and remove the condition on the approval of California's opt-out of the CAA fleet program.

On May 13, 1994, the SCAQMD adopted Rule 1504, establishing a parking cash-out program for parking not owned by the employer. On July 8, 1994, Rule 1504 was submitted as a SIP revision to help meet the requirements of section 187(a)(3) of the Act, relating to carbon monoxide (CO) SIP contingency measures. On January 8, 1995, the revision became complete by operation of law.[2]

The rule serves as a contingency measure to be triggered if the South Coast CO SIP's annual estimates of vehicle miles traveled are exceeded or EPA makes a finding, which is required by the CAA, that the South Coast has failed to attain the CO NAAQS by the year 2000.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, Local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being proposed for by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, Local, or tribal governments or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 31, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–9581 Filed 4–11–97; 8:45 am]

BILLING CODE 6560–50–P

[2] Section 110(k)(1)(B) provides that SIP revisions that have not been determined by EPA to be incomplete by 6 months after receipt shall on that date be deemed by operation of law to meet the minimum criteria for completeness. EPA's completeness rule is set forth in 40 CFR Part 51, Appendix V, which establishes the minimum criteria that a plan revision must meet before EPA is required to act on the submission.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[SWH–FRL–5810–8]

RIN 2050–AE23

Comprehensive Guideline for Procurement of Products Containing Recovered Materials; Proposal To Designate Ink Jet Cartridges

AGENCY: Environmental Protection Agency.

ACTION: Notice of Data Availability.

SUMMARY: This notice summarizes information submitted in response to the Environmental Protection Agency's November 7, 1996 proposal to designate ink jet cartridges as a procurement item under section 6002 of the Resource Conservation and Recovery Act. Based on this new information, the Agency believes that there is insufficient evidence to support a designation at this time. As a result, the Agency has tentatively decided it will not include ink jet cartridges as a designated item in the final Comprehensive Procurement Guideline when it is promulgated. This notice summarizes the information available to the Agency and requests additional information from interested parties.

DATES: EPA will accept public comments on the information in this notice until May 14, 1997.

ADDRESSES: To comment on this notice, send an original and two copies of comments to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Reference docket number F–96–CP2P–FFFFF on the comments.

If any information is confidential, it should be identified as such. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Documents related to the proposal to designate ink jet cartridges are available for viewing at the RCRA Information Center (RIC), which is located at: U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Ground Floor, Crystal Gateway One, Arlington, VA 22202. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. Copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT:

General procurement guidelines information: RCRA Hotline at (800) 424–9346, TDD (800) 553–7672 (hearing impaired) or, in the Washington, DC area at (703) 412–9810.

Proposed ink jet cartridge designation: Dana Arnold, (703) 308–7279.

SUPPLEMENTARY INFORMATION: On November 7, 1996, EPA proposed to designate ink jet cartridges as a procurement item under section 6002 of the Resource Conservation and Recovery Act (RCRA). (See 61 FR 57747.) Based on a preliminary evaluation of public comments and additional information submitted in response to the proposal, the Agency has tentatively concluded that the record does not support a designation of ink jet cartridges at this time.

I. Authority

42 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

II. Background

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in meeting their obligations with respect to designated items under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item composed of the highest percentage of recovered materials practicable.

Executive Order 12873 (the Executive Order) establishes the procedure for EPA to follow in implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish its recommended procurement practices for purchasing designated items, including recovered materials content levels, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG annually and to issue RMANs periodically to reflect changing market conditions. The first CPG was published on May 1, 1995 (60 FR 21370). It established eight product categories, including Non-Paper Office Products, and designated items within those categories.

On November 7, 1996 (61 FR 57747), EPA proposed to designate 13 additional items in the CPG (CPG II). The CPG II proposal included ink jet cartridges in the Non-Paper Office Products category. Ink jet cartridges are used in office equipment such as printers, facsimile machines, and plotters. They consist of plastic cases containing ink, a pump, filters, internal circuitry, and print heads (nozzles).

