

burden for POTWs. They stated that Form R might simplify the reporting requirement for some industrial users, but would not simplify POTWs' task of evaluating the form and sorting out unnecessary information.

In response to these comments, the Agency is clarifying today that EPA Form R and existing RCRA forms may be used to fulfill the notification requirement as long as the industrial user submits all information required in today's rule. However, POTWs may require industrial users to use other forms if they wish. Industrial users may also submit the required information by other means, such as a letter.

Two commenters stated that the information on Form R would be based on pure estimates on the part of the discharger. In response, EPA points out that today's notification requirement also requires estimates for the mass and concentration of hazardous waste constituents, as well as the mass of constituents discharged over the following twelve months. These estimates should be based on the best available data.

Commenters stated that Form R would not cover a sufficient range of pollutants and that the list of SARA compounds was very different from the list of hazardous wastes under section 3001 of RCRA. In the case of substances which are listed or characteristic wastes under section 3001 of RCRA which do not appear on Form R, the industrial user must submit the required information on those wastes to EPA, the States, and the POTW. In addition, although section 313 of SARA only requires notification for industrial users with more than ten employees, today's rule does not include any exemptions based on the number of employees at the facility.

A commenter suggested that the reporting requirements under 40 CFR 403.12 be used to fulfill the notification requirement. In response, the Agency notes that pollutants reported under 40 CFR 403.12 (b), (d), or (e) need not be reported under today's notification requirement. However, the reporting requirements under the above-mentioned provisions of 40 CFR 403.12 apply to pollutants regulated under applicable categorical pretreatment standards. Thus the reporting requirements under 40 CFR 403.12 may not necessarily address hazardous wastes and would fulfill today's requirements only if such wastes had been reported under 40 CFR 403.12 (b), (d), or (e).

To clarify that today's rule applies to new industrial users or to existing industrial users which will discharge hazardous waste only in the future, EPA

has added a provision requiring industrial users who commence discharging after the effective date of today's rule to provide the notification no later than 180 days after the discharge of the hazardous waste.

c. Today's Rule

Today's rule provides that the industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12 (b), (d), and (e).

Industrial users are exempt from the above requirements during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges additional quantities of such hazardous

waste do not require additional notification.

In the case of new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

In the case of any notification made under today's rule, the industrial user shall certify that it has a program in place to reduce the volume or toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. Individual Control Mechanisms for Industrial Users (40 CFR 403.8(f)(1)(iii))

a. Proposed Change

The existing pretreatment regulations require POTWs with approved pretreatment programs to have the legal authority to control, through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with pretreatment standards and requirements. EPA's experience in developing and overseeing the pretreatment program has led it to believe that individual control mechanisms are the best way to ensure compliance with applicable pretreatment standards and requirements. Such a system gives the industrial user individual notice of all of the pretreatment requirements to which it is subject, thus making it easier for such users to understand their obligations before a violation occurs and ensuring more effective prevention of pass through and interference.

For these reasons, the Agency proposed on November 23, 1988 to revise 40 CFR 403.8(f) to require that POTWs with approved pretreatment programs issue discharge permits or equivalent individual control mechanisms to industrial users identified as significant under proposed 40 CFR 403.3(u). Under the proposal, such control mechanisms would contain, at a minimum, the following elements:

- (1) Statement of duration (in no case more than five years);
- (2) Statement of non-transferability without prior POTW approval;
- (3) Applicable effluent limits based on categorical pretreatment standards and local limits;
- (4) Applicable monitoring, sampling, and reporting requirements;

(5) Notification requirements for slug discharges as defined in 40 CFR 403.5(b); and

(6) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements.

The Agency solicited comment on the merits of the proposed revision. Specifically, the Agency requested comment on: (1) The appropriateness of limiting the requirement to industrial users defined as significant under proposed 40 CFR 403.3(u), or the appropriateness of additional or alternative targets, such as categorical users or notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p); (2) whether the requirement should apply only to POTWs with more than a specified number of industrial users (and, if so, what number would be appropriate as a cut-off point); and (3) whether the list of conditions proposed should be reduced, expanded, or modified.

b. Response to Comments

The Agency received many comments on this issue. Commenters included States, POTWs, trade associations, industries and environmental groups. Of these, most supported the proposal in some form and many supported it as proposed.

