



National Pretreatment Program

(40 CFR 403)



Pretreatment Streamlining Rule Fact Sheet 2.0: Required Changes

Do any of the Streamlining Rule changes require states or POTWs to modify their pretreatment regulations or program documents?

Yes, there are required changes in the Pretreatment Streamlining Rule. The majority of the regulatory changes made in the final Pretreatment Streamlining Rule, however, are not required. That is, for many of the changes (e.g., sampling for pollutants not present, general control mechanisms, and equivalent mass limits for concentration limits), the state Approval Authority (or Control Authority depending upon which role the state plays in the particular municipality) and POTW Control Authority may choose whether or not they wish to adopt these specific streamlining provisions. As a general rule, those streamlining changes which are considered less stringent than the current regulations do not need to be adopted. If the state wishes to implement these less stringent requirements, it will need to formally revise its own regulations to provide the appropriate legal authority for such implementation.

There are several streamlining-related changes that are more stringent than the previous Federal requirements and therefore are considered required modifications for the state and/or the POTW. Therefore, to the extent that existing state or POTW legal authorities are inconsistent with the required changes, they must be revised. Of course, where state or local authorities are already consistent with these required provisions, further changes would not be necessary.

Which changes are considered required?

EPA has identified the following 13 rule changes that are more stringent than existing provisions in 40 CFR Part 403, and therefore may require changes to the appropriate state or POTW authorities. States and POTWs should make the changes as soon as possible, and EPA and state NPDES permitting authorities should revise NPDES permits to require implementation of these required changes by POTWs. A general description of each change is included, along with a summary of what state or POTW follow-up actions are needed.

1. Updated removal credits provisions relating to Overflows [§ 403.7(h)]

Description of required change: This change provides updated references relating to requirements that POTWs must meet to adjust removal credits for combined sewer overflows (CSOs).

What follow-up actions are required? Before approving any removal credits, states that are currently delegated oversight of the pretreatment program must revise their regulations where state legal authorities include a provision similar to § 403.7(h). No change to POTW pretreatment programs is necessary based on this regulatory change.

2. Slug control requirements must be included in SIU control mechanisms [§ 403.8(f)(1)(iii)(B)(6)]

Description of required change: The Streamlining Rule requires that applicable slug control requirements be included in the SIU's control mechanism.

What follow-up actions are required? POTWs must incorporate slug control requirements into their SIU control mechanisms and must revise their approved program, if necessary, to ensure that they have the legal authority and procedures to modify control mechanisms as needed. Once the POTW's authority to include these requirements is established, EPA foresees them being incorporated into SIU control mechanisms when the control mechanisms are next reissued. States must revise their regulations, if necessary, to ensure that they have the authority to enforce this requirement.

3. SIUs must be evaluated for the need for a plan or other action to control slug discharges within a year from the final rule's effective date or from becoming an SIU [§ 403.8(f)(2)(vi)]

Description of required change: The final Streamlining Rule specifies that POTWs must evaluate all of their SIUs for the need for a slug control plan or other actions at least one time. If the POTW has not yet done so, it must complete the evaluations before October 14, 2006 or within a year of the Industrial User being designated as significant. Where the evaluation has been conducted and documented previously, even if conducted prior to publication of the Streamlining Rule, no new evaluation is required.

What follow-up actions are required? For this provision, the applicable state regulations must be revised to specify the October 14, 2006 date for existing SIUs, and the 'within one year' final rule change for Users designated as SIUs after October 14, 2005. While POTWs must conduct this evaluation, as described above, a pretreatment program modification may not be necessary.

4. SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for a slug discharge [§ 403.8(f)(2)(vi)]

Description of required change: The final Streamlining Rule requires SIUs to notify the POTW immediately of changes that occur at the facility affecting the potential for a slug discharge, thereby allowing the POTW to reevaluate the need for a slug control plan or other actions to prevent such discharges.

What follow-up actions are required? POTWs must revise their approved program as necessary to ensure that they have the legal authority and procedures to enforce this requirement. States must revise their regulations, if necessary, to ensure that they have the authority to enforce this requirement.

5. Significant Noncompliance (SNC) definition is expanded to include additional types of Pretreatment Standards and Requirements [§ 403.8(f)(2)(viii)(A-C)]

Description of required change: The final Streamlining Rule made several wording changes that expand the types of Standards and Requirements that are to be considered when determining whether an SIU's violations constitute SNC. These changes affect what EPA considers to be "chronic violations" (§ 403.8(f)(2)(viii)(A)), "Technical Review Criteria violations" (§ 403.8(f)(2)(viii)(B)), and "other" violations (§ 403.8(f)(2)(viii)(C)). Note that changes to the SNC requirements for late reports, for the type of newspapers must be used for publishing SNC violations, and for the application of SNC to SIUs only are optional revisions.

What follow-up actions are required? State regulations must be revised, if necessary, to reflect the expanded coverage of Standards and Requirements in the SNC definition. In addition, if necessary, POTWs need to revise their SNC definition in their legal authority, enforcement response plan, and/or program procedures to reflect expanded coverage of standards and requirements in the SNC definition.

6. SIU reports must include BMP compliance information [§ 403.12(b), (e), (h)]

Description of required change: The final Streamlining Rule requires SIUs to submit documentation as required by the Control Authority or applicable Pretreatment Standards and Requirements to determine compliance with BMP-based Standards or local limits.