In the background documents for the proposed CPG II and the companion draft RMAN, EPA discussed why it had initially concluded that ink jet cartridges were items that are or may be produced with recovered materials content. EPA explained that spent ink jet cartridges could be refilled or remanufactured. Consequently, in Section G–7 of the companion draft RMAN (61 FR 57760), EPA's tentative recommendations suggested that, in order to procure ink jet cartridges, agencies adopt one or both of the following approaches. An agency could: (1) procure ink jet cartridge refilling services or (2) procure refilled ink jet cartridges. EPA further recommended that procuring agencies establish policies giving priority to refilling their spent ink jet cartridges and, if refilling services are unavailable or impractical, to purchase refilled ink jet cartridges.

III. Issues Raised by Commenters

Commenters raised a number of concerns in response to EPA's proposal to designate ink jet cartridges. These included the impact of the proposed ink jet cartridge designation on the solid waste stream, the performance of refilled ink jet cartridges, and product availability.

Subsequent to the close of the public comment period, EPA met with one of the commenters (a major manufacturer of ink jet equipment and ink jet cartridges) to discuss the proposed ink jet cartridge designation. Minutes of this meeting have been added to RCRA Docket F–96–CP2P–FFFFF to make the information received at the meeting available for public review. In addition, EPA contacted the U.S. General Services Administration's (GSA) Federal Supply Service to discuss GSA's public comments on the proposed ink jet cartridge designation and issues raised by the ink jet equipment manufacturers. A summary of information obtained during these conversations has also been added to RCRA Docket F–96-CP2P-FFFFF.

A. Impact on the Solid Waste Stream

One of the underlying purposes of the procurement guidelines program is to harness Federal purchasing power to develop markets for materials recovered from solid waste. As explained above, once EPA designates an item, RCRA section 6002 requires a procuring agency to purchase a designated item containing the highest percentage of recovered materials practical. This means that EPA's designations can help to create markets for recovered materials by creating markets for products made from those materials. Given this potential, an important element that EPA considers in its designation decision is whether designation of a particular item will significantly reduce discarded materials in the solid waste stream through the promotion of the recovery of materials, including post-consumer materials. Thus, when considering whether to designate an item, EPA examines the likely impact of the designation on the volume of solid waste generated and discarded annually.

In the background document for the proposed CPG II, ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses,'' EPA stated that ink jet cartridges are composed primarily of plastic, and plastics constituted 10 percent of municipal solid waste in 1994. Approximately 80 to 90 million ink jet cartridges are discarded annually. EPA was not able to quantify the amount of ink jet cartridges discarded by Federal agencies, however.

Commenters noted that ink jet cartridges weigh approximately 1.40 ounces, which would equate to 3,400–3,900 tons of plastic discards annually. The plastics comprising the largest fraction of the municipal solid waste stream are polyethylene terephthalate (PET), high density polyethylene (HDPE), low density polyethylene (LDPE), polyvinyl chloride (PVC), polypropylene (PP), and polystyrene (PS). Items designated in the original CPG contain one or more of these plastics, thus helping to create markets for these larger constituents of the plastics waste stream. By contrast, commenters stated that ink jet cartridges contain a specialty plastic and currently cannot be made with recovered materials. Therefore, designating ink jet cartridges would not create end-use markets for plastics recovered from municipal solid waste and would not have a significant impact on the solid waste stream.

In addition, it has been brought to EPA's attention that ink jet cartridge refill kits generate a larger volume of solid waste than discarded ink jet cartridges, including the packaging. The kits include plastic containers for the replacement ink, tools for puncturing the cartridges in order to add the ink, and plastic and paper packaging. According to the information provided to EPA through public comments, refill kits have a three to four times larger

share of the refill market than do vendors that refill and return ink jet cartridges to the user. Thus, the initial result of an ink jet cartridge designation could well be a net increase in solid waste, albeit a small increase when compared to the total amount of solid waste generated annually.

B. Performance

EPA's initial research indicated inconsistent quality among the ink jet cartridge refill kits and between the products of the ink jet cartridge refillers. EPA's research also indicated a lack of quality control standards for refillers and refill kits. Thus, while some refillers are able to produce refilled ink jet cartridges with acceptable performance characteristics, others have not been able to do so consistently. Because there are no testing or other quality control standards for procuring agencies to reference in their solicitations, the quality of refilled ink jet cartridges may be of concern.