Several commenters suggested that some instruments other than permits, such as contracts or administrative orders, might serve as equivalent control mechanisms. Most of those opposing the requirement stated that the POTW should have the flexibility to choose whether or not to implement a system of individual control mechanisms. One commenter stated that the requirement was redundant, because every POTW with an approved program is already required to notify users of pretreatment requirements and to have the authority to prohibit harmful pollutants from entering the POTW.

POTWs are required under the existing pretreatment regulations to have and exercise the authority to control through permit, order, or similar means, the contribution of individual industrial users to the POTW (40 CFR 403.8(f)(iii)). It is also true that, under the existing regulations, POTWs are required to notify users of applicable pretreatment standards and requirements and to ensure compliance with such standards and requirements. The Agency does not believe, however, that POTWs have consistently exercised their discretion under the existing regulations to develop adequate industrial user control mechanisms. Audits conducted of local pretreatment

programs have led the Agency to conclude that many existing control mechanisms are inadequate to ensure compliance with pretreatment requirements and that industrial users should often be provided with better notice of pretreatment requirements. The Agency continues to believe that individual control mechanisms are the best way to accomplish these objectives. For this reason, EPA proposed to require POTWs to issue permits or other individual control mechanisms to significant industrial users.

Today's rule will provide substantial benefits to the POTW, to the industrial user, and to the pretreatment program as a whole. For instance, a user subject to both categorical standards and local limits would receive individual notice of which limits are applicable (i.e., the most stringent of the two) for each regulated pollutant in its discharge. Similarly, a user with equivalent mass- or concentration-based limits or alternative limits derived by the combined wastestream formula would be informed of such limits in its permit or other individual control mechanism. Users would also be individually notified of sampling and reporting requirements, including any requirements more stringent than the applicable Federal minimum requirements. An individual control mechanism also benefits the user by providing notice of applicable requirements before a violation occurs, rather than afterwards. In addition, individual control mechanisms provide a mechanism for the POTW to impose individualized pretreatment requirements (e.g., for sampling and reporting) on an industrial user. Finally, as some commenters pointed out, this requirement would bring greater consistency to administration and implementation of the national pretreatment program across the country. Some commenters also felt that uniform Federal requirements were necessary to ensure fairness in the administration of the program.

Several commenters stated that mandatory individual control mechanisms would be costly for POTWs. One commenter said that the rule would require POTWs to "scrap" existing and approved pretreatment programs. Some POTWs stated that they were unnecessary because they already had effective ordinances.

Although the Agency is sensitive to concerns regarding costs, EPA notes that many POTWs already issue permits or other individual control mechanisms to some or all of their users and will probably need little or no modification to their existing program to meet these

requirements. POTWs which heretofore have relied entirely on ordinances to ensure compliance will require greater modification of their programs to comply with today's rule. However, EPA believes that the long-term benefits of this approach will justify the costs, even for POTWs that now rely on ordinances as their only control mechanism.

POTWs will be able to reduce their costs by utilizing existing data and by incorporating some existing requirements into the new system. Substantive requirements of the POTW's program (such as prohibited discharges, monitoring and reporting requirements, and penalty provisions) should be self-implementing under the POTW's ordinance. Many of these requirements could simply be written into the individual control mechanism, while others could be adjusted with slight modifications to reflect the particular circumstances of the user. Where the POTW already possesses all necessary data from its users to enable it to identify the character and volume of pollutants contributed by each user to the POTW, there would be no need to collect that information again. In support of its view, EPA points out that one POTW commented that it was initially reluctant when required to implement a permit system by its State Approval Authority. However, it found that implementation was fairly simple when standardized forms were developed, and its users preferred to have all of their requirements listed in one document.

One POTW commented that its State law prohibits municipalities with a population of greater than 500,000 from using permits to control individual discharges to the POTW. The commenter did not indicate whether all individual control mechanisms were similarly prohibited. If not, under the rule as promulgated, the commenter may use some other equivalent individual control mechanism. Alternatively, the commenter would have to seek a revision in its State law. In another context, a commenter requested that the Agency clarify the meaning of "equivalent control mechanisms" which could be used in place of permits. Another commenter stated that, if approaches other than permits have been approved and found effective, they should be allowed to continue and that EPA should not limit the definition of individual control mechanisms to permits only.

In this regard, the Agency would like to clarify both what it considers to be an acceptable "permit" under today's rule, and what may constitute "equivalent

control mechanisms". Where possible, analogies or distinctions are drawn between pretreatment permits and NPDES permits because most POTWs are very familiar (as NPDES permittees) with the NPDES program. First, unlike federal requirements applicable to direct dischargers, industrial users are not required under today's rule to obtain a permit prior to discharging to a POTW. (However, POTWs may establish such a requirement pursuant to their own legal authorities). Second, industrial users must comply with all applicable pretreatment requirements under federal law, whether or not they are contained in the permit or equivalent individual control mechanism. As a corollary, compliance by the industrial user with the terms of the permit does not shield it from liability for failure to comply with federal pretreatment requirements not set forth in the permit. However, EPA expects that the POTW will do everything possible to ensure that the limits and other requirements in the permit are as accurate and complete as possible, and will notify the user of any changes in applicable pretreatment requirements which become effective subsequent to the issuance of the permit.

As stated in the preamble to the proposed rule, the Agency will require issuance of "individual discharge permits or equivalent control mechanisms." An adequate equivalent control mechanism is one which ensures the same degree of specificity and control as a permit. To clarify that the conditions of the individual control mechanism must be enforceable against the significant industrial user through the usual remedies for noncompliance (set forth in 40 CFR 403.8(f)(1)(vi)(A)), EPA has amended the language of 40 CFR 403.8(f)(1)(vi)(B) to provide that pretreatment requirements enforced through the remedies of 40 CFR 403.8(f)(1)(vi)(A) shall include the requirements set forth in individual control mechanisms. In addition, the Agency has added to proposed 40 CFR 403.8(f)(1)(iii) a statement that individual control mechanisms must be enforceable.

EPA notes that the most effective control mechanisms should also be "strictly enforceable" under local law. Generally, for an individual control mechanism to be strictly enforceable, the local ordinance must specify that the terms and conditions of the control mechanism can be challenged (administratively and/or in court) only within a very limited time period after the control mechanism becomes effective. If the control mechanism is not challenged within the allotted time

period, it cannot later be challenged in an enforcement proceeding (for guidance on this and other issues concerning individual control mechanisms, see EPA's *Industrial User Permitting Guidance Manual*, (September 1989)).

Commenters suggested several alternatives to the use of permits as individual control mechanisms. These included ordinances, administrative orders, and contracts. Although only two commenters discussed the use of an ordinance as a control mechanism, some POTWs rely on ordinances as their principal control mechanism. An ordinance may offer fairness and consistency in its application, but it does not provide specificity and individual notice to significant industrial users. One POTW stated that its ordinance, together with notice by mail to individual users, was sufficient. In response, the Agency emphasizes that, although a letter provides notice to the individual user of applicable limits and other requirements, an ordinance system contains the same limits for all industrial users and does not provide for POTW evaluation of significant industrial users to determine whether individual requirements are necessary for that user. Accordingly, an ordinance will not be considered an equivalent control mechanism under today's rule.

Two commenters discussed the use of administrative orders as an alternative control mechanism. One commenter stated that administrative orders are an effective method of imposing pretreatment and reporting requirements on industrial users and are less paperwork-intensive than permits. One POTW commented that it modified its administrative orders to attempt to comply with EPA's oversight requests, but did not succeed in meeting all requirements. This commenter also stated that it is necessary for the Agency to clearly specify the requirements for individual control mechanisms.

The Agency agrees that detailed administrative orders may be an equivalent individual control mechanism. In order to completely satisfy today's requirement with an administrative order system, the POTW must issue administrative orders to its significant industrial users whether or not they are complying with all applicable pretreatment standards and requirements. In addition, such orders must contain all of the minimum elements of an individual control mechanism specified in today's rule. The use of administrative orders therefore may not be necessarily less paperwork-

intensive than other individual control mechanisms. Finally, administrative orders that are typically issued only in the context of an enforcement action may not meet one or more of the criteria for an adequate control mechanism described above and thus would not satisfy today's requirements. POTWs may, of course, use a mix of appropriate administrative orders, permits, and other equivalent individual control mechanisms to satisfy today's rule.

Several commenters mentioned the use of contracts as a control mechanism. One stated that the successful use of contracts precluded the need for permits, and two others equated the use of contracts with the use of permits. Two commenters stated that the permit should be signed by the permittee and "act [as a] legal contract between the POTW and the permittee."

