Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 2, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–20449 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 262 and 403

[FRL–7255–8]

RIN 2090–AA13

National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Available only to members in EPA's National Environmental Performance Track program, this action proposes: a provision that would allow hazardous waste generators who are members in Performance Track up to 180 days to accumulate their hazardous waste without a RCRA permit or interim status; simplifications to reporting requirements for facilities governed by Maximum Available Control Technology (MACT) provisions of the Clean Air Act (CAA); and specific reporting modifications for Publicly Owned Treatment Works (POTWs) regulated by the Clean Water Act (CWA). Additionally, this action solicits comments on a potential pilot of consolidated reporting that would allow Performance Track facilities to submit a single report that would contain data routinely required under the CAA, the CWA, the Emergency Planning and Community Right-to-know Act (EPCRA), and the Resource Conservation and Recovery Act (RCRA). These provisions are intended to serve as incentives for facility membership in the National Environmental Performance Track, and as demonstrations of the concept for reporting streamlining.

DATES: Submit comments on or before November 12, 2002. A public hearing on this proposed rule will be held on September 27, 2002. Submit requests to present oral testimony on or before September 25, 2002.

ADDRESSES: *Comments.* Submit comments (in duplicate if possible) to: Docket No. A–2000–47, U.S. Environmental Protection Agency, Mailcode 6102, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public Hearing will be located at 1200 Pennsylvania Avenue, Washington, DC 20460.

Electronic Access and Filing. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.*

Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–2000–47. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Documents related to this rulemaking may be viewed at: U.S. EPA Air Docket, Room M–1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. Submit electronic comments and other data to *a-and-r-docket@epa.gov. See* **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Robert D. Sachs, 202–260–2765, *sachs.robert@epa.gov.* *Public Hearing information:* Robert D. Sachs, 202–260–2765, *sachs.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In addition to being available in the docket, an electronic copy of today's proposed rule will be available on the World Wide Web through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Docket. The docket is an organized and complete file of all the information considered by us in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. The regulatory text and other materials related to this rulemaking are available for review in the Air Docket under Docket Number A–2000–47 (*see* **ADDRESSES** above) or copies may be mailed on request by calling the Air Docket at (202) 260–7548 or by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table.

Category	Examples of NAICS
Utilities	221
Textile mills	313
Wood product manufacturing	321
Chemical manufacturing	325
Plastics and rubber products manufacturing	326
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Fabricated metal products	332
Machinery manufacturing	333
Computer and electronic product manufacturing	334

Category	Examples of NAICS
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Miscellaneous manufacturing	339

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action.

Outline. The information presented in the text that follows is organized as below:

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G. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 *et. seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995

I. Overview

A. What Is the History of This Action?

EPA announced the National Environmental Performance Track (Performance Track) program on June 26, 2000. The program is designed to recognize and encourage top environmental performers—those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that provide greater benefit to people, communities, and the environment. The program is based upon the experiences of EPA, states, businesses, and community and environmental groups with new approaches that achieve high levels of environmental protection with greater efficiency. This experience includes: EPA's Common Sense Initiative, designed to improve environmental results by tailoring strategies for six industry sectors; the national Environmental Leadership Program and EPA Region I's Star Track program, designed as new ways to encourage businesses to do better than required; and many performance track-type programs in states such as Oregon, Wisconsin, New Jersey and Virginia.

EPA currently is implementing the National Environmental Performance Track (Performance Track), formerly known as the Achievement Track. The program is designed to recognize facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress. A complete description of the Performance Track program, its requirements, and other program materials are available on EPA's Web site (*www.epa.gov/performancetrack*) or by calling the Performance Track Information Center toll free at 1–888–339-PTRK (7875).

EPA has held three Performance Track application periods—between July 2000 and September 2000, between February 2001 and April 2001, and between August 2001 and October 2001. In the future, EPA plans to hold two entry periods each year. A total of 279 facilities have been accepted into the program. The National Environmental Performance Track is a voluntary program. Decisions to accept and remove facilities is wholly discretionary to EPA, and applicants or potential applicants have no legal right to challenge EPA's decision.

Today's proposal creates several regulatory provisions that constitute enforceable legal requirements for facilities that are members of the Performance Track program and have taken all other necessary steps required for the applicability or implementation of the individual regulatory incentive provisions. Full eligibility and other program requirements can be found at the Performance Track Web site (*www.epa.gov/performancetrack*). The Agency believes that, because of the stringency of the program criteria, facilities in the Performance Track should receive the non-regulatory and regulatory benefits outlined in the Program Description (and summarized below). Specifically, for acceptance in the Performance Track, facilities must:

- Have adopted and implemented an environmental management system (EMS) that includes specific elements;
- Be able to demonstrate environmental achievements and commit to continued improvement in particular environmental categories;
- Engage the public and report publicly on their performance; and
- Have a record of sustained compliance with environmental requirements.

In addition, the Performance Track is designed so that EPA and other stakeholders can monitor and track the implementation of the benefits currently being offered to program members, as well as those being considered. Member facilities commit to providing annual reports on the status of their efforts to achieve their commitments to improvements in specific environmental categories. This reporting plus additional activities to engage the public result in a high level of scrutiny that will aid in monitoring the activities of the Performance Track program. Lastly, facilities are accepted into the Performance Track for a period of three years. To continue receiving the benefits associated with the program, facilities will reapply, which will include developing additional, ongoing

commitments to environmental performance improvements.

In its efforts to promote improved environmental performance through the National Environmental Performance Track, EPA is evaluating further regulatory incentives that could be applied to qualifying facilities. This rulemaking is the first in what are expected to be several steps in developing incentives that will promote participation in the program and the associated environmental benefits. These incentives will include both those that will be implemented through rulemaking (such as the regulatory changes proposed today) and those that may be accomplished through administrative action by EPA or the states. EPA encourages interested parties to submit comments on additional incentives that are consistent with the design and goals of the Performance Track.

B. How Have Stakeholders Been Involved?

During the development of the Performance Track Program and subsequent to its announcement in June 2000, EPA has had many meetings with a wide array of stakeholders. Stakeholders included companies, non-governmental organizations, states, associations, and others. Over the course of these meetings, EPA has discussed many issues including any incentives that would reward Performance Track members, as well as those incentives that would motivate non Performance Track facilities to implement environmental improvements that would qualify them for membership in the program.

This proposed rulemaking grew out of the stakeholders' collective interest in promoting incentives for participating facilities. Since the inception of the program, EPA has held three meetings with state regulators: May 2000 in Denver, February 2001 in Chicago, and November 2001 in Charleston. At each of these meetings, break-out sessions were held to solicit feedback from state personnel on potential incentives to be offered to Performance Track members.

On December 12, 2000, EPA held a ''Charter Event'' for the first round of Performance Track members. At this meeting EPA held a series of breakout discussions. During these sessions, ideas about incentives that could become part of the regulatory framework were discussed.

Similarly, on October 30, 2001 EPA met with a variety stakeholders including associations, non-governmental organizations and states to discuss EPA's ''Innovations Strategy.'' During this meeting EPA held a specific breakout session on incentives that could be made available for performance track members.

In addition, EPA has consulted regularly with individual Performance Track participants and the Performance Track Participants Association (PTPA), which is composed of 141 members. The PTPA is a nonprofit organization that provides a forum for corporations, trade associations and public entities dedicated to improving their environmental performance through the vehicle of the Performance Track program. The PTPA met twice, in June and November of 2001, and is convening its first annual conference in April, 2002. The PTPA also has an Incentives workgroup that focuses on identifying and advocating for incentives for Performance Track members.

Furthermore, EPA is working with nine trade organizations through the Performance Track network to further enhance participation in the program. Network Partners include the following organizations: American Chemistry Council, American Textile Manufacturers Institute, Cement Kiln Recycling Coalition, National Association of Chemical Distributors, National Paint and Coatings Association, National Stone, Sand and Gravel Association, NORA (an Association of Responsible Recyclers), North American Die Casting Association, and Screenprinting and Graphic Imaging Association International.

C. What Incentives for Members Are Envisioned?

The Performance Track Program Description provides a list of incentives the Agency intended to make available to member facilities. EPA currently offers several incentives that are available to members when they enter the program (*e.g.,* recognition, networking opportunities, discretionary inspection benefits). EPA is also in the process of making other incentives available through taking administrative action (other than rulemaking) and by issuing or amending guidance documents (*e.g.,* reduced reporting under Discharge Monitoring Reports). These incentives will be available when those steps have been completed. In some cases, other steps also must be taken before a facility may take advantage of an incentive. For example, states are responsible for implementing parts of many federal environmental programs. In such cases, states may need to revise regulations, seek EPA approval of a revised program, re-issue permits, or take other actions. EPA has made funds available to approximately 20 states to identify where existing state laws may need to be revised to support the National Environmental Performance Track. See the National Environmental Performance Track Program Description for a fuller discussion of these incentives.

In the Program Description, EPA also committed to propose specific regulatory changes as incentives for membership in the Performance Track. The proposed changes in this rulemaking follow up on this commitment. EPA believes the modest regulatory changes proposed here are appropriate for facilities that are members of the program.

EPA is proposing the following regulatory changes to promote membership in the program and to realize the environmental and other benefits resulting from the actions of member facilities. EPA excluded incentives that would involve a relaxation of substantive standards of performance or that would require statutory change. EPA identified incentives that would apply broadly to different types of facilities; that reduce the reporting and other operating costs of the current system; and that can be implemented nationally.

EPA believes it is important to offer the kinds of incentives described here for several reasons. First, the achievements of these facilities deserve public recognition. Second, some of the reporting and other administrative requirements that apply generally to facilities may not be needed for facilities that have met the entry criteria for the Performance Track because these facilities have implemented appropriate environmental management systems, have consistently met their regulatory commitments, and have agreed to make information regarding their performance publicly available. Third, these incentives may offer the opportunity for qualifying facilities to apply their resources to achieving even better environmental performance. And finally, the availability of these incentives should encourage other facilities to make environmental improvements that will enable them to qualify for membership.

In this rulemaking, EPA is proposing changes to certain regulatory programs to offer incentives exclusively to Performance Track facilities. They include:

- Reducing the frequency of reports required under the air toxics provisions of Section 112 of the Clean Air Act (air toxics standards promulgated under this section of the CAA are often referred to

as MACT Standards or Maximum Achievable Control Technology Standards). In this incentive, EPA proposes to reduce the frequency of required MACT reporting for all eligible Performance Track facilities to an interval that is twice the length of the regular reporting period, but not less frequently than once every six months. Second, if Performance Track facilities reduce their emissions through pollution prevention or process changes to below MACT levels, and below the major source threshold, required reporting elements in the periodic report may be met through an annual certification. Performance Track facilities must continue to meet all relevant monitoring and recordkeeping requirements. For major sources, reports must still be submitted at least semi-annually in order to meet Title V permitting requirements.

• Reducing the reporting costs for POTWs in the Performance Track that must publish notices of violations by facilities that use their services. These POTWs would be allowed to use the Internet rather than paid newspaper notices. POTWs would also be allowed to reduce their oversight of some smaller industrial users; they would be allowed the discretion to determine that some of these users are ''nonsignificant.'' Also proposed are other alternative environmental performance-based incentives for POTWs in the Performance Track.

• Allowing large quantity hazardous waste generators who are members of the Performance Track up to 180 days (and 270 days if the waste must be transported 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status, provided that these generators meet certain conditions. This incentive would also assist EPA in learning more about appropriate hazardous waste generator accumulation times.