Further, EPA's initial research indicated that users of refilled ink jet cartridges had sometimes experienced clogged nozzles and other performance problems. EPA has received additional information in the public comments that indicates performance problems have occurred. According to one commenter, refilled ink jet cartridges can create a number of problems, ranging from diminished ink quality to interference with the proper operation of the ink jet nozzle. Commenters also provided anecdotal information that faulty refilled ink jet cartridges can and have caused damage to the office equipment in which they were used. EPA discussed these performance concerns with GSA and found that, because GSA has offered refilled ink jet cartridges only recently, no record of customer satisfaction has been established. EPA seeks additional information about the performance of refilled ink jet cartridges, in particular the potential for damage to office equipment caused by the use of this item.

EPA also has received conflicting information about whether ink jet cartridges are designed to be refilled. Some original equipment manufacturers stated, in their public comments, that the components in ink jet cartridges are designed to last only for the supply of original ink. In other words, ink jet cartridges are designed to be disposable. However, there is evidence that ink jet cartridges can and are being refilled and can perform adequately, even if they are not performing identically to a new replacement ink jet cartridge.

C. Product Availability

EPA's initial research identified 24 companies that refill ink jet cartridges for customers nationwide. In its comments, a major manufacturer of new replacement ink jet cartridges questioned whether refillers offer national coverage, particularly to rural areas, although this manufacturer did not provide any hard evidence to the contrary. This manufacturer also commented that its products are available immediately, while refilled ink jet cartridges may not be available immediately. Again, the manufacturer did not substantiate this statement.

EPA has never limited its designations only to items that are available immediately in every part of the United States. Because the purpose of the federal buy-recycled program is to develop markets for products containing recovered materials, it has always been understood that these items might not be available to all procuring agencies in all instances. Rather, it is expected that, as procuring agencies seek to purchase products containing recovered materials, these items will become more widely and universally available. For this reason, RCRA section 6002 provides that procuring agencies are not required to buy an EPA-designated item containing recovered materials if that item is not available within a reasonable time. Nevertheless, the availability of refilling services and refilled ink jet cartridges is a consideration for EPA when designating ink jet cartridges. Therefore, EPA seeks additional information about the availability of refilled ink jet cartridges and refilling services.

IV. Conclusion

Usage of ink jet printers, facsimile machines, and plotters is increasing rapidly. The ink jet cartridge supplier industry also is evolving rapidly, as is the technology to refill ink jet cartridges. EPA believes that, consistent with the Agency's waste management hierarchy, which promotes waste prevention and recycling, ink jet cartridges should be designed to be refillable and/or recyclable, rather than disposable. However, these products must serve their intended purpose and perform in an acceptable manner. While the Agency acknowledges that some refilled ink jet cartridges may be of high quality, the questions about the performance of refilled cartridges discussed by commenters raise legitimate concerns that warrant further consideration before the Agency designates ink jet cartridges in the CPG. Moreover, designation of ink jet cartridges would not have a significant impact on the solid waste stream because the specialty plastic used in these cartridges cannot currently be made with recovered materials. There is, in addition, some concern that designation could actually result, in the near term, in a small increase in the generation of solid waste associated with ink jet cartridges. At this time, ink jet cartridge refill kits are generating more waste than discarded cartridges. Based on these factors, EPA has tentatively concluded that it is premature to designate ink jet cartridges at this time. EPA solicits comment on the information discussed in this notice and on the other newly docketed information referenced in this notice.

Dated: April 8, 1997.

David A. Bussard,

Acting Director, Office of Solid Waste.

[FR Doc. 97–9517 Filed 4–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–98; FCC 97–94]

Amendment of Rules and Policies Governing Pole Attachments

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In 1987, the Commission adopted its current pole attachment formula for calculating the maximum just and reasonable rates utilities may charge cable operators for pole attachments. In this *Notice of Proposed Rulemaking,* we seek comment as to whether the current pole attachment formula should be modified or adjusted to eliminate certain anomalies and rate instabilities particular parties assert have occurred. Should altering the formula become necessary, we have tentatively proposed a modification that would improve the formula's accuracy. In addition, we propose changes to the formula to reflect the present accounting system that replaced the former rules in 1988. Finally, we propose a new conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable operators and telecommunications service providers for their use of conduit systems.

DATES: Comments are due on or before May 12, 1997 and Reply Comments are due on or before June 12, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission,