes .....	Compliance dates for existing sources apply to existing Group 1 POTW treatment plants.
§ 63.6(d) .....	Yes .....	Section reserved.
§ 63.6(e) .....	Yes, except as noted below ...	Operation and maintenance requirements apply to new sources.
§ 63.6(e)(1)(i) .....	No .....	General duty; See § 63.1583(d) and § 63.1586(d) for general duty requirements.
§ 63.6(e)(1)(ii) .....	No .....	Requirement to correct malfunctions.
§ 63.6(e)(3) .....	No .....	SSM plans are not required for POTW.
§ 63.6(f) .....	Yes, except as noted below ...	Compliance with non-opacity emission standards applies to new sources.
§ 63.6(f)(1) .....	No .....	The POTW standards apply at all times.
§ 63.6(g) .....	Yes .....	Use of alternative non-opacity emission standards applies to new sources.
§ 63.6(h) .....	No .....	POTW treatment plants do not typically have visible emissions.
§ 63.6(i) .....	Yes .....	Extension of compliance with emission standards applies to new sources.
§ 63.6(j) .....	Yes .....	Presidential exemption from compliance with emission standards.
§ 63.7 .....	Yes .....	Performance testing requirements.
§ 63.7(a) .....	Yes .....	Performance testing is required for new sources.
§ 63.7(b) .....	Yes .....	New sources must notify the Administrator of intention to conduct performance testing.
§ 63.7(c) .....	Yes .....	New sources must comply with quality assurance program requirements.
§ 63.7(d) .....	Yes .....	New sources must provide performance testing facilities at the request of the Administrator.
§ 63.7(e) .....	Yes, except as noted below ...	Requirements for conducting performance tests apply to new sources.
§ 63.7(e)(1) .....	No .....	The performance testing provisions of § 63.694 for control devices are incorporated by reference into subpart DD of this part.

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

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.7(f) .....	Yes .....	New sources may use an alternative test method.
§ 63.7(g) .....	Yes .....	Requirements for data analysis, recordkeeping, and reporting associated with performance testing apply to new sources.
§ 63.7(h) .....	Yes .....	New sources may request a waiver of performance tests.
§ 63.8 .....	Yes .....	Monitoring requirements.
§ 63.8(a) .....	Yes .....	Applicability of monitoring requirements.
§ 63.8(b) .....	Yes .....	Monitoring shall be conducted by new sources.
§ 63.8(c) .....	Yes, except as noted below ...	New sources shall operate and maintain continuous monitoring systems (CMS).
§ 63.8(c)(1)(i) .....	No .....	See § 63.1583(d) for general duty requirement with respect to minimizing emissions and continuous monitoring requirements.
§ 63.8(c)(1)(iii) .....	No .....	See the applicable CMS quality control requirements under § 63.8(c) and (d).
§ 63.8(d) .....	Yes, except as noted below ...	New sources must develop and implement a CMS quality control program.
§ 63.8(d)(3) .....	No .....	The owner or operator must keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, and make them available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator must keep previous ( <i>i.e.</i> , superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision of the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).
§ 63.8(e) .....	Yes .....	New sources may be required to conduct a performance evaluation of CMS.
§ 63.8(f) .....	Yes .....	New sources may use an alternative monitoring method.
§ 63.8(g) .....	Yes .....	Requirements for reduction of monitoring data.
§ 63.9 .....	Yes .....	Notification requirements.
§ 63.9(a) .....	Yes .....	Applicability of notification requirements.
§ 63.9(b) .....	Yes, except as noted below ...	Initial notification due February 23, 2000 or 60 days after becoming subject to this subpart.
§ 63.9(c) .....	Yes .....	Request for extension of compliance with subpart VVV.
§ 63.9(d) .....	Yes .....	Notification that source is subject to special compliance requirements as specified in § 63.6(b)(3) and (4).
§ 63.9(e) .....	Yes .....	Notification of performance test.
§ 63.9(f) .....	No .....	POTW treatment plants do not typically have visible emissions.
§ 63.9(g) .....	Yes .....	Additional notification requirements for sources with continuous emission monitoring systems.
§ 63.9(h) .....	Yes, except as noted .....	Notification of compliance status when the source becomes subject to subpart VVV. See exceptions in § 63.1591(b).
§ 63.9(i) .....	Yes .....	Adjustments to time periods or postmark deadlines or submittal and review of required communications.
§ 63.9(j) .....	Yes .....	Change of information already provided to the Administrator.
§ 63.10 .....	Yes .....	Recordkeeping and reporting requirements.
§ 63.10(a) .....	Yes .....	Applicability of notification and reporting requirements.
§ 63.10(b)(1)–(2) .....	Yes, except as noted below ...	General recordkeeping requirements.
§ 63.10(b)(2)(i) .....	No .....	Recordkeeping for occurrence and duration of startup and shutdown.
§ 63.10(b)(2)(ii) .....	No .....	Recordkeeping for failure to meet a standard, see § 63.696.
§ 63.10(b)(2)(iii) .....	Yes .....	Maintenance records.
§ 63.10(b)(2)(iv) .....	No .....	Actions taken to minimize emissions during SSM.
§ 63.10(b)(2)(v) .....	No .....	Action taken to minimize emissions during SSM.
§ 63.10(b)(2)(vi) .....	Yes .....	Recordkeeping for CMS malfunctions.
§ 63.10(b)(2)(vii)–(ix) .....	Yes .....	Other CMS requirements.
§ 63.10(b)(3) .....	No .....	Recording requirement for applicability determination.
§ 63.10(c) .....	Yes, except as noted below ...	Additional recordkeeping requirements for sources with continuous monitoring systems.
§ 63.10(c)(7) .....	No .....	See § 63.696(h) for recordkeeping of (1) date, time, and duration; (2) listing of affected source or equipment, and an estimate of the tons per year of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(c)(8) .....	No .....	See § 63.696(h) for recordkeeping of (1) date, time, and duration; (2) listing of affected source or equipment, and an estimate of the tons per year of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(c)(15) .....	No .....	Use of SSM plan.
§ 63.10(d) .....	Yes, except as noted below ...	General reporting requirements.
§ 63.10(d)(5) .....	No .....	See § 63.697(b) for malfunction reporting requirements.
§ 63.10(e) .....	Yes .....	Additional reporting requirements for sources with continuous monitoring systems.
§ 63.10(f) .....	Yes, except as noted .....	Waiver of recordkeeping and reporting requirements. Electronic reporting to the EPA cannot be waived.
§ 63.11 .....	Yes .....	Control device and equipment leak work practice requirements.
§ 63.11(a) and (b) .....	Yes .....	If a new source uses flares to comply with the requirements of subpart VVV, the requirements of § 63.11 apply.
§ 63.11(c), (d) and (e) .....	Yes .....	Alternative work practice for equipment leaks.