In this notice, EPA solicits comments on another potential incentive—the opportunity for Performance Track facilities to consolidate reporting under various environmental statutes into a single report. The incentives in this notice—both those for which we propose rulemaking changes and the opportunity for participating in a consolidated reporting pilot—are just a part of an overall package of incentives that EPA intends to provide for Performance Track members. We noted above that the National Environmental Performance Track Program Description lists several other incentives that EPA intends to make available through administrative action not requiring rulemaking changes. That same document notes that EPA is considering another potential incentive—the opportunity for expedited review for companies that submit Premanufacturing Notifications (PMNs) under the Toxic Substances Control Act, if the substance is manufactured in a Performance Track facility and the applicant uses EPA's Pollution Prevention Framework in preparing the PMN submission. If EPA decides to make the TSCA incentive a part of the Performance Track Program, we would propose rulemaking to do so at a later time.

We solicit comments on whether EPA should add other incentives beyond the ones in this notice and in the Program Description, and what they might be. EPA will consider at least three criteria in devising and selecting additional incentives. One is the make-up of the current set of Performance Track facilities and the potential applicant pool. Another is the extent to which the characteristics of Performance Track facilities (including their use of effective EMSs and their commitment to public reporting beyond that required by regulations) may be appropriate substitutes for some aspects of existing regulatory and other requirements. The third criterion is that incentives do not represent a reduction in protectiveness when compared to current requirements. We solicit comments on these criteria and suggestions of others.

D. What Is EPA's Rationale for This Rule?

EPA is proposing to modify reporting and other requirements that affect facilities that are subject to various environmental statutes and regulations. The proposed rulemaking would make these modifications available only to those facilities that successfully achieve the status of members in the National Environmental Performance Track Program and continue to meet the conditions of the program.

The environmental benefits that will be generated by Performance Track member facilities are related to the criteria for membership in the Performance Track. These were enumerated and fully described in EPA's announcement of this program (*www.epa.gov/performancetrack*), and are summarized below:

Facilities must satisfy the following four entry criteria to be accepted into the Performance Track:

(1) Facilities must be in compliance with Federal, State, Local and Tribal environmental regulations.

(2) They must operate a well-designed environmental management system (EMS) as part of their overall management system.

(3) They must demonstrate a record of environmental improvements for the previous two years beyond the minimums required of them. They also must take additional future actions and commit to further improvements in the succeeding three years.

(4) Facilities must engage the public and each year they must report publicly on their progress toward meeting the goals that they have chosen, as well as summarize their compliance and the performance of their EMS. EPA will also make the applications of each facility member available to the public.

These criteria are the key to generating the incremental environmental improvements; they were designed to work together as an integrated approach. No single criterion, standing alone, would provide EPA with the necessary assurance that the changes proposed here would lead to increased compliance or performance. However, in combination the Agency believes that these criteria ensure that the facilities eligible for these proposed changes are both capable of and committed to maintaining beyond-compliance environmental performance and that any lapses will be rare and quickly corrected by facility management. Further, the Agency and the public will continue to receive information on facility compliance and performance. Nothing in this proposal would compromise the ability of the Agency to investigate and sanction suspected environmental violations.

Compliance with environmental regulations: Although the first criterion merely re-iterates the existing obligation of all facilities to comply with relevant policies and regulations, the other criteria go beyond the environmental problems addressed under existing regulations and focus on the unique set of environmental challenges faced by each individual facility. EPA believes that a strong compliance history is an important factor in defining performance in the Performance Track. EPA, in cooperation with State and local authorities to the extent possible, reviews the compliance history of applicants.

Environmental management systems: To satisfy the second program criterion, a Performance Track member facility must have a mature environmental management system. These systems integrate environmental considerations into routine decision-making at facilities, establish work practices that consistently reduce environmental risks and releases, evaluate environmental performance, and set management

priorities based on the environmental impacts of individual facilities. Because they organize and consolidate information on a facility's environmental obligations and potential weaknesses for management, an EMS often improves the facility's compliance record and reduces accidents. However, many EMS frameworks address unregulated environmental impacts as well as regulated impacts. Thus, an EMS provides a facility with the ability to assess and mitigate impacts that are most significant for the facility or that pose the most risk to the ecosystem and community surrounding the facility. An EMS allows a facility to take additional environmental mitigation actions that are highly effective and appropriate, providing better environmental results as well as more flexibility than the existing regulatory structure alone.

EMSs are being used increasingly by organizations around the world to help integrate environmental considerations into day-to-day decisions and practices and to address environmental issues more consistently and effectively. The increasing use of EMSs has resulted in the development of an international EMS standard (ISO 14001). In light of their growing use and potential for improving environmental results, especially in the area of unregulated impacts, EPA has focused more attention on EMSs in recent years. The Agency has a research program underway with the States to pilot test and evaluate the effectiveness of EMSs in several industry settings. The Agency has developed and tested EMSs for specific sectors, including local governments and metal finishing and screen printing firms. We have promoted EMSs through several voluntary partnership programs, such as Design for the Environment (DfE), and we have incorporated EMS requirements in enforcement settlement agreements. In June 2000, the Administrator supported the North American Commission for Environmental Cooperation (CEC) document ''Improving Environmental Compliance: 10 Elements of Effective Environmental Management Systems.''

The EMS provisions in the Performance Track are designed to ensure that member facilities will continue to not only meet their regulatory obligations but also to perform better than required by regulation. The Performance Track specifies that a qualifying facility must have an EMS that includes detailed elements in the following categories: environmental policy (including compliance with both legal requirements and voluntary commitments), planning, implementation and operation, checking and corrective action, and management review. Additionally, the EMS must have been in full operation for at least one review cycle (generally one year) and must have been audited (may be a self-audit). The EMS requirements are described in more detail in EPA's National Environmental Performance Track Program description at *www.epa.gov/performancetrack.*

Past and future environmental improvements: Facilities must demonstrate their commitment to continuous environmental performance. To do this, facilities must identify accomplishments in specific categories. The categories are: energy use, water use, materials use, air emissions (including greenhouse gases), waste, discharges to water, accidental releases, habitat preservation/restoration, and product performance. Past improvements must have been beyond regulatory requirements. In addition, Performance Track facilities must make use of their EMSs to set and commit to achieving environmental performance goals that go beyond regulatory requirements and that mitigate some facility-selected significant environmental impacts. These performance goals must be chosen among the specific categories identified above including both regulated and unregulated environmental impacts.

Because these performance goals and accomplishments go beyond requirements and in some cases, well beyond areas covered by existing environmental regulations, EPA believes that facilities that qualify for the Performance Track have demonstrated a serious commitment to real environmental improvement. By their willingness to undertake greater environmental responsibilities, these facilities have earned the confidence that they will maintain compliance with regulatory requirements under the streamlined procedures proposed in this Notice.

Public commitments: To satisfy the fourth program criterion, all Performance Track facilities publicly disclose progress toward their commitments and other performance information each year, including summary information regarding their EMS and compliance with legal requirements. Because these commitments and the performance reporting go beyond those required by current regulation, communities will have access to more information about the performance of local facilities. This public scrutiny also will provide an incentive for firms to make meaningful commitments and achieve them.

We believe that facilities that make the choice to apply and to demonstrate their commitments to environmental improvements in the public spotlight will be imposing upon themselves a unique and particularly strong set of pressures to deliver this heightened level of performance.

In time, we expect the Performance Track program to produce additional environmental gains as a result of the more efficient use of the resources of federal, state, and local environmental authorities. Because we expect the entry criteria to result in member facilities that are carrying out their environmental obligations in a manner beyond what is required of them, we believe that EPA and the other authorities will be able to shift enforcement and compliance activities to other facilities in the regulated community. We believe that this resource reallocation may bring further environmental improvements, as limited compliance resources are applied more effectively.

Each of the regulatory changes we are proposing today would enable some Performance Track members to reduce their reporting or other compliance costs.

1. What Environmental Benefits Will the Performance Track Program Bring to Society?

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and reporting requirement relief, to the extent that they affect companies bottom lines, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

2. How Will Incentives Maximize the Benefits of the Performance Track Program?

Incentives play a crucial role in maximizing the environmental benefits of any voluntary program. Facilities must perceive a benefit to themselves that is at least equal to their perceived costs of membership in a voluntary program. These costs include the administrative burden of membership as well as any costs incurred in meeting the substantive requirements of the program. Facility members of the Performance Track Program also face

the additional risk of adverse public reaction if they fail to meet their environmental goals or if their internal audits of compliance or EMS performance reveal problems. These public risks are unique to Performance Track facilities. Facilities participating in other EPA voluntary programs as well as facilities that do not participate in any voluntary program may and do keep audit information confidential. Improved public information about the environmental performance of facilities is an important component and public benefit of the Performance Track program and it significantly raises the costs perceived by facility managers for internal oversights or lapses.

The greater the benefits to facility members in the Performance Track program, the more facilities will participate. Increased program incentives may also generate environmental benefits from non-members. If facilities that do not currently meet the Performance Track program criteria believe that membership would benefit them, they may work to improve their management systems and environmental performance to become eligible.

3. Will These Incentives Undercut Existing Environmental Protections?

EPA believes that the proposed 180-day accumulation period for hazardous waste and the changes proposed in reporting for MACT facilities and for POTWs will have no direct deleterious effects on the environmental performance of those facilities. We believe that, although EPA and other regulatory bodies will receive compliance information from these facilities less frequently, the facilities' demonstrated strong environmental performance and the presence of their EMSs more than compensate for reduced reporting. As a safeguard, EPA and the other governmental authorities will not be giving up their ability to take enforcement actions against any facility that fails to comply with permits or other obligations. The risk of a very public removal from this program for failure to comply adds an extra incentive to comply with program requirements. EPA believes that this, plus the incentives that facilities have to be perceived by the public and by governmental offices as better environment performers than their competitors, reduces the risk that any environmental damages will result from this program or the regulatory changes we are proposing.

We believe that the changes proposed here for POTWs' public reporting will not decrease the public's ability to learn about violations by the POTWs' permittees. Rather, EPA believes that these changes may actually enhance the public's ability to learn about these violations and thus to participate in ensuring compliance by dischargers.

4. How Does the Program Design Limit Membership to a Uniquely Appropriate Set of Facilities?

EPA designed the Performance Track program to generate improvements in environmental performance of facilities. EPA believes that the entry criteria and the ongoing obligations for continued membership in Performance Track as described above will bring about benefits to the environment such as decreased releases of pollutants to the air, water, and land, of greater efficiency in energy and raw material usage, and of decreased risks of accidental releases of hazardous substances. These incremental environmental benefits will flow from the facilities' activities that are tied to their membership in Performance Track, and this justifies making available to this category of facilities the benefits of the modified requirements that we propose today.

Further, EPA believes that there are controls and safeguards built into the Performance Track program that reduce the possibility a facility would receive the benefits of the modified requirements we propose today without the facility delivering improved environmental performance.

EPA's announcement of this program (*www.epa.gov/performancetrack*) describes how we review the applications and make selections of facilities that meet the entry criteria. It also summarizes other steps we will take to run the program, including conducting site visits at up to 20 percent of the member facilities and the possible removal of facilities if they are found not to be meeting the commitments they have taken on. We believe that this approach is generally capable of identifying those facilities, among the tens of thousands of facilities subject to environmental regulations, which have and will continue to comply with and exceed regulatory requirements. We also believe that the combination of the administrative controls of the Performance Track program and the public reporting voluntarily accepted by program members will, as a rule, be effective in limiting membership to only such facilities.

