(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

* * * * *

(g) * * *

(4) any mixture of a solid waste excluded from regulation under § 261.4(b)(7) and a hazardous waste listed in subpart D of this part solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed.

* * * * *

[FR Doc. 01–24068 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL–7073–3]

RIN 2090–AA16

Pretreatment Program Reinvention Pilot Projects Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule will change the National Pretreatment Program regulations to allow Publicly Owned Treatment Works (POTWs) that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local Pretreatment Programs. These POTWs will be allowed to modify their programs, and implement the new local programs as described in their FPAs. In today's rule, EPA recognizes that many POTWs with approved Pretreatment Programs have mastered the administrative and procedural requirements of the National Pretreatment regulations. Several of these POTWs want the opportunity to implement local pretreatment programs with effectiveness measured against environmental results rather than strict adherence to programmatic and administrative measures. These POTWs have expressed an interest in Project XL to test new pilot ideas that focus resources on activities that they believe would provide greater environmental benefits than are achieved by complying with current regulatory requirements. This rule is intended to provide the regulatory flexibility that will enable these and other test programs to move forward. Currently, five POTWs are actively involved in this Project XL process. The flexibility provided by this rule revision is limited to fifteen POTWs that meet the Project XL criteria.

DATES: This final rule is effective October 3, 2001.

ADDRESSES: A docket containing the rule, Final Project Agreements, supporting materials, public comments and the official record is available for public inspection and copying at the EPA's Water Docket, EB–57 (East Tower Basement), 401 M Street, SW., Washington, DC 20460. The record for this rulemaking has been established under docket number W–00–30, and includes supporting documentation. The public may inspect the administrative record from 9 am to 4 pm Monday through Friday, excluding Federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (202) 260–3027. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at *http://www.epa.gov/projectxl/.*

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 1027 West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Mr. Chad Carbone in advance by telephoning (202) 260–4296.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Frazer, (202) 564–0599, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., (MC 4203), Washington, DC 20460. Further information on today's action may also be viewed on the world wide web at *http://www.epa.gov/projectxl/.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the National Pretreatment Program and POTWs subject to Pretreatment Standards and requirements that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local pretreatment programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Publicly Owned Treatment Works.
State and Tribal government.	States and Tribes acting as Pretreatment Program Control Authorities or as Approval Authorities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

On October 6, 2000, the Environmental Protection Agency proposed a rule (65 FR 59791) that set forth the mechanism through which POTWs that complete the Project XL process can seek modification of their programs following the procedures in 40 CFR 403.18, and implement the new

local programs as described in their FPAs. Today's final rule promulgates regulations that are identical to the proposed rule.

Outline of Today's Rule

I. Authority

This regulation is being promulgated under the authority of sections 307, 402 and 501 of the CWA.

II. Background

A. What Is Project XL?

Project XL, which stands for ''eXcellence and Leadership,'' is a national pilot program that tests innovative ways of achieving better and more cost-effective public health and environmental protection through site-specific agreements with project sponsors. Project XL was announced on March 16, 1995, as a central part of EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995). The intent of Project XL is to allow EPA and regulated entities to experiment with pragmatic, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects are intended to allow EPA to collect more data on a more focused basis prior to national rulemaking. Today's regulation would enable implementation of five specific XL projects as well as future projects that successfully complete the Project XL process. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

B. What Is EPA Announcing?

In the June 23, 1998, **Federal Register** (63 FR 34170), EPA requested proposals for XL projects from 15 POTWs based on environmental performance measures for the pretreatment program. The process for reviewing and choosing acceptable pilot program candidates included input from POTWs, State and EPA Regional Pretreatment Coordinators, as well as opportunity for public participation. As discussed in more detail below, five POTWs have advanced to the final steps of the Project XL process. In today's rule, EPA announces revisions to the national pretreatment regulations at 40 CFR part 403 that will allow the current and future selected Local Pilot Pretreatment Programs to be implemented. The flexibility provided by this rule revision is limited to 15 POTWs that meet the Project XL criteria. POTWs must submit revised pretreatment programs for approval and obtain modified permits to authorize the POTW to implement its pilot program instead of its currently Approved POTW Pretreatment Program. However, please note that the affected States may first need to revise their own regulations or statutes to authorize the pilot programs for pretreatment XL project sponsors before this rule can be implemented in their jurisdictions.