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

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.12 .....	Yes .....	State authority and designation.
§ 63.13 .....	Yes .....	Addresses of State air pollution control agencies and EPA Regional Offices.
§ 63.14 .....	Yes .....	Incorporation by reference.
§ 63.15 .....	Yes .....	Availability of information and confidentiality.

TABLE 2 TO SUBPART VVV OF PART 63—COMPLIANCE DATES AND REQUIREMENTS

If the construction/reconstruction date is	Then the owner or operator must comply with	And the owner or operator must achieve compliance
Group 1 POTW: (1) After December 27, 2016 .....	(i) New source requirements in §§ 63.1583(b); 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup.
(2) After December 1, 1998 but on or before December 27, 2016.	(i) New source requirements in § 63.1583(b) but instead of complying with both requirements (industrial user(s) NESHAP and the POTW standards in §§ 63.1586(b) or (c)), you must comply with the most stringent requirement <sup>1</sup> . (ii) New source requirements in §§ 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup through October 26, 2020. On or before October 26, 2020.
(3) On or before December 1, 1998	(i) Existing source requirements in §§ 63.1583(a) ..... (ii) Existing source requirements in §§ 63.1588 through 63.1591 .....	By the compliance date specified in the other applicable NESHAP. On or before October 26, 2018.
Group 2 POTW: (4) After December 27, 2016 .....	(i) New source requirements in §§ 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup.
(5) After December 1, 1998 but on or before December 27, 2016.	(i) New source requirements in § 63.1586(b) or (c) <sup>1</sup> ..... (ii) New source requirements in §§ 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup through October 26, 2020. On or before October 26, 2020.
(6) On or before December 1, 1998	(i) Existing source requirements in §§ 63.1586(a); and 63.1591(a) .....	On or before October 26, 2018.

<sup>1</sup> Note: This represents the new source requirements in the original 1999 NESHAP, which are applicable until October 26, 2020. Between October 26, 2017 and October 26, 2020, you must transition to the new requirements in Table 2 (2)(ii) and (5)(ii) for Group 1 and Group 2 POTW, respectively.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[EPA-R06-RCRA-2017-0153; SW-FRL-9969-73-Region 6]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting a petition submitted by ExxonMobil Oil Corporation Beaumont Refinery (ExxonMobil) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by ExxonMobil to have the secondary impoundment basin (SIB) solids excluded, or delisted from the definition of a hazardous waste. The SIB solids are

listed as F037 (primary oil/water/solids separation sludge); and F038 (secondary oil/water/solids separation sludge).

After careful analysis and evaluation of comments submitted by the public, the EPA has concluded that the petitioned wastes are not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to the surface impoundment solids generated at ExxonMobil's Beaumont, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

**DATES:** Effective October 26, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-RCRA-2017-0153. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For technical information regarding the ExxonMobil Beaumont Refinery petition, contact Michelle Peace at 214-665-7430 or by email at [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

- I. Overview Information
  - A. What action is EPA finalizing?
  - B. Why is EPA approving this delisting?
  - C. What are the limits of this exclusion?
  - D. How will Beaumont Refinery manage the waste if it is delisted?
  - E. When is the final delisting exclusion effective?
  - F. How does this final rule affect states?
- II. Background
  - A. What is a "delisting"?
  - B. What regulations allow facilities to delist a waste?
  - C. What information must the generator supply?