II. The Proposed Rulemaking Changes

A. Maximum Achievable Control Technology (MACT)

1. Reduced Frequency of Required MACT Reporting for All Eligible Performance Track Facilities

Facilities covered by the MACT provisions of the Clean Air Act must meet a variety of recordkeeping, monitoring, and reporting requirements as specified in 40 CFR part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories. For facility members in the Performance Track, EPA proposes to reduce the reporting frequency while assuring the availability of information required for compliance with MACT standards.

Because of the high-level environmental performance of Performance Track facilities, EPA believes it is appropriate to provide these facilities the opportunity to reduce their reporting frequency under part 63. Since the underlying data required from these facilities would still be gathered, the Agency would still receive the information needed to ascertain any lapses in compliance.

MACT reporting requirements differentiate between facilities, based on facility performance, with respect to reporting frequency. For example, reporting frequency may be increased from semi-annually to quarterly for some reports based on the frequency of excursions outside of required performance parameters. The approach the Agency is proposing today applies a similar concept by reducing reporting frequency for the best performers.

EPA is proposing to reduce the frequency of certain required periodic MACT reports for eligible Performance Track facilities. Periodic reports include a range of reports that are required to be sent in to the Permit Authority on intervals that range from quarterly, or more frequently if required by special circumstances, to semi-annually. The reports are different from records, which must be kept on site and incorporated into the periodic reports and other reports. There are general reporting requirements in 40 CFR part 63, subpart A, and additional reporting requirements under subparts applying to specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants.

EPA is proposing to double the reporting intervals for these reports by amending §§ 63.2 and 63.10, and adding a new § 63.16. For major sources, however, reports must still be submitted at least semi-annually to meet Title V

permitting requirements specified in section 504(a) of the Clean Air Act.

This proposed rulemaking would not revise other requirements concerning event reporting, record keeping, and monitoring. EPA is seeking comment, however, on whether there are also opportunities to reduce these burdens for Performance Track facilities while still providing the information required to assure protection of health and the environment.

2. Reporting Reductions for Performance Track Facilities That Achieve MACT or Better Emission Levels Through Pollution Prevention Methods Such as Process Changes

EPA is also proposing to reduce the level of detail of the required reporting, under some circumstances, for those facilities which reduce emissions below 25 tons per year of aggregate hazardous air pollutant (HAP) emissions and 10 tons per year of any individual HAP, and which have reduced emissions to a level which is fully in compliance with the applicable MACT standard.

For those Performance Track facilities which are below the thresholds for major sources of HAPs (25 tons per year aggregate or 10 tons per year for an individual HAP), and which have reduced the levels of all HAP emissions to at least the level required by full compliance with the applicable standard, additional reductions in reporting requirements would be available, depending on the nature of the requirement and the means the facility is using to meet the requirement. As above, however, for major sources, reports would still be submitted at least semi-annually to meet Title V permitting requirements.

Once again, the objective is to reduce the reporting burden for the best performing facilities, without compromising the Agency's ability to ensure compliance.

For those facilities using pollution prevention technologies or techniques to meet MACT standards, reductions in reporting burden would depend on the requirements of the Part 63 standard and facility performance. The term ''source reduction'' is defined in the Pollution Prevention Act (PPA) section 6603. Members in this program should refer to this statutory definition and any subsequent rulemakings and interpretations pursuant to PPA section 6607. The specific incentives are listed below:

(1) If the standard calls for control technology and the facility complies using control technology: The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use the control technology to meet the emission standard, and are running it properly. The facility would still have all monitoring and recordkeeping requirements.

(2) If the standard calls for control technology and the facility complies using pollution prevention (P2):

The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels at or below the MACT standard requirements. The facility would have to maintain records demonstrating the veracity of the certification.

(3) If the standard calls for pollution prevention and the facility complies using pollution prevention:

There is no reduction in the requirements unless the facility is achieving performance 50% better than the standard. If the facility is achieving that level of performance or better, then the facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels below the MACT standard. The facility would have to maintain records demonstrating the veracity of the certification.

For each of the above alternatives, EPA is proposing that if the facility no longer meets the criteria for continued membership in the program, the incentive would no longer apply. In addition, the facility may be removed from the program.

EPA solicits comments on the proposed changes described above.

B. Alternative Environmental Performance-Based Incentives for POTWs in the Performance Track

Publicly Owned Treatment Works (POTWs) regulated under the National Pretreatment Program (General Pretreatment Regulations for Existing and New Sources of Pollution) are required to identify industrial users discharging to their systems, issue permits to these users, monitor industrial user activities through on-site sampling and inspections, and carry out other administrative functions involving extensive recordkeeping and reporting.

In order to become a member in the National Environmental Performance Track program, a POTW must demonstrate a historical record of meeting legal requirements associated with its operation, implement an Environmental Management System, and achieve environmental improvements that go beyond compliance with their basic NPDES permit conditions. For those POTWs, EPA has concluded that it is reasonable to provide administrative relief from certain requirements. EPA considers that the proposed reporting and other programmatic and administrative changes proposed today are particularly appropriate for Performance Track POTWs. Such facilities, because of their EMSs and their commitment to continued environmental improvements, can implement these changes with less risk of adverse environmental effect.

1. Electronic Web posting for SNC notification.

a. What Are the Existing Requirements?

POTWs are currently required to publish a list of industrial users which, at any time during the preceding 12 months, were in significant noncompliance. ''Significant Noncompliance'' (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or

implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of that modification was to provide some certainty and consistency among Control Authorities for publishing their lists of Industrial Users in noncompliance. Currently, Control Authorities are required to annually publish a list of Industrial Users (IUs) in SNC at any time during the previous twelve months. The Control Authority must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, Control Authorities are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the Control Authority respond with some type of formal enforcement action such as an enforceable order (''Guidance for Developing Control Authority Enforcement Response Plans,'' EPA 832–B–89–102, September 1989.)

b. What Is in Today's Proposal?

Under today's proposed rule, a Performance Track POTW would have the discretion to not publish certain instances of SNC in a newspaper. The POTW would be allowed, in lieu of a newspaper publication, to provide information on all instances of SNC on its Web site for a designated 30-day period. EPA believes that this change would provide faster public notice of SNC and would reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. Importantly, the Performance Track POTW would continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. This would ensure that members of the community without access to a computer would still have notice of a subset of the significant and/or ongoing violations. The POTW must keep historic compliance data for each Industrial User in SNC as part of its web page beginning with the first web publication. Historic compliance data must be easy to access and well documented as part of the web page and must be continual. The POTW must certify as part of its annual report that it has posted the significant noncompliance information and historic compliance data on the web site. Furthermore, a hard copy of the web page listing the significant noncompliance data must be sent to the Approval Authority as part of the annual report and must be made available to EPA, State, and the public upon request. All SNC violations, whether published in a newspaper or not would be published as soon as is practicable or annually on a schedule determined by the Control Authority's permit on the Control Authority Web site. The Web site must contain an explanation of how SNC is determined, as well as a contact name and phone number for additional information. The SNC information will be added to the historic compliance data at the end of the 30 day notice period.

The purpose of the current provision is to comply with the public participation requirements of 40 CFR part 25, while also serving as a deterrent to violators because of the public notification of noncompliance. Allowing POTWs to report such violators on their Web sites would reduce the printing costs incurred by municipalities to publish the list, while potentially providing increased public visibility and access to the information. Typically, newspaper notices are published once per week for two succeeding weeks; the Web site would include the information every day for at least 30 days. The Internet provides an entirely new mechanism for access to information, and provides for the information to be available on a longer-term basis than in a single edition of a newspaper. Moreover, posting on the POTW's Web site is likely to provide better and more focused access for members of the public particularly interested in the activities of the POTW. Given the wide availability of access to electronic information at public facilities, such as libraries, this information may be, in fact, more readily available to all members of the public than that obtained through newspaper publication. It is also likely that local newspapers would utilize this information in their reporting on environmental issues.

The Agency solicits comment on whether it is necessary to require public notice of a subset of SNC, or for ongoing instances of SNC to be published in a newspaper. In particular, the Agency seeks comment on how it might dispense with newspaper publication of SNC in its entirety for Performance Track POTWs while still providing equal and permanent access to this important information to all members of the community, regardless of socioeconomic status, race, or physical ability. How would a substitution affect the availability of this information to the public? Is the publication of this information on the internet an adequate substitute for newspaper publication? Is a 30-day listing, followed by availability of a historic listing of all listed SNC violations on the Control Authority's Web site an adequate substitute for the current practice? What are the cost and other resource implications for the POTWs of taking advantage of this alternative approach? Is access to the Internet readily available in all communities, through the use of personal computers, libraries and schools? What would be adequate notice of this kind of a change in the public notice procedures?

2. Oversight of Significant Industrial Users

a. What Are the Existing Requirements?

Why does it matter which industrial users are considered significant?

POTWs with Approved Pretreatment Programs and States acting as Pretreatment Control Authorities are required to provide certain minimum oversight of Significant Industrial Users (SIUs). The required minimum oversight includes inspection and sampling of each SIU annually, reviewing the need for a slug control plan every two years, and issuing a permit or equivalent control mechanism every five years (40 CFR 403.8(f)(1)(iii) and (f)(2)(v) and 403.10(f)(2)(i)).

Control Authorities have expressed concern with the rigidity of the oversight requirements, especially with respect to smaller facilities that are subject to categorical Pretreatment Standards and facilities that have no potential to cause pass through or interference problems at their plants. If these facilities were excluded from the definition of SIU, Control Authorities could, on a case-by-case basis, determine adequate sampling and inspection frequencies and whether individual permits are necessary for the facilities.

What facilities are currently defined as Significant Industrial Users?

''Significant Industrial User'' is defined in 40 CFR 403.3(t) to include two types of facilities. The first includes all industrial users that are subject to a Pretreatment Standard for New or Existing Sources. These standards are often referred to as national categorical pretreatment standards and facilities subject to the standards are referred to as categorical industrial users (CIUs).

The second category of facilities included in the definition of SIU includes those which are not categorical

industrial users. All non-categorical facilities that discharge over 25,000 gallons per day of process wastewater are considered SIUs unless a Control Authority excludes a facility based upon a finding that it does not have a reasonable potential of adversely affecting the operation of the plant or of causing a violation of any pretreatment standard or requirement. Control Authorities may also consider smaller facilities to be SIUs if the facilities have the potential to cause problems with a POTW's operations or violate pretreatment standards or requirements.

What is the history of the definition of SIU?

The definition of SIU and related requirements was established in July 1990 by the rule to implement the Domestic Sewage Study (''the DSS Rule''). 55 FR 30082, July 24, 1990. Before this regulatory revision, sampling and inspection frequency were only recommended in EPA guidance. *Pretreatment Compliance Monitoring and Enforcement Guidance* (1986). The proposed DSS Rule would have required Control Authorities to inspect and sample SIUs at least once every two years. The DSS proposal requested comment on whether to require annual inspections and sampling. 53 FR 47649, November 23, 1988. The preambles to the proposed and final rule did not specifically address whether to adopt a different requirement for oversight of smaller SIUs.

The proposed Metal Products and Machinery rule (60 FR 28269, May 21, 1995) solicited comment on whether, as an alternative to exempting low discharge industrial users from the rule, EPA should revise part 403 to reduce monitoring, reporting and inspection requirements applicable to small-flow facilities. Today's proposal elaborates on the issue of categorical industrial users that may be considered nonsignificant.

What changes to the definition of Significant Industrial User has EPA considered in the past?

In 1996, the Water Environment Federation (WEF) and the Association of Metropolitan Sewerage Authorities (AMSA) convened a workshop to discuss potential opportunities to streamline the pretreatment regulations. One of the recommendations from the Pretreatment Streamlining Workshop was to exclude facilities under 100 Gallons Per Day (GPD) from the definition of Significant Industrial User. The Workshop also presented recommendations for additional streamlining. One of the Workshop's recommendations was that Control Authorities be able to exempt from the definition of SIU any categorical industrial user that has no reasonable potential to adversely affect the POTW's operation.

The Workshop also recommended that EPA allow Control Authorities more flexibility in the oversight of facilities that would continue to be defined as SIUs. Specifically, the Workshop recommended that EPA allow Control Authorities more flexibility in sampling SIUs, while perhaps keeping the annual inspection requirement.

In 1997, EPA sent a letter to stakeholders that solicited comment on revising the current definition of Significant Industrial User to exclude certain ''*de minimis*'' (now referred to as ''nonsignificant'') facilities that are subject to national categorical pretreatment standards. The draft suggested a definition of nonsignificant that included (1) facilities that never discharge concentrated wastes such as solvents, spent plating baths, filter backwash, and sludges, or more than 100 GPD of other process wastewater, and (2) facilities subject only to certification requirements after having met Baseline Monitoring Report requirements (*e.g.,* pharmaceutical manufacturers). EPA's letter sought comment on the recommendations from the WEF/AMSA Workshop and also on whether to allow POTWs more flexibility in sampling SIUs that had been in consistent compliance.

In 1999, EPA proposed changes to the Pretreatment regulations in the **Federal Register**. Included in the proposed changes is a new definition for Significant Industrial User.

Did the stakeholders agree with EPA's suggestion?

Most of the commenters in the 1999 proposal supported the concept of allowing POTWs to reduce some oversight of nonsignificant categorical industrial users. However, no clear consensus exists for what the definition of nonsignificant should be.

Several commenters thought that the definition of SIU should not be changed. Some commenters opposed a definition based on flow and preferred one based on total mass or on potential to impact the POTW. One made a specific recommendation that SIU status be determined by considering both the flow and its toxicity using the Toxic Weighting Factors used by EPA in guideline development.

A few commenters addressed whether facilities that are in consistent compliance should be allowed to be excluded from oversight as SIUs. One commented that, regardless of consistent compliance, any SIU with the potential to adversely impact the POTW should be an SIU. Approval Authority commenters generally opposed and POTW commenters generally supported not requiring Control Authorities to regulate as an SIU any industrial user that did not present a potential to adversely impact the facility.

b. What Is in Today's Proposal?

What changes to the SIU definition is EPA proposing today?

EPA is proposing to authorize Control Authorities that have been approved as National Environmental Performance Track facilities to designate certain categorical industrial users as ''nonsignificant.'' Today's proposal would keep the existing definition of significant industrial user, but allow Control Authorities to exempt certain Categorical Industrial Users (CIUs) from the definition if the appropriate Control Authority determines the CIU is ''nonsignificant.'' In making the determination that a CIU is ''nonsignificant,'' the Control Authority will be required to consider the potential for the CIU to violate any pretreatment standard and the potential impact of the facility on the POTW, alone and in combination with other discharges. The Control Authority will be required to document the decision and demonstrate the CIU has no reasonable potential to adversely impact the POTW and no reasonable potential to violate any applicable Pretreatment Standard established by EPA, the State, or the local Control Authority. Additionally, the CIU must have been in compliance for 3 years preceding the determination.

Regardless of whether they are considered SIUs, all CIUs would still be required to comply with applicable categorical pretreatment standards and the related reporting requirements in 40 CFR 403.12. Control Authorities would still be required to perform the same oversight of ''nonsignificant'' CIUs that is required for other facilities that are not SIUs, including notifying the CIU of its status and requirements (§ 403.8(f)(2)(iii)); receiving and reviewing required reports (§ 403.8(f)(2)(iv) and § 403.12(b), (d), and (e)); random sampling and inspection (§ 403.8(f)(2)(v)) and taking enforcement action as necessary (§ 403.8(f)(2)(vi)).

The POTW's annual Performance Track report to EPA would provide a list of the facilities that are being regulated as nonsignificant CIUs. After an initial list is provided, deletions and additions may be keyed to the previously submitted list.

Will EPA consider other criteria for designating a CIU as ''nonsignificant''?

Yes. Various stakeholders in the past have suggested different flow cut-off criteria for ''nonsignificant'' CIUs. EPA recognizes that any numeric flow cut off is likely to be somewhat arbitrary. For instance, the 100 GPD criterion was supported by the stakeholders at the WEF/AMSA meeting, and EPA included this criterion in its 1999 proposal. EPA is interested in other ideas specific to Performance Track facilities, and therefore, is requesting comment on other criteria.

3. Program Modifications

a. What Are the Existing Requirements?

What are the current requirements addressing Program Modifications?

40 CFR 403.18 States, in part;

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

(b) Substantial modifications defined. Substantial modifications include:

(1) Modifications that relax POTW legal authorities (as described in § 403.8(f)(1)), except for modifications that directly reflect a revision to this Part 403 or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section;

(2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under § 403.5(c);

(3) Changes to the POTW's control mechanism, as described in § 403.8(f)(1)(iii);

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

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

(6) Changes to the POTW's confidentiality procedures; and

(7) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the POTW's Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on Industrial Users of the POTW.

(c) Approval procedures for substantial modifications.

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

(2) The Approval Authority shall approve or disapprove the modification based on the requirements of § 403.8(f) and using the procedures in § 403.11(b) through (f), except as provided in paragraphs (c)(3) and (4) of this section. The modification shall become effective upon approval by the Approval Authority.

(3) The Approval Authority need not publish a notice of decision under § 403.11(e) provided: The notice of request for approval under § 403.11(b)(1) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change

(4) Notices required by § 403.11 may be performed by the POTW provided that the Approval Authority finds that the POTW notice otherwise satisfies the requirements of § 403.11.

(d) Approval procedures for non-substantial modifications.

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

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

(3) If the Approval Authority does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under paragraph (b)(7) of this section, the POTW may implement the modification.

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

Many of these requirements are a result of the revisions to the Program Modification regulations made in 1997. The 1997 revision streamlined the procedures for modifying approved POTW Pretreatment Programs in several ways. First, fewer categories of modifications are considered ''substantial'' and, therefore, automatically subject to the detailed public notice procedures. Modifications that will no longer automatically be considered ''substantial'' include: changes that result in more prescriptive POTW legal authority; changes to legal authority that reflect changes to the Federal regulations; changes to local limits for pH; reallocations of local limits that do not increase the authorized discharge of the pollutant from the POTW; and other changes discussed below. 40 CFR 403.18(b). Second, the rule no longer requires the Approval Authority to issue a public notice of its final approval of a modification if it received no comments on its proposed approval of the modification and the modification is approved as proposed. 403.18(c)(3). Third, public notice provided by a POTW will satisfy the Approval Authority's obligation to provide notice in certain circumstances. 40 CFR 403.18(c)(4). Fourth, the rule allows a POTW to report changes to its list of industrial users in the POTW's annual reports, rather than being required to obtain advance approval. 40 CFR 403.8(f)(6) and 403.12(i)(1). Fifth, the period of notice that POTWs must provide for non-substantial modifications and the time for review by Approval Authorities will both be 45 days; POTWs may implement a non-substantial modification if the Approval Authority does not disapprove it within that time. 40 CFR 403.18(d). Sixth, the rule grants additional flexibility regarding the type of newspaper that may publish the notices and the government agencies that receive individual notice of all modifications. 40 CFR 403.11(b)(1) (A) and (B).

b. What Additional Flexibility Is Being Considered as Part of the National Environmental Performance Track Program?

For POTWs with approved Pretreatment Programs that are part of the National Environmental Performance Track Program, EPA is proposing additional flexibility in the manner notice is provided of a request to modify the pretreatment program. This is similar to the flexibility being proposed for the publication of

industries in significant noncompliance (SNC).

Under today's proposed rule, a Performance Track POTW would have the discretion to either provide public notice of their Program Modification request through newspaper publication or by posting the request on a Web site. Today's proposal does not change the substantive requirements of any modification notification requirements. EPA believes that public notice through use of a Web site would provide faster public notice of Program Modifications and allow a more open process with greater opportunity for stakeholders to be involved. Importantly, the Performance Track POTW would continue to be required to provide individual notice to stakeholders that have requested individual notice. This would ensure that members of the community without access to a computer would still have notice of substantial program modifications.

The purpose of the current provision is to comply with the public participation requirements of the pretreatment program. Allowing POTWs to post modification requests on their Web sites would reduce the printing costs incurred by municipalities to publish the proposed change, while potentially providing increased public visibility and access to the information. Typically, newspaper notices are published once per week for two succeeding weeks; the Web site would include the information every day for the time necessary to finalize the modification. Also, the Web site will contain detailed information about the modification and the program in general. This will allow the public to more easily review and make decisions about the merit of the modification. As explained in the discussion of SNC, the internet provides an entirely new mechanism for access to information, and provides for the information to be available on a longer-term basis than in a single edition of a newspaper. It is also likely that local newspapers would utilize this information in their reporting on environmental issues.

The Agency solicits comment on whether it is necessary to require certain program modifications to be published in a newspaper. In particular, the Agency seeks comment on how it might dispense with newspaper publication of Program Modifications entirely for Performance Track POTWs while still providing equal and permanent access to this important information to all members of the community, regardless of socioeconomic status, race, or physical ability.

Under the existing rule, Approval Authorities may consider local notice by the POTW to constitute a program modification request and notice of decision under § 403.11(b)–(f). This issue is also addressed under § 403.18(c)(4). Under the existing rule, Approval Authorities also remain ultimately responsible for assuring the publication of the notice. POTWs are not required to provide the notice described in § 403.11. The existing rule leaves POTWs and Approval Authorities free to negotiate arrangements for the publication of the required notice. In the absence of voluntary and adequate notice by the POTW, the Approval Authority would still be required to provide the notice. In order for a local POTW public notice to substitute for an Approval Authority notice, the local notice must meet the requirements of § 403.11(b)(1). The existing rule acknowledges that Approval Authorities may find the notice provided by POTWs to be legally adequate. 40 CFR 403.18(c)(4).

In the preamble to the 1997 revisions to the regulations, EPA noted that one industry trade association argued that local procedures were not adequate.

The commenter noted that there was no record that most significant changes are worked out in advance at the local level. The commenter asserted that a more objective forum is needed than the local forums, where decisions are diverse and not always based on environmental considerations. Because local participation varies, the commenter asserted that § 403.18 is needed to level the playing field. EPA agrees that Approval Authority review of modifications helps assure their consistency with state and federal regulations. State and EPA Approval Authorities retain the right to review modifications under today's rule regardless of who issues the notices. The lack of comments on State and EPA issued notices suggests that many issues are resolved at the local level. Approval Authorities must assure that notice provided at the local level is adequate and includes an opportunity to request a hearing from the Approval Authority.

Also in the 1997 revisions, EPA solicited comment on how the public might be educated as to the importance of Pretreatment Program requirements, so that public input will occur in response to notice of program modifications.

''One industry commenter stated that the content of public notices is not adequate for business to know what is being proposed. The commenter recommended that POTWs be required to directly notify businesses and to hold seminars to educate the businesses. One POTW supported allowing POTWs to provide notice but specifically opposed requiring POTWs to educate the public on the importance of the program.'' Also, ''An environmental group commented that public participation would be improved if POTWs were required to maintain a mailing list, with annual solicitation to be on the list, of parties wanting notice of non-substantial modifications. A similar procedure is already in place for substantial modifications.''

With today's action, EPA is soliciting comment on alternative methods for Public Notice to achieve the intent of § 403.11(b).

Today, EPA is proposing to allow approved Pretreatment Programs that are part of the National Environmental Performance Track Program to Public Notice all Program Modifications on a Web site in lieu of publication in the newspaper. Further, this Public Notice may be used by the Approval Authority to meet the requirements under 40 CFR 403.11. The information provided on the Web site would be more detailed than a notice of availability. The information would need to include an explanation of current requirements, a detailed description of the modification, and an explanation of the need for the modification.

As with the SNC issue, EPA is interested in views on how a substitution would affect the availability of this information to the public. Is the publication of this information on the Internet an adequate substitute for newspaper publication? Is access to the Internet readily available to all communities, for example via personal computers, libraries and schools? What would be adequate notice of this kind of a change in the public notice procedures? For example, back issues of newspapers are commonly available in the library.

4. Revisions to the Requirements for the Pretreatment Program Annual Report

a. What Are the Current Requirements?

For any POTW with an approved pretreatment program, a condition of the NPDES permit [*see* 40 CFR 403.12(i)] is that the POTW provide the Approval Authority (either the State or EPA, as applicable) with an annual report that briefly describes the POTW's program activities. These requirements must, at a minimum, include:

A. An updated list of all Industrial Users discharging to the POTW and, more specifically, a list of those IUs that are classified as Significant Industrial Users (SIUs) that are subject to categorical pretreatment standards and a description of what standards apply to each facility;

B. A summary of the status of each IU's compliance during the reporting period;

C. A summary of the compliance and enforcement activities conducted by the POTW during the reporting period; and

D. Any other specific information requested by the Approval Authority.

This information is critical for the Approval Authority to oversee both the industrial users and the POTW. The annual report provides the Approval Authority with information on the compliance of the industrial users that discharge into the POTW. It also provides information on the enforcement responses and activities that the POTW has undertaken.

b. What Additional Flexibility Is Being Proposed as Part of the National Environmental Performance Track Program?

EPA is proposing to modify the submission procedures for the annual report, as well as streamline one part of the annual report. Instead of annually submitting the report, the POTW must annually post the report on the POTW's website and provide written certification to the Approval Authority when the information has been posted. The information must remain accessible as part of the website for at least three years.

The POTW will be required to submit written copies of the annual reports every two years to the Approval Authority. The written report no longer needs to include compliance data for all IUs, although the website posting must still contain compliance data for all IUs. The written report need only include specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting period (2 years) instead of a summary of the status of all IU compliance over the reporting period. The submission every two years will contain reports for each of the two preceding years. The POTW's permit will be modified to incorporate this requirement and will require that the POTW post the annual report on the website and that all information posted must be accurate and truthful. If the annual report is not posted annually, or if it contains inaccurate information, it will be a violation of the NPDES permit. The POTW must provide a copy of the annual report to EPA, the State, or the public upon request.

EPA believes allowing a POTW to post the annual report on the website would reduce printing costs to the POTW and provide the public greater access to information about the POTW's program. The Agency is seeking comment on whether this is an appropriate option for the annual reports. There is no national database that tracks information on individual indirect dischargers, so the Agency relies upon the annual reports to oversee the compliance of these indirect dischargers. Furthermore, the States or EPA would still input summary information from the annual reports into EPA's national database (Permit Compliance System-PCS). EPA is seeking comment on how the extended time period for submitting the annual reports will impact programmatic and enforcement oversight overall.

C. 180-Day Accumulation Time for Performance Track Hazardous Waste Generators

1. Background

EPA is proposing to allow large quantity hazardous waste generators who are members in the Performance Track program up to 180 days (or up to 270 days if the generator must transport its waste, or offer its waste for transportation, a distance of 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status. This RCRA regulatory flexibility is intended to provide an additional incentive for membership in the Performance Track program, and should provide the Agency with useful information on the environmental, economic and other implications of extended accumulation times for hazardous waste generators. As discussed below, we believe that the regulatory flexibility provided in this rulemaking will also serve to ensure protection of human health and the environment at Performance Track facilities.

Including this RCRA incentive as part of the Performance Track program is consistent with the general objectives of the program, as discussed in Section IV of this preamble. In addition, this aspect of the proposal may assist EPA in learning more about how accumulation times for hazardous waste generators may affect the ultimate disposition of hazardous wastes (*e.g.,* recycling vs. disposal), the economics of hazardous waste generation and accumulation, and the overall environmental performance of hazardous waste generator facilities. More specifically, EPA believes that additional accumulation time may allow generators to accumulate enough waste to make transportation to waste management facilities more cost-effective and efficient for the generator. In particular, EPA is interested in learning whether additional accumulation time may result in increased recycling of generator waste (EPA has found this to be the case with F006 (metal finishing) hazardous waste, *see* 65 FR 12377). EPA also believes that additional accumulation time may result in environmental benefits related to the reduction in the movement and handling of hazardous waste on-site, as well as reduced off-site shipments.

The Performance Track program presents a good opportunity for EPA, the States and the regulated community to experiment with this type of regulatory flexibility in a way that should pose negligible incremental risks to human health or the environment. We believe that the criteria for membership in the Performance Track—strong past performance, effective EMSs, promised specific future improvements in environmental performance, and additional public reporting of environmental information—should ensure that this regulatory flexibility will be provided only to companies who will use it responsibly. This, combined with the safeguards built into the proposal and the relatively modest regulatory relief that the rule would provide (*i.e.,* additional time to accumulate waste), should ensure that this rulemaking is fully protective of human health and the environment.

2. What Are the Current Requirements for Large Quantity Generator Accumulation?

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per month (or one kilogram or more of acute hazardous waste), known as large quantity generators (LQGs), limit the amount of time hazardous waste can be accumulated at the generator's facility without a RCRA permit. According to § 262.34, LQGs may accumulate hazardous waste on-site for up to 90 days without having to obtain a RCRA permit. The generator must comply with certain unit-specific standards (*e.g.,* tank, container, containment building, and drip pad standards) for accumulation units, and certain general facility requirements such as for marking and labeling of containers, preparedness and prevention, and emergency response procedures. Generators may also petition the EPA Regional Administrator to grant an extension of up to 30 days to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis (*see* § 262.34(b)).

Today's proposed rule would not make any changes to the existing regulations that apply generally to 90-day accumulation by LQGs, and EPA is not soliciting comment on those provisions or any other existing

provision of § 262.34. This includes the provisions for extended accumulation times for F006 wastes, which are specified at § 262.34(g). Those provisions, which apply only to generators who accumulate F006 wastes, allow for extended accumulation times that are similar in many respects (including the time limits) to those being proposed today for Performance Track members. It is therefore possible that, once today's rule is promulgated, a generator of F006 waste who is also a member in Performance Track could take advantage of extended accumulation times under either regulatory scheme (*i.e.,* under § 262.34(g), (h) and (i), or under § 262.34(j), (k) and (l)).

3. What is in Today's Proposal?

Today's proposed rule would allow LQGs of hazardous waste that are members of the Performance Track program to accumulate hazardous waste at their facilities for longer than the 90 days currently specified in § 262.34, subject to certain limitations and conditions. The proposal would not affect other existing generator requirements; for example, Performance Track members would still have to manifest their hazardous waste shipments (*see* Subpart B of part 262) and comply with other generator requirements in part 262 (*e.g.,* packaging and labeling of waste shipments).

The requirements for Performance Track extended accumulation times would be added as new paragraphs (j), (k) and (l) to subpart C of part 262. The following is a discussion of each proposed provision.

Time Limits. Proposed § 262.34(j)(1) specifies that hazardous waste generators who are Performance Track members may accumulate hazardous wastes for an extended period of time—up to 180 days, or up to 270 days if the generator must transport waste, or offer waste for transportation, over a distance of 200 miles or more. Such generators would not need RCRA permits or interim status if they stay within these limits. Note that these extended accumulation time limits would be consistent with the current limits for generators of F006 wastes (*see* § 262.34(g)).

Initial Notice. Under proposed § 262.34(j)(2), Performance Track generators would need to give prior notice to EPA or the authorized state agency of their intent to accumulate hazardous waste in excess of 90 days in accordance with these regulations. These notices will assist EPA and state agencies in monitoring implementation of this element of the Performance Track program. Such notices would need to identify the generator and facility, specify when extended accumulation at the facility will begin, and include a description of the wastes that will be accumulated for extended time periods and the units that will be used for that purpose.

The initial notice would also need to include a statement that the facility has made all changes to its operations, procedures and equipment necessary to accommodate extended time periods for accumulating hazardous wastes (§ 262.34(j)(2)(ii)). This is to address situations in which longer accumulation times may involve, for example, changing the design, location, or capacity of the unit(s) in which the wastes are accumulated. Such changes could affect how the facility addresses other generator requirements, such as those for personnel training or emergency response procedures. This statement in the notice should help ensure in advance that Performance Track members are aware of and have implemented any changes at the facility that may be needed to accommodate extended accumulation times.

For generators who intend to accumulate hazardous waste for as long as 270 days (because the waste must be transported, or offered for transport, more than 200 miles from the generating facility), the notice submitted by the generator would also need to contain a certification that an appropriate off-site hazardous waste management facility for the waste is not available within 200 miles of the facility. The provision for accumulation up to 270 days is intended primarily to address situations where wastes must be transported for considerable distances to off-site facilities, and where extended accumulation time may enable the facility to more efficiently ship fewer (but larger) loads of wastes to those facilities.

Today's proposal does not specify any particular criteria or restrictions as to what may be considered an ''appropriate'' hazardous waste management facility in this context. At a minimum, any such facility would need to be operating in compliance with applicable environmental regulations. However, EPA is concerned that the 270-day limit could conceivably be abused unless there is some further definition in the final rule as to what is meant by ''appropriate'' facility. The provision for accumulation of up to 270 days by Performance Track facilities is primarily intended by EPA to address situations where hazardous waste generators are located in areas remote from commercial hazardous waste facilities, or where the additional accumulation time is needed to facilitate beneficial, legitimate reuse or recycling of the wastes. The 270-day limit was not intended simply to provide additional convenience or cost savings for the generator. In any case, EPA requests comment as to whether the 270-day limit should be available under Performance Track only when the additional accumulation time allows the generator to achieve some specific environmental objective (*e.g.,* increased recycling rates), or whether other types of restrictions or limits should be placed on its availability to Performance Track members.

Standards for Accumulation Units. Another proposed condition ((262.34(j)(3)) would require Performance Track generators to accumulate hazardous wastes in storage units (such as containers, tanks, drip pads and containment buildings) that meet the standards for storing hazardous wastes at RCRA interim status facilities (*see* subparts I, J, W and DD of 40 CFR part 265, respectively). These are standard requirements for large quantity generators.