C. Stakeholder Involvement in the Project XL Process

EPA believes stakeholder involvement in developing Local Pilot Pretreatment Programs is crucial to the success of the programs; therefore, as part of the Project XL proposal, a POTW must clearly explain its process for involving stakeholders in the design of the pilot program. This process should be based upon the guidance entitled, Regulatory Reinvention (XL) Pilot Projects, set out in the April 23, 1997, **Federal Register** notice (62 FR 19872). The support of parties that have a stake in the program is very important. Once EPA has accepted a candidate based on its detailed proposal, the POTW, EPA, the State and local stakeholders typically develop a Final Project Agreement (FPA). The FPA is a non-binding agreement that describes the intentions and commitments of the implementing parties. Stakeholders may include communities near the project, local or State governments, businesses, environmental and other public interest groups, or other similar entities. Stakeholders will also have formal opportunities to comment on provisions of the FPA that are incorporated in the POTW's revised pretreatment program under the procedures established at 40 CFR 403.18 and this rule.

D. Summary of Public Comments

EPA proposed this regulation on October 6, 2000 (65 FR 59791). The preamble to the proposed rule explains the changes in the regulations. The public comment period was open for a period of 30 days and closed on November 6, 2000.

EPA received a total of three comments regarding this rule. The commenters included two States and a trade group that represents municipalities. Two of the commenters fully support the revised regulation which will allow the Project XL process to move forward and provide a means to test new ways to streamline the pretreatment program and provide greater environmental benefits. The other commenter believes that both major and minor modifications to expired NPDES permits are prohibited and requests that 40 CFR 403.20 be clarified to allow approved Pretreatment Program Modifications that may be processed as minor NPDES Permit modifications in accordance with 40 CFR 122.63(g), to be also processed in cases when the associated NPDES Permits are expired. In response to this comment, EPA agrees that the Federal NPDES regulations do not contemplate modifications to expired NPDES permits and EPA understands that many States have permitting backlogs. However, EPA does not believe that an exception to the NPDES permitting regulations is appropriate in this narrowly tailored rulemaking amending the pretreatment regulations. Rather, EPA believes that States with NPDES permit backlogs would make POTWs that qualify under this rule a high priority and reissue those permits promptly so that those

facilities can implement the changes to their permits allowed under this rule.

E. What Is the National Pretreatment Program?

The National Pretreatment Program is part of the Clean Water Act's (CWA's) water pollution control program. The program is a joint regulatory effort by local, State, and Federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called ''publicly owned treatment works'' or ''POTWs''). Control of pollutants prior to discharge of wastewater to the municipal sewer system minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

F. What Are the Current Pretreatment Program Requirements?

The minimum requirements for an approved POTW Pretreatment Program currently are published at 40 CFR 403.8(f). POTWs with approved Pretreatment Programs must maintain adequate legal authority, identify industrial users, designate which industrial users (IUs) are ''Significant Industrial Users'' (SIUs) (under 40 CFR 403.3(t)) and perform required monitoring, permitting and enforcement. Other sections of part 403 require POTWs with Approved Pretreatment Programs to sample and apply nationally applicable pretreatment standards to the industrial users discharging pollutants to the POTW collection system. POTWs are also required to develop local limits in accordance with 40 CFR 403.5. As announced today, EPA will allow Approval Authorities to require a POTW to meet requirements in an environmental performance-based pilot program instead of certain administrative programmatic requirements currently required in a POTW's Approved Pretreatment Program under 40 CFR part 403.

G. How Do the Current Requirements Relate to Environmental Objectives?

As described in 40 CFR 403.2, the general pretreatment regulations promote three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of POTWs, including interference with the use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

These objectives require local programs to be designed so they are preventative in nature, and therefore, any pilot program also would need to maintain this preventative approach. The specific requirements for an Approved POTW Pretreatment Program are intended to achieve these objectives. Individual pretreatment programs, however, are not routinely required to report on the achievement of environmental measures.

The 1991 National Pretreatment Program Report to Congress provides extensive data related to the sources and amounts of pollutants discharged to POTWs, the removal of pollutants by secondary treatment technology, and the general effectiveness of the pretreatment program. The 1991 Report did, however, point to a serious lack of comprehensive environmental data with which to fully assess the effectiveness of both the national and local pretreatment programs. These Project XL pilots will help to provide data for this purpose.

H. Why Is EPA Allowing POTW Local Pilot Pretreatment Programs at this Time?

Some POTWs have mastered the administrative aspects of the pretreatment program (identifying industrial users, permitting, monitoring, etc.) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in focusing their resources on activities that they believe would provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefitting the environment and toward activities that may achieve measurable improvements in the environment.

EPA developed the Project XL program to provide regulated entities the flexibility to conduct innovative pilot projects. Today's rule represents an attempt to spur innovation in the pretreatment program, to increase environmental benefits and, in conjunction with the streamlining proposal (see 64 FR 39564), to determine, if further streamlining of the program is needed, how streamlining can achieve environmental improvements and in what direction those future streamlining efforts should be directed.

I. Are There Any POTWs Currently Going Through Project XL Approval Process?

In order to implement the pretreatment XL projects, EPA is promulgating this rule to provide regulatory flexibility under the Clean Water Act. Currently, five (5) POTWs have requested flexibility through the Project XL FPA approval process. The POTWs are: The Narragansett Bay Commission (NBC) in Rhode Island; the Jeffersontown Wastewater Treatment Plant (WWTP), owned and operated by the Louisville and Jefferson County Metropolitan Sewer District (MSD) in Kentucky; the Metropolitan Water Reclamation District of Greater Chicago (Chicago) in Illinois; the City of Albuquerque (Albuquerque), New Mexico; and the City of Denton (Denton), Texas. The FPA for NBC lays out the following flexibilities: (1) Reduced self-monitoring requirements for ten (10) categorical industrial users (CIUs) for tier 1 facilities, (2) reduced inspection frequency for ten (10) CIUs tier 1 facilities from once every year to once every two years, and (3) allow participating CIUs tier 1 facilities to not sample for pollutants not expected to be present. Under the FPA for MSD, the POTW is requesting flexibility to (1) use an alternative definition for significant industrial user (SIU), (2) allow participating CIUs to not sample for pollutants not expected to be present and (3) use an alternative definition of significant noncompliance (SNC). The Chicago FPA describes flexibility that includes (1) use of an alternative definition for *de minimis* categorical industrial user (CIU), and (2) reduced self-monitoring and self-reporting requirements for participating CIUs and (3) use of alternative monitoring methods. The Albuquerque FPA lays out flexibility to (1) use an alternative definition of SIU, (2) use an alternative definition of SNC, (3) reduce permitting requirements for participating IUs, (4) use alternative monitoring methods and (5) reduce reporting requirements for participating IUs. The Denton FPA lays out flexibility to (1) reduce its monitoring of participating IUs and (2) reduce its inspection of participating

IUs. In exchange for these flexibilities, each individual POTW has committed to produce certain proportional amounts of superior environment performance as laid out in the FPA and maintain all legal and preventative environmental health and safety standards. Complete project site-specific descriptions can be found on the web at: http://www.epa.gov/projectxl/.

