private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

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

Dated: March 15, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. In appendix A to part 70 the entry for Tennessee is amended by redesignating paragraph (b) as (d), by adding and reserving paragraph (c), and by adding a new paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

(a) [Reserved]

(b) Chattanooga-Hamilton County Air Pollution Control Bureau, Hamilton County, State of Tennessee: submitted on November 22, 1993, and supplemented on January 23, 1995, February 24, 1995, October 13, 1995, and March 14, 1996; full approval effective on April 25, 1996.

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[FR Doc. 96–7166 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 261

[FRL–5446–2]

RIN 2050–AE31

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: EPA is correcting the text of a regulatory exclusion from the regulatory definition of solid waste for recovered oil which is inserted into the petroleum refining process. The current text of the exclusion contains a factual error as to the location in the refining process at which recovered oil can be inserted. The result of this error is to inappropriately restrict legitimate recycling of recovered oil. The corrected rule also in fact reflects the result EPA initially intended, which was to condition the exclusion of recovered oil on that oil being reinserted into the petroleum refining process at a point where that process removes or will remove at least some contaminants.

In the proposed rules Section of today's Federal Register, EPA is proposing this identical correction and soliciting public comment on this correction. If adverse comments are received, EPA will withdraw this direct final rule and address the comments in a subsequent final rule. EPA will not provide additional opportunity for comment on the correction.

DATES: This final action will become effective on May 28, 1996, unless EPA is notified by April 9, 1996, that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this final rule, then timely notice will be published in the Federal Register.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. F–96–SW2F-FFFFF and are located in the EPA RCRA docket, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any one regulatory docket at no cost. Additional copies cost §.15 per page. Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Steven Silverman, Office of General Counsel (2366), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, (202) 260–7716, Office of General Counsel at the above address.

SUPPLEMENTARY INFORMATION:

Outline of Today's Action

I. Authority

These regulations are issued under the authority of Sections 2002 and 3001 et seq. of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912 and 6921 et seq.

II. Background

In this document, EPA is correcting a significant error in the text of a regulatory exclusion relating to recycling of recovered oil—oil that has been recovered from secondary materials such as wastewater generated from normal petroleum exploration, refining, and transport activities—back into the petroleum refining process. Although the genesis of this error requires some detailed explanation (which appears below), the ultimate resolution is straightforward: the Agency intended to exclude from the definition of solid waste, and RCRA Subtitle C authority, recovered oil that is inserted into a petroleum refining process at a point at which the process removes or will remove at least some contaminants. Today's document corrects the erroneous regulatory text to restore this intended result.

The rule at issue is an exclusion for recovered oil found at 40 CFR 261.4(a)(12) (promulgated at 59 FR 38545 (July 28, 1994)). That rule excludes recovered oil from the definition of solid waste, and RCRA Subtitle C authority, provided the recovered oil is reinserted into a petroleum refining process ''prior to crude distillation or catalytic cracking.'' 40 CFR 261.4(a)(12). The purpose of the exclusion is to exclude from RCRA regulation recovered oil which is used as a feedstock in the petroleum refining process. 59 FR at 38538. Conditioning the exclusion on insertion into the refining process at a point where the process removes contaminants from the recovered oil also helps assure the legitimacy and safety of the activity. 59 FR at 38542.

However, the rule's limitation on the point of reinsertion is, in fact, erroneously restrictive. The correct formulation is that reinsertion should be at, or before, any point in the petroleum refining process where at least some

contaminants are removed (i.e. separated from the matrix). Crude distillation and catalytic cracking are examples of such points but are not the exclusive locations where the refining process removes contaminants. See, e.g., 50 FR at 28725 (July 15, 1985).

The regulatory history of this rule, although tangled, indicates that the Agency did not intend to impose the limiting condition (insertion before crude distillation or catalytic cracking only) in fact promulgated, but rather to condition the exclusion on insertion into any part of the refining process that removes contaminants. Since November 1985, EPA has exempted certain fuels resulting from refining of materials derived from oil-containing petroleum industry hazardous wastes. See 50 FR 49169, 49203 (Nov. 29, 1985) (codifying 40 CFR 261.6(a)(viii)(B)). The accompanying preamble explained that these exemptions were based on the waste being inserted into a part of the petroleum refining process ''designed to remove contaminants in the normal operation of the refining process.'' 50 FR at 49169. The preamble further explained that the source of the test was a comparable statutory exemption from hazardous waste fuel labelling requirements for fuels produced from oil-bearing refining wastes that are inserted into the refining process at a point where ''contaminants are removed.'' 50 FR at 49169, referring to RCRA sections 3004(r)(2)(B), and (r)(3). As set out in the legislative history to those provisions, the underlying principle is that ''(r)efineries often take oily wastes and refining transportation wastes and reintroduce these wastes into the refining process where the oil component is incorporated into a product and contaminants are removed. Refineries should not automatically have to place a warning label on these fuels.'' S. Rep. No. 98–284, 98th Cong. 1st Sess. at 40.

The 1994 rule at issue here meant to retain this principle by requiring that the recovered oil be inserted into the refining process ''at or before a point * * * designed to remove toxic metal and organic contaminants * * *.'' 59 FR at 38542 (July 28, 1994). The preamble then incorrectly stated that this means that insertion had to be ''prior to crude distillation or catalytic cracking.'' *Id.* As noted above, this is factually incorrect. The refining process removes contaminants at a number of points after distillation and catalytic cracking, an example being in fractionation units located downstream of catalytic crackers. See letter from Ralph Colleli, Esq. to Ross Elliott, April 5, 1995; letter from Ralph Colleli, Esq. to Mr. Michael Shapiro, June 20, 1995.

The 1994 regulatory text is consequently factually wrong, and inappropriately reduces recycling opportunities for recovered oil without corresponding environmental benefit. For these reasons, EPA is correcting the text of the exclusion by revising the first sentence to state that insertion of recovered oil must be into the refining process ''at or before a point where contaminants are removed.''

There is also one further *caveat* about the regulatory language. EPA did not extend the scope of the exclusion to include situations where recovered oil is inserted into a petroleum coker. 59 FR at 38542. Instead, EPA deferred making a final decision on that issue until a later rulemaking. 59 FR at 38536, 38541, 38542. In fact, EPA has recently proposed that petroleum coking operations be expressly encompassed within the scope of an expanded exclusion. 60 FR 57747, 57796 (Nov. 20, 1995). EPA will take final action on that proposal as part of that separate rulemaking proceeding.

However, because a final decision on the status of petroleum cokers is being made in that other rulemaking, and because petroleum cokers do remove contaminants from incoming materials, at this time EPA is adding to the amended regulatory text the qualification that insertion be into or before a part of the process where contaminants are removed, but not direct insertion to petroleum cokers. In addition, EPA wishes to clarify that neither the July 28, 1994 rule nor this document is intended to change the current regulatory status of petroleum cokers.

III. Clarification of Issues Discussed in the Preamble

In addition to the correction discussed above, EPA wishes to clarify several issues discussed in the preamble to the July 28, 1994 recovered oil rule.

A. Status of Recovered Oil From Refineries With Synthetic Organic Chemical Manufacturing Industry (SOCMI) Units

The recovered oil rule, as corrected by today's document, provides an exclusion from RCRA regulation for oil that is recovered from ''normal'' petroleum refinery operations and inserted prior to points in the petroleum refining process, other than direct insertion into a coker, where contaminant removal occurs (§ 261.4(a)(12)). Under this provision, oil recovered from a petroleum refinery's wastewater treatment system is excluded from RCRA regulation if it is inserted into designated refinery process points. Since promulgation of the recovered oil rule, EPA has learned that a number of petroleum refineries also operate petrochemical processing units on-site and that wastewater from these units is discharged into the refinery's wastewater treatment system. The wastewater from these units represents 2%–12% of the total refinery wastewater volumes and rarely contains recoverable oil according to some petroleum industry sources. In response to questions from the regulated community regarding whether the recovered oil exclusion applies to oil recovered from petroleum refineries with SOCMI units on-site, EPA provides the following clarification.

While EPA did not specifically address this situation in the recovered oil rule, the Agency intended that the exclusion apply to refineries with on-site petrochemical processing units. EPA views these SOCMI units as part of the normal petroleum refining operation. Therefore, the presence of these units at a petroleum refining facility does not preclude the refinery's eligibility for the recovered oil exclusion.

B. Status of Recovered Oil From Co-Located Petroleum Refineries and Petrochemical Facilities

The recovered oil rule also failed to specifically address how the regulations apply in cases where co-located petroleum refineries and petrochemical facilities share the same wastewater treatment system. In these situations, the proximally located facilities are generally owned and operated by the same parent company. However, the facilities may be separately owned and operated in some instances. This situation presents essentially the same issue as that posed by the previous case involving on-site SOCMI units. The difference in this case is that the petrochemical processes are located off-site of the petroleum refining facility. In response to questions from the regulated community regarding whether the recovered oil exclusion applies to oil recovered from wastewater treatment systems that service both petrochemical and petroleum refining operations, EPA provides the following clarification.

The Agency's intent in crafting the recovered oil exclusion was to limit its applicability to oil recovered from petroleum industry sources for reasons explained in the preamble to the recovered oil rule. 51 FR 38539. Accordingly, the exclusion specifically does not apply to oil generated from non-petroleum industry operations. The

exclusion does, however, apply broadly to recovered oil generated from both on- and off-site sources within the petroleum industry (e.g., the exclusion applies to recovered oil from petroleum exploration and production activities). It is EPA's position that, in cases where petrochemical and petroleum refining operations are co-located and share a common wastewater treatment system, the petrochemical operations are appropriately considered part of normal petroleum refining for purposes of the recovered oil exclusion. In these situations, given the common wastewater treatment system and the predominance of petroleum refining wastewater, the integration between the two facilities is such that the petrochemical facility falls within scope of the exclusion. The recovered oil exclusion therefore applies to oil recovered from a wastewater treatment system that a refinery shares with a co-located petrochemical facility. The exclusion does not, however, apply to recovered oil from a petrochemical facility that is sent to a petroleum refinery for recycling via any route other than a shared wastewater treatment system (e.g., via truck, rail, etc). However, in a separate document published in the Federal Register on November 20, 1995 (60 FR 57747), EPA is proposing to expand the exclusion to cover recovered oil that is sent from petrochemical facilities to co-located or commonly owned refineries for recycling by other means of transport.

C. Recycling of Secondary Materials Between Industries

With the above exceptions, the recovered oil exclusion does not extend to recovered oil from non-petroleum industries. As explained in the preamble to the July 28, 1994 rule, ''such an extension is beyond the scope of the recovered oil rule. It is also beyond the scope of judicial decisions construing the definition of solid waste'' which indicated that, ''when one industry sends its residual materials to another industry for recycling, the initial industry *can* be considered to have discarded them.'' (emphasis added) 59 FR 38,539, July 28, 1994. EPA wishes to clarify that this preamble discussion was not intended to modify in any way the pre-existing state of law regarding EPA's regulatory jurisdiction over recycling. More specifically, EPA wishes to make clear that this discussion was not meant to imply that all secondary materials that are sent off-site for recycling must be considered to be discarded materials in all situations. Rather, the intent of this discussion was merely to: (1) explain the court's and EPA's position that recycling of secondary materials (on- or off-site) *may* involve an element of discard and *may* therefore be subject to regulation under RCRA subtitle C; and (2) make clear that the scope of the recovered oil rule is limited to determining the Agency's jurisdiction only over recycling that occurs within the petroleum refining industry.

IV. State Authority

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Today's amendments are not imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). The rule changes, therefore, will become effective immediately only in those States without interim or final authorization, not in authorized States. The effect of the rule changes on authorized State programs is discussed next.

Today's direct final rule eliminates a factual error, an error that inappropriately restricts the location in the refining process at which recovered oil can be inserted for the legitimate recycling of the recovered oil. Therefore, today's rule restores the Agency's intended result to exclude from the definition of solid waste, and RCRA Subtitle C authority, recovered oil that is inserted into a petroleum refining process at a point at which the process removes or will remove at least some contaminants. The effect of today's direct final rule is therefore considered to be less stringent than the existing federal standards. Authorized States are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the existing federal regulations. Therefore, States that are authorized for the July 28, 1994 rule are not required to modify their programs to adopt today's rule. However, EPA strongly urges States to do so. EPA's authorization guidance to States will link the July 28, 1994 rule and today's final amendments.

Given the minor scope of today's amendment, those States that are authorized for the July 28, 1994 rule may submit an abbreviated authorization revision application to the Region for today's amendment. This application should consist of a letter from the State to the appropriate Regional office, certifying that it has adopted provisions equivalent to and no less stringent than today's final rule (see the December 19, 1994, memorandum from Michael Shapiro, Director of the Office of Solid Waste, to the EPA Regional Division Directors that is in the docket for today's rule). The State should also submit a copy of its final rule or other authorizing authority. Revisions to the revised Program Description, Memorandum of Agreement, and Attorney General's statement are not necessary (see 40 CFR 271.21(b)(1)). EPA expects that this simplified process will expedite the review of the authorization submittal for this rule.

V. 60–Day Effective Date

Because the regulatory community does not need 6 months to come into compliance with this rule, EPA finds, pursuant to RCRA section 3010(b)(1), that this rule can be made effective in less than six months.

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this 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 lead to a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely and materially affect 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 entitlement, 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 amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on ''small entities''. If a

rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that this amendment will have negligible impact on any small entity because it expands the terms of an exclusion from regulation. In addition, the underlying rule itself was deregulatory and so did not have significant adverse economic impact on small entities. See 59 FR 38545. Therefore, the Administrator certifies pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities because this amendment reduces the scope of the RCRA subtitle C regulatory program.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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. When a written statement is needed for an EPA rule, 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, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them 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 because it imposes no enforceable duties on any of these governmental entities or the private sector. The rule merely corrects a factual error in the regulatory text of the regulatory definition of solid waste. In any event, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Solid waste, Petroleum, Recycling.

Dated: March 19, 1996.

Carol M. Browner,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912 (a), 6921, 6922 and 6938.

2. Section 261.4 is amended by revising paragraph (a)(12) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12) Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous waste listed in 40 CFR part 261 D (e.g., K048–K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in 40 CFR 279.1.

* * * * *

[FR Doc. 96–7275 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Naval Vessel Components

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement additional statutory restrictions on the acquisition of anchor and mooring chain and totally enclosed lifeboats, when used as naval vessel components.

DATES: Effective date: April 1, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 28, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D300 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131