If Performance Track facilities use containers for extended accumulation of hazardous wastes, today's proposal would additionally require secondary containment systems for containers to prevent releases into the environment that might be caused by handling accidents, deterioration, or other circumstances. Secondary containment is a standard requirement for RCRA permitted facilities that use containers to store hazardous wastes containing free liquids and certain listed hazardous wastes (*i.e.,* F020, F021, F023, F026, and F027). It is not, however, typically required for hazardous waste generators or interim status facilities. We believe that requiring secondary containment in the context of this rulemaking is a reasonable, common-sense precaution to take in exchange for extending accumulation time limits.

EPA is also requesting comment on an option that would not require secondary containment for accumulation of hazardous wastes in containers. Specifically, we seek comment as to what type of containment is appropriate for Performance Track facilities, given that the containment requirements for permitted RCRA facilities are intended to ensure protections for what may essentially be indefinite storage of hazardous wastes, while accumulation at Performance Track generator facilities will be limited to 180 (or in some cases 270) days.

Because secondary containment involves the use of devices such as

berms or walls to prevent releases (*see* § 264.175), which are generally consistent with normal industry practices for handling and storage of hazardous materials, we believe that this secondary containment requirement will impose only minimal costs on Performance Track facilities. EPA solicits information regarding incremental compliance costs and benefits associated with the secondary containment requirement in this proposed rule.

There is currently an upper bound estimate of 43 facilities in the Performance Track program to which secondary containment provisions could apply. Cost estimates for installing secondary containment, if necessary, are based on the costs of installing secondary containment for tanks. Estimated installation costs range from $1,200 for 275-gallon tanks to $55,000 for 125,000 gallon tanks.[1] These estimates, however, are likely to represent an upper bound cost for containers, since construction of a secondary containment system for containers, such as a berm, is likely to be less than that required for tanks. The extent of total costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units. Notable however, is anecdotal information that many of these facilities already have secondary containment installed at their facilities. EPA solicits comment on how many Performance Track facilities currently have secondary containment installed for containers.

Volume Limit. Under proposed § 262.34(j)(4), member generators would be allowed to accumulate no more than 30,000 kilograms of hazardous waste at the facility at any one time. The Agency has information that the typical capacity for a hazardous waste truck transport vehicle ranges from an average of approximately 16,400 kg to a maximum of approximately 27,300 kg.[2] In addition, generators shipping hazardous waste by rail may have capacities of approximately 50,000 kg.[3] Based on this preliminary information, EPA believes that a 30,000 kg waste accumulation limit is reasonable and appropriate in ensuring economical shipments of wastes in a wide range of transport vehicle sizes. We seek comment on this provision of today's proposal, as well as relevant information on: (a) The capacities of vehicles involved in hazardous waste shipping; (b) the likely impacts of less frequent shipments on the risks of spills and leaks at hazardous waste generating facilities and in the transport process; (c) the cost impacts of such changes—both transportation-related and other operational costs; and (d) other pros and cons of quantity limits larger or smaller than the 30,000 kilograms that we are proposing today.

Recordkeeping, Labeling and Marking. Proposed § 262.34(j)(5) specifies the types of records that program members would need to maintain at their facilities as a condition for extended accumulation times. These records are primarily intended to document that the accumulation time limits are not exceeded. Retaining these records is a standard requirement for all LQGs of hazardous waste.

Similarly, § 262.24(j)(6) would require that tanks and container units used for extended accumulation be marked or labeled with the words ''Hazardous Waste'', and containers would have to be marked to indicate when the accumulation period began. These are also standard conditions for hazardous waste generators, and are specified in this rule mainly for the sake of clarity.

General Facility Standards. Under current regulations, all hazardous waste generators are subject to certain general facility standards relating to personnel training, preparedness and prevention, and contingency plans and emergency procedures. These general facility requirements would also apply to Performance Track generators, and have been included in this rule for the sake of clarity.

Pollution Prevention. Under today's proposal Performance Track facilities would have to implement pollution prevention practices as a condition for using extended accumulation times. This condition is consistent with the Agency's general policy of encouraging waste minimization and pollution prevention as alternatives to disposal. It is also consistent with our goal of using Performance Track to recognize and encourage outstanding environmental performance. We seek comment on this condition. We also request comments on whether extended accumulation times for Performance Track generators should in some way be linked to achieving reductions of certain types of high-risk chemicals (*e.g.,* RCRA Waste Minimization Priority Chemicals that are known to be highly persistent, bioaccumulative, and toxic). For a list of these priority chemicals, *see http://www.epa.gov/epaoswer/hazwaste/minimize/chemlist/pdt-fact.pdf.*

Annual Report. Under proposed § 262.34(j)(9), Performance Track generators accumulating their hazardous waste for more than 90 days would be required to provide information regarding the impact of the additional accumulation time. This information would be submitted in the Annual Performance Report which is required of all Performance Track members (*see www.epa.gov/performancetrack,* or the document entitled ''National Environmental Performance Track Program Guide,'' EPA 240–F–01–002). Specifically, the report would need to include for the previous year information on the quantity of each hazardous waste that was accumulated for extended time periods, the number of off-site waste shipments, identification of destination facilities and how the wastes were managed at those facilities, information on the impact of extended accumulation time limits on the facility's operations (including any cost savings that may have occurred), and information on any on-site or off-site spills or other environmental problems associated with handling these wastes. The information submitted in these reports will assist the Agency in evaluating the success of this Performance Track program incentive, and may inform future Agency decisions pertaining to hazardous waste accumulation.

In accordance with today's rule, if in the past year a Performance Track generator accumulated hazardous waste for more than 180 days (but no more than 270 days), the generator would have to include in its Annual Performance Report a statement affirming that an appropriate off-site hazardous waste management facility was at the time (or is still) not available within 200 miles of the generating facility. This condition is intended to help ensure against any potential abuse of the provision that allows accumulation beyond 180 days under certain circumstances.

EPA believes that these annual reporting requirements are reasonable, and should not create undue burdens for Performance Track members. We solicit comments on these requirements of the proposed rule, including

[1] DPRA, Incorporated, ''Unit Cost Compendium'' prepared for U.S. EPA's Office of Solid Waste, Economics, Methods, and Risk Analysis Division, September 30, 2000 presents formulas for estimating the capital costs of installing secondary containment units for above ground storage tanks.

[2] Unit Cost Compendium, prepared by DPRA Incorporated, for USEPA, Office of Solid Waste, September 30, 2000 and personal communication with DPRA.

[3] Rail car capacities vary depending on whether the transport unit is a rail box car (from 160 cubic yards to 370-cubic yards), a rail gondola (from 15 cubic yards to 262 cubic yards), or a rail tanker (22,000 gallons), R.S. Means, Environmental Remediation Estimating Methods, 1997. In general, one cubic yard of solid equals 1.5 tons and one cubic yard of liquid equals 1 ton.

comments on how burdensome such reporting might be to program members, and whether there may be other means of obtaining the information EPA will need for monitoring the success of the Performance Track program.

Accumulation Time Extensions. Today's proposal would also add a new paragraph (k) to § 262.34, to address extensions of accumulation time limits in certain situations. This provision is consistent with the current regulations that apply generally to LQGs (*see* § 262.34(b)), and has been included in today's proposal for the sake of clarity. Specifically, it would allow the overseeing agency the option of granting a Performance Track generator an additional 30 days of accumulation time, if such extra time is needed due to unforseen, temporary and uncontrollable circumstances. We expect that requests for such time extensions would be reviewed and approved (or disapproved) in the same manner as they currently are for non-Performance Track LQGs.

Withdrawal/Termination from Program. Proposed § 262.34(l) would address situations in which a Performance Track facility that has been accumulating hazardous wastes for extended periods of time under these regulations decides to withdraw from the program, or when the overseeing agency has for some reason decided to terminate the generator's membership in the program. In such cases the generator would need to return to compliance as soon as possible, but no later than six months after withdrawal or termination, with the standard requirements for less-than-90-day accumulation by large quantity generators.

4. How Will Today's Proposal Affect Applicability of RCRA Rules in Authorized States?

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. (*See* 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, a State continues to have enforcement responsibilities under its law to pursue violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003.

After authorization, Federal rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA), no longer apply in the authorized state. New Federal requirements imposed by those rules that predate HSWA do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

Today's proposed rule would not be promulgated under HSWA authorities. Consequently, the final rule would not amend the authorized program for states upon promulgation, and EPA would not implement the rule. The authorized RCRA program would change when EPA approves a State's application for a revision to its RCRA program.

For the proposed Performance Track Rule, EPA would encourage States to expeditiously adopt Performance Track regulations and begin program implementation. To revise the federally-authorized RCRA program, States would need to seek formal authorization for the Performance Track Rule after program implementation. EPA encourages states to begin implementing this incentive as soon as it is allowable under state law, while the RCRA authorization process proceeds.[4]

III. Other Potential Incentives: Consolidated Reporting

The program description for Performance Track (*www.epa.gov/performancetrack*) announces EPA's intention to initiate a pilot test of consolidated reporting, to be available for Performance Track facilities, as an incentive to encourage membership. Consolidated reporting would allow facilities to reduce the number or scope of reports submitted to EPA or its delegated authority under current regulations. It could provide for reductions or revisions in reporting elements or the submission of a single report in lieu of several reports now required by regulation. In addition, consolidated reporting could be designed to increase the extent to which environmental reporting could be integrated with the data systems facilities use to manage their manufacturing operations, thus reducing to some extent the need for environmental reporting data systems entirely separate from other data systems at the facility. From the public's perspective, such a revision of reporting requirements could also provide for more effective and transparent communication of information about a facility's environmental performance, within the constraints necessary for protecting confidential business information.

EPA has explored approaches to consolidated reporting with a variety of stakeholders. For example, under the Common Sense Initiative (CSI), the Agency made considerable progress in developing options for consolidated reporting on a multimedia basis for the computer and electronics industry. Since the Common Sense Initiative, EPA has continued to work with the petroleum refining industry to develop a consolidated reporting model focused on air reporting, with the long-term objective of expanding the approach on a multi-media basis.

EPA believes that the Performance Track provides a special opportunity to further explore the potential benefits of consolidated reporting. EPA believes that the Performance Track facilities would be an appropriate group for piloting an approach to consolidated reporting because these facilities are required to have well-developed environmental management systems and excellent compliance records. These qualifications indicate that a facility has a high level of organizational competence and a capacity to manage environmental data. Both of these factors are important because a consolidated reporting project will touch on several areas of regulation. In addition, a Performance Track facility's commitment to public reporting indicates an openness with regard to information sharing that can be expected to support the extensive EPA-facility coordination that this pilot would require. A Performance Track facility's commitment to going beyond regulatory requirements also gives evidence of the facility's ability to innovate, which is also a necessary quality in pilot projects.

One possible model for a Performance Track consolidated reporting pilot is the multimedia Consolidated Uniform Report for the Environment (CURE) initiative developed by the CSI consumer and electronics subcommittee. Over the course of more than three years, the subcommittee developed a consolidated reporting approach which would consolidate twelve federal and state reports in a single reporting system. The project was a joint effort of EPA and the Texas Natural Resource Conservation

[4] EPA encourages states to take this approach for less stringent federal requirements where rapid implementation is important. For example, EPA encouraged states to implement state Corrective Action Management Unit Regulations, once adopted as a matter of state law, prior to authorization (see 58 FR 8677, February 16, 1993).