J. What Are the Environmental Benefits Anticipated Through Project XL?

These XL projects are expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by allowing POTWs the ability to identify environmental goals and allocate the necessary resources on a site specific basis. Specifically, these projects are expected to produce additional benefits by (i) reducing pollutant loadings to the environment or some other environmental benefit beyond that currently achieved through the existing pretreatment program (including collecting environmental performance data and data related to environmental impacts in order to measure the environmental benefit), (ii) reducing or optimizing costs related to implementation of the pretreatment program with the savings used to attain environmental benefits elsewhere in the watershed in any media, and (iii) providing EPA with information on how the pretreatment program might be better oriented towards the achievement of measures of environmental performance.

EPA's intent is to allow Local Pilot Pretreatment Programs to be administered by those POTWs that best further those objectives. Each pilot program's method of achieving the environmental benefit should be transferable so that other POTWs may be able to implement the method and also achieve increased environmental benefits.

K. What Is the Project Duration and Completion Date?

Under Project XL, local Pilot Pretreatment Programs may be approved to operate for the term expressed in the FPA. Prior to the end of the FPA approval period (at least 180 days), the POTW may apply for a renewal or extension of the project period in accordance with the terms of the FPA. If a POTW is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Pretreatment Approval Authority (either EPA or the authorized State) could allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program would be met. The revised Local Pilot Pretreatment Program would need to be approved in accordance with the FPA and the procedures in 40 CFR 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority would direct the POTW to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment program. The Pretreatment ApprovalAuthority would need to ensure that the POTW's NPDES permit includes a ''reopener'' clause to implement this procedure.

The results of the pilots, including recommendations in POTW reports, may be used to determine the direction of future Pretreatment Program streamlining and/or reinvention.

L. How Could the Project Be Terminated?

Either the Approval Authority or the POTW may terminate a project earlier than the final project agreement's (FPA) anticipated end date. Parties will follow procedures for termination set out in the FPA. The implementing permits will also reflect the possibility of early termination. When the NPDES permitting agency modifies the POTW's NPDES permit to incorporate the flexibility allowed by today's rule, it must include a ''reopener'' provision that requires the POTW to return to compliance with previously approved pretreatment program requirements at the expiration or termination of the FPA, including an interim compliance period, if needed. Additional details are available in the site-specific FPAs.

III. Rule Description

Today's rule modifies 40 CFR part 403 to allow Pretreatment Approval Authorities (EPA or State) to grant regulatory flexibility to Project XL POTWs with approved FPAs. The regulatory flexibility would allow such POTWs to implementPretreatment Programs that include legal authorities and requirements that are different than the administrative requirements in 40 CFR part 403. The POTW would need to submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The approved modified program would need to be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority would approve or disapprove the pilot program using the procedures in 40 CFR 403.18.

For example, the POTW would work through the Project XL process as described above. The POTW either would or has already developed the necessary FPA with stakeholder participation (local interest groups, State representatives, EPA, any other interested parties). The POTW would use the FPA as the blueprint when developing a revision of the POTW's approved local pretreatment program. The POTW would submit the revised program to its Approval Authority (State or EPA region) requesting a substantial program modification using the procedures outlined in 40 CFR 403.18. The Approval Authority would review the program modification request to determine that it contains the provisions of the blue-print FPA and make a determination to approve or deny the request. The proposal for modification would be publicly noticed following the procedures in 40 CFR 403.11 and 40 CFR 403.18. After the close of the public comment period, the Approval Authority would consider and respond to public comments and revise the POTW's pretreatment program accordingly. Then the POTWs NPDES permit would be modified by adding the modified pretreatment program as an enforceable part of the permit.

IV. Additional Information

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, 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. This rule reduces the regulatory costs to POTWs of complying with the pretreatment requirements and affects only a small number of POTWs. It only affects those POTWs that elect to participate in the voluntary Project XL Program. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective on October 3, 2001.

D. Paperwork Reduction Act

This rule does not impose any new information collection burden. This rule merely changes the National Pretreatment Program regulations to provide flexibility to allow POTWs that have completed the Project XL selection process, including FPA development, to modify their approved local Pretreatment Programs. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The Office of Management and Budget (OMB) has previously approved the information collection requirements for 40 CFR 403.18 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2040–0009 (EPAICR No. 0002.09) and 2040–0170 (EPA ICR No. 1680.02). In addition, OMB has approved the ICR entitled ''Regulatory Reinvention Pilot Projects Under Project XL: Pre-treatment Program,'' and assigned OMB control number 2010–0026 (EPA ICR No. 1755.05).

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. Include the ICR and/or OMB control number in any correspondence.

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 review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 of 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Further, UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. The Project XL Program is a voluntary Federal program. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to UMRA section 203.

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

The 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 rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. 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 final 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 because it provides flexibility to participate in a voluntary program designed to reduce administrative requirements for facilities that have negotiated agreements with, among other parties, their State and local governments. Thus, Executive Order 13132 does not apply to this rule.

H. 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 final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, or 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. This rule provided flexibility to participate in a voluntary program designed to reduce administrative requirements and provide superior environmental performance for facilities that have negotiated agreements with, among other parties, their State and local governments. Thus Executive order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. EPA requested comment on this aspect of the rulemaking, but did not receive any such comments.

J. Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, generally requires that an Agency publish a rule at least 30 days prior to its effective date. However, this requirement does not apply to rules which grant an exemption from existing requirements or rules for which the Agency finds ''good cause'' to make the rule effective within 30 days of publication. Because today's rule essentially provides a variance procedure from existing administrative requirements for certain POTWs, today's rule grants an exemption and is not subject to the requirement to publish 30 days prior to the effective date of the rule. EPA also believes that it is important to make this rule effective as soon as possible so that the affected POTWs and their State and local governments can begin to make the changes to permits and undertake other necessary measures to allow the FPAs to be implemented. As a result, this rule is effective on the date of publication.

K. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 403

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

Dated: September 27, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is amended as follows:

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 403.20 is added to read as follows:

§ 403.20 Pretreatment Program Reinvention Pilot Projects Under Project XL.

The Approval Authority may allow any publicly owned treatment works (POTW) that has a final ''Project XL'' agreement to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in § 403.18. The approved modified program must be incorporated as an enforceable part of the POTW's NPDES permit. 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 Approval Authority determines that the primary objectives of the Local Pilot Pretreatment Program are not being met or the ''Project XL'' agreement expires or is otherwise terminated.

[FR Doc. 01–24713 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF89

Endangered and Threatened Wildlife and Plants; Endangered Status for the Ohlone Tiger Beetle (*Cicindela ohlone*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for the Ohlone tiger beetle (*Cicindela ohlone*). This species is endemic to Santa Cruz County, California, and is threatened by habitat fragmentation and destruction due to urban development, habitat degradation from invasion of nonnative vegetation, and vulnerability to local extirpations from random natural events. This final rule extends the Federal protection and recovery provisions of the Act to this species.

DATES: This final rule is effective October 3, 2001.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, Fish and Wildlife Biologist, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Ohlone tiger beetle (*Cicindela ohlone*) is a member of the Coleopteran family Cicindelidae (tiger beetles), which includes over 2,000 species worldwide and over 100 species in the United States (Pearson and Cassola 1992). Tiger beetles are day-active, predatory insects that prey on small arthropods. Because many tiger beetles often feed on insect species that are injurious to man and crops, they are regarded as beneficial (Pearson and Cassola 1992; Nagano 1982). Adult tiger beetles are medium-sized, elongate beetles that can have a brilliant metallic green, blue, red, and yellow coloration highlighted by stripes and spots. Alternatively, they can be brown, black or dull colored (Knisley and Shultz 1997). Adults are ferocious, swift, and agile predators that seize small prey with powerful sickle-shaped jaws.