The use of contracts as a control mechanism was addressed in a previous rulemaking (53 FR 40562, October 17, 1988). In that rulemaking, EPA stated that contracts do not provide a POTW with the requisite penalty authority for an approved program and are not an adequate control mechanism for POTWs with an approved pretreatment program. As a result, all references to the use of contracts as a control mechanism were deleted from the general pretreatment regulations (for a discussion of this issue, see the above-mentioned Federal Register notice at 53 FR 40574 *et seq.*). A "permit" signed by the permittee (i.e., the industrial user) may be deemed a contract and thus lose its effectiveness as a control mechanism. POTWs that currently use contracts as control mechanisms may incorporate most of the terms of such contracts into their newly issued non-contractual individual control mechanisms if such terms are current, reflect applicable pretreatment standards and requirements, and otherwise meet the requirements of today's rule.

Several commenters appeared to be confused about the meaning of the statement in the preamble to the proposed rulemaking that the Agency was proposing to require POTWs with approved programs to have "the legal authority to issue individual discharge permits or equivalent control mechanisms." Several POTWs commented that they supported the proposal, as some of them already had the authority to issue permits. One State commented that the proposal was not adequate unless the POTW is also required to actually issue the control mechanism. One POTW supported a requirement that POTWs have permit authority, but not a requirement to issue

permits. Finally, one trade association commented that the Agency should remove the word "permits" from the requirement if permit issuance was not intended to be a mandatory requirement.

EPA intended that the proposed rule be interpreted consistently with the Agency's interpretation of other requirements of 40 CFR 403.8(f)(1), i.e., the requirement that the POTW have the authority to undertake various activities means that the POTW must, in fact, engage in those activities. EPA is revising the language of 40 CFR 403.8(f) to clarify that POTW pretreatment programs must be implemented to exercise the authorities in 40 CFR 403.8(f)(1).

In the proposed rulemaking, the Agency also requested comments on (1) the appropriateness of limiting the requirement to industrial users defined as significant under proposed 40 CFR 403.3(u), or the appropriateness of additional or alternative targets, such as categorical users or notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p); (2) whether the requirement should apply only to POTWs with more than a specified number of industrial users (and, if so, what number would be appropriate as a cut-off point); and (3) whether the list of proposed conditions should be contracted, expanded, or modified. The Agency received a number of comments in response to these questions.

Roughly half of the commenters on the proposal responded to the question of which industrial users should be required to have individual control mechanisms. Several commenters stated that the POTW should have the flexibility to decide which users should be covered. However, most commenters who supported the proposal agreed that EPA should specify certain classes of industrial users for which POTWs would be required to issue individual control mechanisms. Most of these supported the proposal to require the use of individual control mechanisms for significant industrial users. With respect to dischargers other than significant users, including dischargers of hazardous wastes, most commenters stated that the use of control mechanisms for such users should be at the discretion of the Control Authority. However, other commenters suggested that the Agency extend the requirement to include dischargers of hazardous wastes or to include all industrial users. Finally, a few commenters wanted the requirement limited to categorical users.

None of these comments provided a compelling reason for the Agency to change the proposed requirement that

permits or equivalent individual control mechanisms be issued to all significant industrial users. The Agency agrees with those commenters who supported limiting the requirement to significant users, including categorical users. The Agency also agrees with those commenters who believed that the definition of significant industrial user is sufficiently inclusive and flexible to ensure that the necessary users are regulated by individual control mechanisms. The definition of significant industrial user, as promulgated in today's rulemaking, includes all categorical dischargers and all noncategorical dischargers meeting certain criteria, except to the extent that the Control Authority, with the approval of the Approval Authority, modifies the list of significant industrial users in accordance with criteria specified in 40 CFR 403.3(t)(1)(ii).

EPA believes that issuing individual control mechanisms to non-significant users should be at the discretion of the POTW because this class of users does not typically have sufficient potential to cause pass through or interference to warrant a requirement for individual control mechanisms. For this reason, today's rule does not require that POTWs issue individual control mechanisms to all industrial users. A POTW may, however, require non-significant users to have permits or other individual control mechanisms. One POTW commented that there should be two classes of industrial user permits. In response, EPA points out that POTWs are free to implement this approach if they wish, although the Agency does not believe that a two-class approach would be appropriate for all POTWs in a national rule.