Commission (TNRCC). As CSI concluded in 1998, the subcommittee and the CSI Council recommended that EPA continue the development of CURE. While CURE specifically focuses on the reports which are required for facilities in the computer and electronics sector, the stakeholders who participated saw the application to this sector as a pilot which would provide the opportunity to test a concept which could be applied more broadly. They also focused initially on some of the most generally applicable and broadest types of environmental reports, but the final report points out the potential—once a CURE pilot is underway—for exploring consolidation of a far wider array of data than is captured under the final draft report on CURE. Nonetheless, a system modeled on CURE would be a dramatic step towards a consolidated multi-media reporting system. It could potentially both substantially reduce the reporting burden for member facilities and increase both the accessibility and comprehensibility of facility information available to the public.

CURE tried to eliminate redundancies, to use ''smart'' programs to guide data submission, to create greater context for understanding of the data, and to provide for electronic submission to reduce and improve reporting. It reduced more than 800 data elements in current reports to approximately 400—including new data elements agreed to by stakeholders to facilitate better interpretation of the data. Five facilities tested a partial prototype of CURE in 1998. The CURE study estimated annual total savings of $250,000–$290,000 would be realized if most of the computer and electronics facilities in Texas could take advantage of such consolidated reporting.

There are, however, some limitations to the use of CURE as the model for a consolidated reporting pilot for Performance Track facilities:

- CURE focuses only on those reports of specific interest to computer and electronics facilities. To expand the CURE model for applicability to other sectors would require extensive additional effort, both by EPA and the states.
- Since CURE was developed in the context of Texas rules, additional work would need to be done both by EPA and the states, even for reports for the computer and electronics industry, to develop the model more fully for other states.
- There were a number of areas in which the CURE working group failed to reach consensus, which would require additional decisions. For example, the working group failed to reach agreement as to whether materials accounting data elements should be included, even on a voluntary reporting basis, within the CURE reporting system.
- While the CURE model covers many environmental reports commonly required of industrial facilities, it does not cover all reports. Many facilities would find that the CURE report model would substitute for several separate standard reports, but that they would still need to file additional reports to state or EPA offices for reporting obligations that are not covered by this consolidated report.

We have included additional information in the docket on the CURE study and how it might function as a pilot program.

EPA seeks comment on how best to establish a pilot consolidated reporting program for the Performance Track. EPA is particularly interested in which Performance Track applicants (and the States where they are located) would be interested in participating in a Consolidated Reporting Pilot. This would help EPA further define the scope for such a pilot program and the need for regulatory changes (both at the Federal and the State levels) necessary to implement consolidated reporting. In addition, EPA is interested in suggestions on the elements of a consolidated reporting system that would be most critical to Performance Track members, and how comprehensive the scope of such a pilot should be for facilities to benefit from participating in the pilot.

In order to meet the requirement that the party submitting the report be in a position to attest to the accuracy of the information reported, EPA expects that the person submitting the report will be required to be in a position to have such knowledge, and/ or would be required to attest to such knowledge in making the report. EPA solicits comment on how best to accomplish this goal.

EPA believes that it must promulgate at least some regulatory changes to make it possible for such a pilot program to take place. The scope and content of such changes would depend on the particular reports that would be included in such a pilot. We solicit comments on this. Commenters should also be aware that some States may have to modify existing regulations to permit facilities to use the consolidated reporting option. In some jurisdictions, permits may have to be amended before facilities may take advantage of this option. EPA is committed to consulting with the States on ways to tailor the consolidated reports to their needs and requirements. Potential members should consider how the pilot program would benefit them in spite of the existence of conflicting statutory or regulatory reporting due dates. EPA invites comments on this issue.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Cost and Economic Impacts?

The rulemaking changes being proposed today will reduce some reporting and other compliance costs for the covered facilities. Most of these cost reductions result from reduced waste management costs or reduced respondent reporting burden hours, so these proposed changes also reduce the total number of such hours resulting from EPA's regulatory programs.

EPA has completed the first three open enrollment periods for the Performance Track program. This resulted in a total of 281 facilities (mostly industrial facilities, but also a number of facilities in the service sector, several federal facilities and POTWs). Because EPA plans to solicit and to accept additional facilities into the program, it is not possible to project the cost and burden hour reductions with complete accuracy. Another factor that hinders such projections is that, just as membership in Performance Track is voluntary, it is up to the facilities themselves to decide which incentives apply to them and which to avail themselves of.

Maximum Achievable Control Technology: We estimate that there are approximately 12 current Performance Track facilities that may be eligible for the rule change. For these facilities with emissions of HAPs that are lower than the 25 ton per year aggregate or the 10 ton per year limit for an individual HAP, they may be able to submit a simplified annual report rather than multiple periodic reports. If we assume an average reduction of one periodic report per year (estimated to require an average of 25.5 labor hours), the cost savings per facility equals $1307. In the aggregate, we estimate a total cost savings for the 12 Performance Track facilities of $15,680 annually and a total reduction of 306 labor hours.

Alternative Environmental Performance-Based Incentives for POTWs in the Performance Track: Currently there is one POTW in the Performance Track program. To implement this incentive, it is estimated that a POTW would incur, on a one-time basis, 47 hours and $1837 in costs to request the pretreatment program modification required to use this incentive, publish the public notification of a change in the public

notice procedures to website posting, and a certification to the Approving Authority that the pretreatment annual report had been posted on its website. No net savings or costs are anticipated from the rule revision that allows POTWs to publish the list of SIUs in SNC annually on a website instead of in the newspaper, in part because any SNC that continues past 30 days will still need to be published in the newspaper. Any cost savings resulting from less newspaper text may be netted out by the additional costs of preparing the list for website publication. Similarly, the rule revisions that allow publication of the annual POTW report on the web and submitting the written report every other year to EPA or the state agency and the publication of modifications to pretreatment programs on the web are not likely to result in any cost savings. Lastly, it is difficult at this point to quantify the potential cost savings that could result by allowing POTWs to reclassify as ''nonsignificant'' CIUs which have no reasonable potential to adversely affect the POTW or to violate any applicable EPA pretreatment standard, and that have not been in noncompliance for the past three years. The net effect of this provision depends to a significant degree on the number and type of CIUs served by the POTW. We estimate that, for State and local authorities, some such authorities will need to spend time and money adopting revisions to their regulations to conform with the rulemaking changes we propose today and to re-open and re-issue permits to Performance Track facilities earlier than they would otherwise. However, these are primarily one-time costs, and we estimate that there will be long-term benefits from the simplifications we propose for reporting by POTWs and the reclassification of CIUs determined to be ''nonsignificant.''

180-Day Accumulation Time for Performance Track Hazardous Waste Generators: Potential aggregate transport cost savings for Performance Track member facilities that accumulate hazardous waste up to 180 days range from $14,900 to $77,100 per year, depending on the type of waste (*i.e.,* liquid or solid) and the distance the waste is transported.[5] The extent of savings depends on how many Performance Track generators are likely to take advantage of the provision. It is expected that Performance Track generators would only take advantage of this provision if it enables them to accumulate their wastes more efficiently and at a reduced cost. Although there is likely to be some reduction in labor hours for the Performance Track facilities, we do not anticipate it to be significant as most of the labor is included in the transporter's fees. Additional cost savings that have not been quantified are likely to result from costs associated with the handling and/or storage of hazardous waste, reduced pick-up costs, the reduced need for rush procurements, and a reduction in mobilization fees.

There may be additional costs for installation of secondary containment. There is currently an upper bound estimate of 43 facilities in the Performance Track program to which secondary containment provisions could apply. Cost estimates for installing secondary containment, if necessary, are based on the costs of installing secondary containment for tanks. Such costs range from $1,200 for 275-gallon tanks to $55,000 for 125,000 gallon tanks. The extent of costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units. These estimates, however, are likely to represent an upper bound cost for containers, since construction of a secondary containment area for containers, such as a berm, is likely to be less than that required for tanks.[6] The extent of total costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units.

Total Estimated Impact of Proposed Rule on Costs and Labor Hours

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. This estimate excludes the cost of secondary containment units because of the uncertainty associated with how many Performance Track facilities will need to install such units. Not all of these savings will be available immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. We estimate that the full resource savings described above will begin to be realized about two years after this rulemaking's promulgation or after the relevant state rule revisions are promulgated. Finally, these rulemaking changes will result in some increased costs for State/local agencies and EPA.

B. What Are the Health, Environmental and Energy Impacts?

We expect that there will be no adverse effects on the environment from the direct impacts of these rulemaking changes. As we discussed above, most of these changes relate to reporting, and do not in any way loosen the underlying environmental obligations of the Performance Track facilities. We expect that the reporting changes will not result in any of these facilities becoming more lax in their diligence.

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and reporting requirement relief, to the extent that they affect companies' bottom lines, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

V. Solicitation of Comments and Public Participation

We would like to have full public participation in arriving at our final decisions, and we encourage comment on all aspects of this proposal from all interested parties. Interested parties should submit supporting data and detailed analyses with their comments so we can make maximum use of them. Information on where and when to submit comments is listed in ''Comments'' under the **ADDRESSES** and **DATES** sections. Information on procedures for submitting proprietary information in the comments is listed in ''Comments'' under the **SUPPLEMENTARY INFORMATION** section.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. Not all of these savings will be available

[5] Memorandum dated March 6, 2002 from Industrial Economics, Incorporated to EPA's Office of Policy, Economics, and Innovation.

[6] DPRA, Incorporated, ''Unit Cost Compendium'' prepared for U.S. EPA's Office of Solid Waste, Economics, Methods, and Risk Analysis Division, September 30, 2000 presents formulas for estimating the capital costs of installing secondary containment units for above ground storage tanks.

immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. The cost savings estimated for this proposed rulemaking could potentially be impacted (and result in total costs, not savings for the rulemaking) by any installation costs associated with installation of secondary containment. As noted in section IV A, secondary containment costs are not included in total rule cost savings estimate because of the uncertainty associated with how many Performance Track facilities will need to install such units.

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132, Federalism

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

This proposed rule 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, as specified in Executive Order 13132. This rule provides incentives that states can adopt to provide benefits to their state member facilities in the National Performance Track program. As a voluntary program, Performance Track allows states the option to adopt the provisions in this rule. Thus, Executive Order 13132 does not apply to this rule.

Stakeholders, including many states, were consulted during the development of the Performance Track Program. Many suggestions and ideas generated by states and other stakeholders provided the basis for some of the provisions in this rule. The stakeholder involvement process undertaken is fully discussed in Section I B of this document. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Any effects that Tribes may accrue from this rule will result in cost savings. Thus, Executive Order 13175 does not apply to this rule. Stakeholder involvement is discussed in Section I B of this document. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to the provisions of this rulemaking.

E. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 04–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may

result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Participation by facilities in the Performance Track is voluntary, and so is participation by state or local government agencies. There are no significant or unique effects on State, local, or tribal governments, however there may be some minor effects incurred by these entities. EPA projects these costs to be very low. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, as discussed in section I B and elsewhere, EPA did engage these stakeholders in the process of developing the National Environmental Performance Track Program.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

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

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

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule will relieve regulatory burden and result in cost savings to entities, including any small entities, that are members of the Performance Track Program, so there will be no adverse impacts on small entities. Many small entities (both businesses and governments) and their association representatives were invited to, and attended, the public hearings we conducted early in 2000 on the design of the Performance Track program. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1922.01), and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue NW., Washington, DC 20460, by email at *auby.susan@epa.gov,* or by calling (202) 566–1672. You may also download a copy from the Internet at *http://www.epa.gov/icr.*

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. Not all of these savings will be available immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for

EPA.'' Include the ICR number in any correspondence. Submit requests to present oral testimony on or before September 25, 2002. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 13, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by September 12, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Thus, the provisions of NTTAA do not apply to this rulemaking and EPA is not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially-applicable voluntary consensus standards and to explain why EPA should use such standards in this regulation.

List of Subjects

40 CFR Part 63

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

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, parts 63, 262 and 403 of title 40, chapter I of the Code of the Federal Regulations are proposed to be amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.2 is amended by adding in alphabetical order definitions of ''Periodic report,'' ''Pollution prevention,'' ''Source in the performance track'' and ''Source reduction'' to read as follows:

§ 63.2 Definitions.

* * * * *

Periodic report means the report of all information which is required to be reported on a periodic basis, including, but not limited to, monitoring information and required recordkeeping, as well as summaries of event-related reports.

* * * * *

Pollution prevention means ''source reduction,'' as defined under the Pollution Prevention Act (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.

Source reduction, as defined in the Pollution Prevention Act means any practice which: reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign or products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

* * * * *

Source in the Performance Track means a source which has been accepted by EPA for membership in the Performance Track Program (as described in www.epa.gov/performancetrack, formerly known as the Achievement Track Program) and is still a member of the program. The Performance Track program is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

* * * * *

3. Section 63.10 is amended by:

a. Revising paragraph (d)(1); and

b. Adding paragraph (e)(3)(i)(D).

The revision and addition read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * *

(1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, and except as provided in § 63.16, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

* * * * *

(e) * * *

(3) * * *

(i) * * *

(D) The affected source is complying with the Performance Track provisions of § 63.16, which allows less frequent reporting.

* * * * *

4. Section 63.16 is added to Subpart A and reads as follows:

§ 63.16 Performance track provisions.

(a) Notwithstanding any other requirements in this part, an affected source at any major source or any area source that is a member of the Performance Track, which is subject to regular periodic reporting under any subpart of this part, may submit such periodic reports at an interval that is twice the length of the regular period specified in the applicable subparts; provided, that for sources subject to permits under 40 CFR part 70 or 71 no interval so calculated for any report of the results of any required monitoring may be less frequent than once in every

six months. (b) Notwithstanding any other requirements in this part, the following modifications of reporting requirements apply to any major source that is a member of Performance Track which is subject to requirements under any of the subparts of this part and which has: (1) Reduced its total HAP emissions to less than 25 tons per year;

(2) Reduced its emissions of any individual HAP to less than 10 tons per year; and (3) Reduced emissions of all HAPs covered by each MACT standard to at least the level required by full compliance with the applicable emission standard. (c) For affected sources at any area source member of Performance Track and which meet the requirements of paragraph (b)(3) of this section, or for affected sources at any major source that meet the requirements of paragraph (b) of this section:

(1) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using add-on control technology, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is meeting the emission standard by continuing to use that control technology. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(2) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using pollution prevention, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions to levels at or below those required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(3) If the emission standard to which the affected source is subject is based on pollution prevention, and the affected source complies by using pollution prevention and reduces emissions by an additional 50 percent or greater than required by the applicable emission standard, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions by an additional 50 percent or greater than required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(4) Notwithstanding the provisions of paragraphs (c)(1) through (3), of this section, for sources subject to permits under 40 CFR part 70 or 71, the results of any required monitoring and recordkeeping must be reported not less frequently than once in every six months.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.34 is amended by adding paragraphs (j), (k), and (l) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(j) A generator member of the Performance Track Program, a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results (as described at *www.epa.gov/performancetrack,* formerly known as the Achievement Track Program), who generates 1000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

(1) The generator accumulates the hazardous waste for no more than 180 days, or for no more than 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility; and

(2) The generator first notifies the Regional Administrator and the Director of the authorized State in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

(i) Name and EPA ID number of the facility, and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and

(ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and

(iii) A statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that an appropriate off-site hazardous waste management facility is not available within 200 miles of the generating facility; and

(3) The waste is managed in:

(i) Containers, in accordance with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265 and 40 CFR 264.175; or

(ii) Tanks, in accordance with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265, except for §§ 265.197(c) and 265.200; or

(iii) Drip pads, in accordance with subpart W of 40 CFR part 265; or

(iv) Containment buildings, in accordance with subpart DD of 40 CFR part 265; and

(4) The volume of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains the following records at the facility for each unit used for extended accumulation times:

(i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable), a description of the waste generation and management practices at the facility showing that they are consistent with respecting the extended accumulation time limit, and documentation that the procedures are complied with; or

(ii) Documentation that the unit is emptied at least once every 180 days (or 270 days, if applicable); and

(6) Each container or tank that is used for extended accumulation time periods

is labeled or marked clearly with the words ''Hazardous Waste'', and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in subparts C and D in 40 CFR part 265, with § 265.16, and with § 268.7(a)(5). In addition, such a generator is exempt from all the requirements in subparts G and H of part 265 of this chapter, except for § 265.111 and § 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants released to the environment prior to its recycling, treatment or disposal; and

(9) The generator includes the following in its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the Director of the authorized State:

(i) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (*e.g.,* recycling, treatment, storage or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at or from extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) If the generator has accumulated hazardous wastes on-site for more than 180 days but less than 270 days, a certification affirming that an appropriate off-site hazardous waste management facility is not available within 200 miles of the generating facility; and

(k) If hazardous wastes must remain on-site at a Performance Track member facility for longer than 180 days (or 270 days, if applicable) due to unforseen, temporary and uncontrollable circumstances, an extension to the extended accumulation time period of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(l) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, or if the Regional Administrator terminates a generator's membership, the generator must return to compliance with all otherwise applicable hazardous waste regulations as soon as possible, but no later than six months after the date of withdrawal or termination.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.3 is amended by revising paragraph (t)(2) to read as follows:

§ 403.3 Definitions.

* * * * *

(t) * * *

(2) Upon a finding that an industrial user meeting the criteria in paragraph (t)(1)(i) or (t)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in § 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with § 403.8(f)(6), determine that such industrial user is not a significant industrial user. The Control Authority may not determine that any industrial user meeting the criteria in paragraph (t)(1)(i) of this section is not a significant industrial user if the industrial user has been in noncompliance at any point during the 3 years preceding a potential determination.

* * * * *

3. Section 403.21 is added to read as follows:

§ 403.21 Pretreatment Program Under National Environmental Performance Track Program.

The Approval Authority may authorize a POTW that is a member of the National Environmental Performance Track Program, a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results (as described at *www.epa.gov/performancetrack,* formerly known as the Achievement Track Program), to adopt legal authorities and requirements that are different from the requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification for approval by the Approval Authority in accordance with the procedures outlined in § 403.18. The Approval Authority must approve the modified program and include it as an enforceable provision of the POTW's NPDES permit before the POTW can implement any such modification. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program, if the POTW no longer meets the eligibility criteria for the National Environmental Performance Track Program. The Approval Authority may authorize adoption of the following alternative requirements:

(a) A POTW that is a member of the National Environmental Performance Track Program may adopt an alternative approach to the requirement of § 403.8(f)(2)(vii) for a POTW to publish at least annually notification of Industrial Users (IUS) which were in significant noncompliance with pretreatment requirements (SNC) at any time during the previous twelve months. Under this alternative approach, the following is required:

(1) The POTW must adequately notify the public of the change in the public notice procedures;

(2) The POTW must annually public notice all IUS in SNC (as determined under § 403.8(f)(2)(vii)) on a website maintained and managed by the Control Authority. Notice of the violation must remain posted at this site for a period of no less than thirty days. The POTW must post an explanation of how SNC is determined, along with a contact name and phone number for information;

(3) The POTW must keep historic compliance data for all IUS on the website beginning with the first website publication. This historic compliance data must be easy to access, well-documented, and continual;

(4) If a violation is not corrected within thirty (30) calendar days, or if a violation results in pass through or interference, the POTW must also annually provide the newspaper public notice for these violations in the format specified in § 403.8(f)(2)(vii);

(5) The POTW must certify as part of its annual report required by § 403.12(i) that it posted the SNC data and the historic compliance data on the website; and

(6) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(b) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to the requirements of §§ 403.11 and 403.18 for public notification of modifications to approved pretreatment programs. Under this alternative approach, the following is required:

(1) The POTW must adequately notify the public of the change in public notice procedures;

(2) The POTW must post its public notice of program modifications under §§ 403.11 and 403.18 on a website maintained and managed by the Control Authority; and

(3) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(c) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to submitting its annual report under § 403.12 (i). Under this alternative approach, the following is required:

(1) The POTW must annually post their annual report (§ 403.12(i)) on a website maintained and managed by the Control Authority;

(2) The information must remain accessible as part of the website for at least three years;

(3) The POTW must provide written notice to the Approval Authority within five days of posting the annual report on the website. This notice must include a certification consistent with the certification language provided in 40 CFR 122.22(d) by an official attesting to the accuracy of the submitted information;

(4) Every other year, the POTW must submit a written report to the Approval Authority. The report must include specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting period instead of a summary of the status of all IU compliance over the reporting period; and

(5) The POTW must provide a written copy of the annual report containing all information currently required under § 403.12(i) to the EPA, State, or public upon request.

(d) A POTW that is a member of the National Environmental Performance Track Program shall prepare and maintain a list of its industrial users meeting the criteria in paragraph (a) of this section. The list shall identify the criteria in paragraph (a) of this section applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to § 403.3 (t)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to § 403.9 or as a non-substantial modification pursuant to § 403.18(b)(2). Modifications to the list shall be submitted to the Approval Authority pursuant to § 403.12(i)(1).

[FR Doc. 02–20347 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7258–2]

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Engines Weighing 14,000 Pounds Gross Vehicle Weight or Less; Notice of Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, notice of document availability.

SUMMARY: On June 8, 2001, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (66 FR 30830) proposing revisions to regulations requiring availability of information for use of on-board diagnostic systems (OBD) and emission-related repairs. One of the proposed changes specified that manufacturers comply with SAE Standardized Practice J2534 for ''pass-through reprogramming'' for MY 2003 and later OBD-equipped vehicles with reprogramming capabilities. At the time the proposal was issued in June 2001, SAE J2534 had not yet been finalized. In the proposal, EPA committed to issuing a notice of document availability in the **Federal Register** to announce that SAE J2534 had been finalized.

SAE J2534 was finalized in February of 2002 and is now available for inspection only in EPA Air Docket A–2000–49 (*see* **ADDRESSES**). In addition, interested parties can purchase this document directly from the Society of Automotive Engineers (SAE) (*see* **ADDRESSES**).

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–2000–49. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7549 and the facsimile number is (202) 260–4400 and the Internet e-mail is *a-and-r-docket@epamail.epa.gov.* A reasonable fee may be charged by EPA for copying docket material.

SAE J2534 can be purchased from the Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001 or at *www.sae.org.*

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105, Telephone (734) 214–4288, or Internet e-mail at *pugliese.holly@epa.gov.*

Dated: August 5, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–20451 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 13

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would extend the coverage of the Department's regulation implementing the Equal Access to Justice Act to include adversary administrative adjudications commenced after September 30, 1984. It would also amend the eligibility criteria and certain other aspects of that regulation to conform with amendments to the Act. Finally, it would reflect the separation of the Social Security Administration from HHS, and that component's establishment as an independent agency in 1995.

DATE: HHS will accept comments on this proposed rule through October 12, 2002. The Office of Management and Budget will accept comments on the amendments to §§ 13.10 through 13.12 through the same date.

ADDRESSES: Comments must be in writing. Please send them to: Katherine M. Drews, Acting Associate General