Tiger beetle larvae are also predatory. They live in small vertical or slanting burrows from which they lunge at and seize passing invertebrate prey (Essig 1926; Essig 1942; Pearson 1988). The larva grasps the prey with its strong mandibles (mouthparts) and pulls it into the burrow; once inside the burrow, the larva will feed on the captured prey (Essig 1942; Pearson 1988). Tiger beetles share similar larval body forms throughout the world (Pearson and Cassola 1992). The larvae, either white, yellowish, or dusky in coloration, are grub-like and fossorial (subterranean), with a hook-like appendage on the fifth abdominal segment that anchors the larvae inside their burrows.

Tiger beetle larvae undergo three instars (larval development stages). This period can take 1 to 4 years, but a 2-year period is the most common (Pearson 1988). After mating, the tiger beetle female excavates a hole in the soil and oviposits (lays) a single egg (Pearson 1988; Kaulbars and Freitag 1993; Grey Hayes, pers. comm. 1998). Females of many species of *Cicindela* are extremely specific in choice of soil type for oviposition (egg laying) (Pearson 1988). It is not known at this time how many eggs the Ohlone tiger beetle female lays, but other species of *Cicindela* are known to lay between 1 and 126 eggs per female (C. Barry Knisley, Randolph-Macon College, *in litt.* 2000). After the larva emerges from the egg and becomes hardened, it enlarges the chamber that contained the egg into a tunnel (Pearson 1988). Before pupation (transformation process from larva to adult), the third instar larva will plug the burrow entrance and dig a chamber. After pupation in this chamber, the adult tiger beetle will dig out of the soil and emerge. Reproduction may either begin soon after emergence or be delayed (Pearson 1988).

Tiger beetles are a well-studied taxonomic group with a large body of scientific literature; the journal *Cicindela* is devoted exclusively to tiger beetles. Scientists have studied the diversity and ecological specialization of tiger beetles, and amateur collectors have long been attracted by their bright coloration and swift movements. Tiger beetle species occur in many different habitats, including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson 1988; Knisley and Hill 1992). A common habitat component appears to be open sunny areas for hunting and thermoregulation (an adaptive behavior to use sunlight or shade to regulate body temperature) (Knisley *et al.* 1990; Knisley and Hill 1992). Individual species of tiger beetle are generally highly habitat-specific because of oviposition and larval sensitivity to soil moisture, composition, and temperature (Pearson 1988; Pearson and Cassola 1992; Kaulbars and Freitag 1993).

The Ohlone tiger beetle is endemic to Santa Cruz County, California, where it is known only from coastal terraces supporting remnant patches of native grassland habitat. Specimens of this species were first collected northwest of the City of Santa Cruz, California, in 1987, and were first described in 1993 (Freitag *et al.* 1993). Both male and female specimens have been collected.

The adult Ohlone tiger beetle is a relatively small beetle measuring 9.5 to 12.5 millimeters (mm) (0.37 to 0.49 inches (in)) long. The adults have large, prominent eyes and metallic green elytra (leathery forewings) with small light spots (Freitag *et al.* 1993). Their legs are long, slender, and coppery-green. Freitag *et al.* (1993) describe features that distinguish this species from closely related species of *Cicindela purpurea* and other *purpurea* group taxa.

Two principal distinguishing features of the Ohlone tiger beetle are its early seasonal adult activity period and its disjunct distribution. While other tiger beetle species, such as *Cicindela purpurea*, are active during spring, summer, or early fall (Nagano 1982; Freitag *et al.* 1993), the Ohlone tiger beetle is active from late January to early April (Freitag *et al.* 1993). The Ohlone tiger beetle is the southernmost of *purpurea* group species in the Pacific Coast region; its distribution is allopatric (geographically separated) to those of similar species (Freitag *et al.* 1993).

Ohlone tiger beetle larvae are currently undescribed. However, tiger beetle burrows, measuring 4 to 6 mm in diameter (0.16 to 0.23 in), were found in the same habitat areas where adult Ohlone tiger beetles were collected (David Kavanaugh, California Academy of Sciences, pers. comm. 1997; Vince Cheap, *in litt.* 1997). The surface openings of these burrows are circular and flat with no dirt piles or mounds surrounding the circumference (Kim