EPA disagrees with those commenters who stated that the requirement for individual control mechanisms should be limited to categorical users. Such a requirement would fail to include many users whose discharges significantly affect POTWs. One commenter stated that the Agency should not require permits for small dischargers, but supported requiring permits for categoricals. However, the Agency believes that even small dischargers should be required to obtain individual control mechanisms if they qualify as significant industrial users because they may have a significant effect on a POTW. On the other hand, if a non-categorical user is not classified as a significant industrial user, it would not be required to obtain an individual control mechanism under today's rule.

A few commenters addressed the question of whether the requirement should apply only to POTWs with more

than a specified number of industrial users. Several commenters stated that the requirement should apply to all POTWs with approved programs.

One stated that even a small POTW may need to issue individual control mechanisms to significant dischargers. Another commenter stated that small POTWs (less than 5 million gallons per day) with a small number of significant users (less than ten) should not be required to issue such control mechanisms to their significant users. However, one large POTW commented that this requirement should only apply to smaller POTWs (under 20 mgd).

In response to the commenter who wanted to limit the applicability of the requirement to smaller POTWs, the Agency believes that the larger the POTW (and the greater the number of industrial users), the greater the benefit to be derived from individual control mechanisms. On the other hand, the Agency does not believe that POTWs with a small number of significant users should be categorically exempted from this requirement. Even a small number of significant users may have a substantial impact on a POTW, particularly where their discharges represent a large percentage of the flow. In addition, industrial users will benefit from individualized notification of the limits and monitoring requirements that apply to them, regardless of the size of the POTW.

Several commenters addressed the minimum elements to be included in an individual control mechanism. A POTW opposed to the proposal commented that there should be no minimum elements if permits were to be required because the POTW is in the best position to determine the necessary contents of a permit, and none of the elements would be appropriate under all circumstances. Another commenter recommended that the Agency allow incorporation by reference as an alternative to listing conditions in the permit or alternative individual control mechanism. Most commenters, however, appeared to be satisfied with the list of conditions in the proposal. One POTW commented that the requirements concerning non-transferability, slug load notification, and penalties be dropped from the list, because these are already set forth in its local requirements.

The Agency believes that there should be minimum requirements for individual control mechanisms. Otherwise, the requirement that POTWs issue such mechanisms would be ineffective. The Agency believes that incorporation by reference is generally not appropriate because of the importance of effective

notice to the significant industrial user of all pretreatment requirements contained in the individual control mechanism.

Several commenters stated that the list of minimum requirements for individual control mechanisms should be expanded. Two commenters said that the list should include (any required) compliance schedules. One commenter suggested that the list should include a statement of severability. One POTW described its own additional requirements, which included: A regularly updated spill prevention program; a water and wasteload balance calculation; a wastewater characterization data base; a schematic flow diagram; a building layout diagram, including all drains to the collection system; and a description of the pretreatment system.

The requirements listed in the proposed rule were intended to be minimum requirements. This leaves the POTW much flexibility in adding other elements. Elements such as water and wasteload calculations, flow diagrams, building layouts, etc., are more suitable for inclusion on a case-by-case basis rather than through a national rule. POTWs may also include a statement of severability, but the Agency is not requiring such a statement because even if a control mechanism is found to be invalid under local law because of a single provision, the user is nonetheless required to comply with all applicable pretreatment standards and requirements.

The Agency has issued detailed guidance on the development of industrial user permits (see the EPA *Industrial User Permitting Guidance Manual*, September 1989). The information in this manual should be of use to all POTWs in utilizing individual control mechanisms to implement pretreatment requirements.

The Agency agrees that where a compliance schedule is required it should be included in the individual control mechanism. For this reason, today's rule includes such a requirement. The Agency points out that such compliance schedules cannot relieve an industrial user of its federal obligation to comply with categorical pretreatment standards or any other federal pretreatment requirements in a timely manner, and language to this effect has also been added to today's rule. Compliance schedules placed in individual control mechanisms are those necessary for the attainment of new or revised categorical pretreatment standards or more stringent local limits, rather than those which are the result of

enforcement actions against the significant industrial user.

Several commenters opposed the proposal that individual control mechanisms have a duration of no more than five years. One POTW commented that locking a user into a set of standards based on the combined wastestream formula would result in annual changes to the control mechanism as flow conditions change. Two other POTWs commented that a five-year limit would be unduly burdensome for POTWs. One stated that permits should only need to be renewed or amended when there are changes in the quality or quantity of the user's discharge. The other stated that there is no need to modify the user's control mechanism as long as the user is in compliance.

In the first instance, the Agency does not believe that a user is "locked" into a particular set of standards with any individual control mechanism. The municipality may structure its permit program to allow the use of reopener clauses which would allow the individual control mechanisms to be modified if and when the POTW revises its local limits. In addition, where production rates or flow rates are highly variable, effluent limits can be written to reflect such variability. The Agency has provided some guidance on how this may be accomplished (see the above-mentioned *Industrial User Permitting Guidance Manual*). The Agency believes that a five-year maximum period is reasonable, due to the inevitability of changes to the POTW's program and changes in the characteristics of wastewater discharged to the POTW. This is consistent with the requirement promulgated in today's rulemaking that all POTWs must evaluate the need to revise their local limits every five years when they apply for renewal of their NPDES permits. There are many reasons for changing the control mechanism requirements, whether or not the user has changed the quality or quantity of its discharge, and the Agency believes that each control mechanism should be reevaluated at least once every five years to ensure that it is up to date.

The Agency also proposed to require a statement prohibiting transferability to a new owner or operator without prior POTW approval. Only one commenter specifically addressed this issue. This commenter stated that so long as compliance has been maintained under the conditions of a permit, the POTW should have ample authority to enforce the permit, although notification to the new owner or operator would be appropriate. The Agency agrees with

this commenter. POTWs may have authority to enforce permits that have been transferred. However, the individual control mechanism is based upon information provided to the POTW by a particular owner or operator. The POTW must, at a minimum, know of the change in ownership or operation to be able to learn of any forthcoming major changes to the industrial user's operations. Similarly, the new owner or operator should have a copy of the existing control mechanism in order to have adequate notice of applicable pretreatment requirements. To ensure that this occurs, the Agency believes that prior notification of the POTW and of the new owner or operator is needed and is therefore promulgating 40 CFR 403.8(f)(1)(iii)(B) to provide that each individual control mechanism must include a statement of nontransferability without, at a minimum, prior notification to the POTW of the change in ownership or operation and without, at a minimum, provision of a copy of the existing individual control mechanism to the new owner or operator. Today's rule does not, however, require prior approval by the POTW. POTWs may decide to require such prior approval in the permits they issue.

The Agency also received several comments on the proposed requirement that individual control mechanisms should include applicable effluent limits based upon categorical standards and local limits. Two POTWs sought to limit this requirement. One of these commenters stated that, due to the inherent variability of certain effluent limits, incorporation of such limits by reference is preferred. The other commented that permit limits should only include end-of-process limits and incorporate by reference local limits and the combined wastestream formula. It is unclear to the Agency why this commenter believed that only end-of-process limits should be included in individual control mechanisms, but the Agency assumes that this commenter was also concerned about variability of certain effluent limits. As discussed above, EPA does not believe that variability of flow and production should prevent the inclusion of appropriate limits in individual control mechanisms. EPA's policy is that POTWs should develop, and place in individual control mechanisms, case-by-case individual end-of-pipe limits for significant industrial users pursuant either to 40 CFR 403.5(c) and/or limits reflecting the application of categorical standards to the permittee's specific operations.

A State suggested that "applicable State standards" be added to the category. The Agency agrees that where these standards apply, they should be included as elements in permits or equivalent control mechanisms. Early calculation of all end-of-pipe limits, including those based on state law, will result in better compliance with applicable standards. Today's rule therefore includes a requirement in 40 CFR 403.8(f)(1)(iii) to include in the individual control mechanism effluent limits based on any applicable State or local law. The Agency has also added a requirement that the individual control mechanism include effluent limits based on applicable pretreatment standards in part 403.

Finally, the Agency received two comments on the requirement that applicable monitoring, sampling, and reporting requirements be included in individual control mechanisms. A State commented that control mechanisms should also include sampling location(s) to ensure that compliance is assessed at the point where the limits are applied. A POTW suggested that the requirement be modified in order to clarify that the requirement refers to self-monitoring instead of the POTW's own compliance monitoring activities.

The Agency agrees with both of these commenters. Sampling requirements should normally specify sampling location(s), and the location(s) should be point(s) at which the limitations set forth in the individual control mechanism apply. Moreover, the Agency intended in the proposal to require that individual control mechanisms contain self-monitoring requirements. The final rule requires that individual control mechanisms specify an identification of the pollutants to be monitored, sampling location and self-monitoring requirements, as well as sampling frequency and sample type. The Agency is also adding a requirement that the control mechanism contain recordkeeping requirements where applicable, since recordkeeping may be very useful in tracking compliance and in otherwise enabling the POTW to obtain needed information about significant industrial users. In addition, EPA has deleted from the proposed rule a separate requirement for notification of slug discharges, since such a requirement might imply that other types of notification should not be included in individual control mechanisms. Instead, the Agency is requiring that such mechanisms contain "applicable" notification requirements, which should include, as well as slug discharges, other notification requirements contained in

part 403 such as non-compliance reporting and notification of changed discharge.

c. Today's Rule

Today's rule requires POTWs with approved pretreatment programs to issue permits or equivalent individual control mechanisms to each significant industrial user. The mechanisms shall be enforceable and shall contain, at a minimum, the following elements:

- Statement of duration (in no case more than five years);
- Statement of non-transferability of the individual control mechanism without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- Effluent limits based on applicable general pretreatment standards in part 403 of this title, categorical pretreatment standards, local limits, and State and local law;
- Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on applicable general pretreatment standards in part 403 of this title, categorical pretreatment standards, local limits, and State and local law; and
- Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and, where required, any applicable compliance schedules. Such schedules may not extend the compliance date beyond applicable federal deadlines.

F. Implementing the General Prohibitions Against Pass Through and Interference

1. Toxicity-Based Permit Limits (40 CFR 122.21(j)(1)(2) and (3))

a. *Proposed rule.* To supplement numerical NPDES permit limits for specific chemicals, EPA has strongly encouraged NPDES permitting authorities to establish toxicity testing requirements in municipal permits and to develop whole effluent toxicity-based permit limitations to control toxicity to aquatic life. Expanded use of toxicity testing and water quality-based permitting for POTWs was also one of the principal recommendations of the Domestic Sewage Study. EPA has encouraged this approach to controlling toxic effluents because it allows POTWs and permit writers to better control pass through by identifying certain toxic effects (such as lethality and effects on growth and reproduction) of a complex

mixture with one measurement. Toxicity-based permit limits can also be useful where national categorical pretreatment standards do not adequately address pollutants that cause local toxicity or where there are no current numerical water quality criteria for individual chemicals, as is the case for many toxic and hazardous constituents. In such cases, toxicity-based permit limits provide a numeric measure of the narrative water quality "no toxics in toxic amounts" standard. When such a toxicity-based limit is violated, a toxicity reduction evaluation (TRE) can be used to investigate the causes, sources, and methods to control the toxicity. A TRE is a procedure used to find control methods to reduce or eliminate toxicity. A TRE provides systematic methods for locating sources of POTW whole effluent toxicity and/or assessing the treatability of the toxicity, whether through pretreatment (source control) or through improved treatment at the POTW. A toxicity identification evaluation (TIE) is part of a TRE which uses toxicity tests to characterize, identify, and confirm the specific causative agents of effluent toxicity. EPA recently enacted regulations requiring that whole effluent toxicity limits be placed in NPDES permits in appropriate circumstances. See 40 CFR 122.44(d).

On November 23, 1988, EPA proposed to revise 40 CFR 122.21(j) to require that all existing POTWs conduct whole effluent toxicity testing and submit the results of such testing in their NPDES permit applications. The information would be used by permit writers to justify permit limitations and toxicity reduction evaluations (TREs) when the testing reveals a potential for violations of water quality standards. The toxicity testing information could also form the basis for monitoring requirements and other permit conditions when needed to ensure ongoing compliance with water quality standards.

In encouraging the use of toxicity testing, EPA has recommended that testing requirements be based on the technical recommendations and principles found in the *Technical Support Document for Water Quality-based Toxics Control (TSD)* (EPA/440/4-85-032, September 1985, revised edition to be published in 1990), and EPA's toxicity testing protocols, or equivalent procedures designated by the Director (i.e., the EPA Regional Administrator or the NPDES permitting authority in a State that is federally approved to administer the NPDES program). The TSD describes the rationale for whole effluent toxicity