What follow-up actions are required? State regulations must be revised, if necessary, to require SIUs to report on compliance with BMP-based categorical Pretreatment Standards or local limits. In addition, POTWs must revise their legal authority, enforcement response plan, and program procedures as necessary to require SIUs to report on compliance with BMP-based categorical Pretreatment Standards or local limits, and to enforce those requirements where Users fail to submit the required information.

7. SIU control mechanisms must contain any BMPs required by a Pretreatment Standard, local limits, state, or local law
[403.8(f)(1)(iii)(B)(3)]

Description of recommended change: The final Streamlining Rule clarified that among the effluent limits that must be contained in all SIU control mechanisms are Best Management Practices (BMPs) that are required by a categorical Pretreatment Standard, local limit, state or local law.

What follow-up actions are recommended?

This revision merely clarifies that applicable BMPs would be required to be included in control mechanisms. It is EPA's expectation that most POTWs already have the authority to implement this requirement. POTWs, however, must ensure that they have the legal authority and procedures to implement this requirement, and to include appropriate BMPs in the control mechanism where appropriate. States should revise their regulations, if necessary, to ensure that they have the authority to enforce this requirement.

8. Documentation of compliance with BMP requirements must be maintained as part of the SIU's and POTW's record-keeping requirements
[§ 403.12(o)]

Description of required change: The final Streamlining Rule clarified that the POTW and the SIU must maintain records of BMP compliance in the same way that other records are maintained as part of § 403.12(o).

What follow-up actions are required? States and POTWs must revise their requirements and program procedures, if necessary, to ensure that they have the authority to implement and enforce this requirement. SIU permits also should be revised to clearly require that this documentation be maintained by the User.

9. Control Authorities which perform sampling for SIUs must perform any required repeat sampling and analysis within 30 days of becoming aware of a violation
[§ 403.12(g)(2)]

Description of required change: The final Streamlining Rule provides that where a Control Authority has assumed responsibility for sampling in lieu of the SIU, it is the Control Authority which must repeat sampling and analysis within 30 days of becoming aware of an exceedance. The only exception to this requirement is if the Control Authority specifically requires the Industrial User to perform the repeat analysis.

What follow-up actions are required? POTWs should generally have the ability to sample any time they determine it is appropriate, and therefore no POTW program revision may be necessary. However, POTWs must revise their approved program as necessary to ensure that they have the legal authority and procedures to implement this requirement. States must revise their regulations, if necessary, to ensure that they have the authority to enforce this requirement.

10. Require periodic compliance reports to comply with sampling requirements, require Control Authority to specify the number of grab samples necessary in periodic and non-categorical SIU reports, and require non-categorical SIUs to report all monitoring results [§ 403.12(g)(3), (4), (6)]

Description of required changes: SIUs are now required to follow sampling requirements in § 403.12 for periodic compliance reports (§ 403.12(e) and (h)), whereas they were previously only explicitly applicable to baseline monitoring reports and 90-day compliance reports. In addition, for the reports required in § 403.12(e) and (h), the final rule requires the Control Authority to indicate the number of grab samples necessary to assess and assure compliance by Industrial Users with applicable categorical Pretreatment Standards and Requirements. Also, the final rule now requires that non-categorical SIUs report all monitoring results, whereas the previous regulations only made this requirement explicit for categorical SIUs.

What follow-up actions are required? State regulations must be revised to reflect these final rule changes. Many POTW pretreatment programs already include these requirements, but POTW legal authorities and program procedures must be revised as necessary to reflect this final rule change.

11. Non-Categorical SIUs are required to provide representative samples in their periodic monitoring reports [§ 403.12(g)(3)]

Description of required change: The final Streamlining Rule extends to the § 403.12(b), (d), and (h) monitoring reports the requirement that SIUs provide data which are representative of conditions during the reporting period.

What follow-up actions are required? Many POTW pretreatment programs already include this requirement, but POTWs must revise their approved program and SIU control mechanisms as necessary to ensure that they have the legal authority and procedures to enforce this requirement. States must revise their regulations, if necessary, to ensure that they have the authority to enforce this requirement.

12. Require notifications of changed discharge to go to the Control Authority and the POTW, where the POTW is not the Control Authority [§ 403.12(j)]

Description of required change: The pretreatment regulations now clarify that Industrial Users must notify the Control Authority, as well as the POTW, if the POTW is not the Control Authority. Prior to the Streamlining Rule, the regulations only specified that the notice go to the POTW.

What follow-up actions are required? State regulations must be revised to require changed discharge notifications to be submitted to the state where the POTW is not the Control Authority. POTWs are not required to make this change since they were already required to be notified in the previous version of § 403.12(j), and the revision brought about by the Pretreatment Streamlining Rule does not change this requirement.

13. How and when the POTW can designate a “duly authorized employee” to sign POTW reports [§ 403.12(m)]

Description of required change: The pretreatment regulations now specify that the POTW must, in writing by the principal executive officer or ranking elected official of the POTW, authorize the use of a “duly authorized employee”. In addition, the regulations require that the authorization be submitted to the Approval Authority prior to or together with the POTW report being submitted.

What follow-up actions are required? State regulations must be revised to require POTWs to follow the procedures for authorizing “duly authorized employees” to sign POTW reports and for submitting reports signed by such employees. POTWs are not required to make this change, although they will be required to follow the new state requirements relating to “duly authorized employee” signatures upon their adoption.