Dated: November 20, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52 —[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

§ 52.120 [Amended]

2. Section 52.120 is amended by removing and reserving paragraphs (c)(83) and (c)(85).

[FR Doc. 97–31278 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–5930–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is removing the final rule appearing at 56 **Federal Register** (FR) 67197 (December 30, 1991) insofar as it excluded hazardous waste treatment residue generated by Reynolds Metals Company (Reynolds), Gum Springs, Arkansas, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This decision to repeal the exclusion is based on an evaluation of waste-specific information provided by Reynolds and obtained by EPA either independently or from the Arkansas Department of Pollution Control and Ecology (ADPC&E) subsequent to the promulgation of the exclusion. After the effective date of this rule, future spent potliner waste generated at Reynolds' Gum Springs, Arkansas, facility will no longer be excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) and must be handled as hazardous waste in accordance with sections 260 through 266, 268 and 273 as well as any applicable permitting standards of section 270. This rule does not remove or affect EPA's reasoning or evaluation as it related to the modified EPA Composite Model for Landfills (EPACML).

EFFECTIVE DATE: December 1, 1997.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Review Room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6775 for appointments. The reference number for this docket is ''F–97–ARDEL–REYNOLDS.'' The docket may also be viewed at the Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general and technical information concerning this notice, contact William Gallagher, Delisting Program (6PD–O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6775.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority for ''Delisting''

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in sections 261.31 and 261.32. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations (CFR); and section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Reynolds was granted a final exclusion for K088 waste treatment residues on December 30, 1991 (*see* 56 FR 67197). In that rule, EPA also addressed the modified EPACML. The EPA believes its statements contained in that rule related to the EPACML remain accurate. Today's action is not intended to repeal or otherwise affect EPA's adoption or use of that model.

After evaluation of new data, EPA proposed, on July 31, 1997, repeal of the final rule issued December 30, 1991 (*see* 62 FR 41005). This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to repeal the Reynolds exclusion.

C. Subsequent Events

Under the RCRA Land Disposal Restrictions (LDR) Program certain hazardous wastes cannot be land disposed until they satisfy treatment standards promulgated by EPA (RCRA sections 3004 (d)–(g)). On April 8, 1996, EPA prohibited land disposal, of and established treatment standards for, spent potliners from aluminum production (K088 hazardous wastes, 61 FR 15566, April 8, 1996). At that time (and still today), Reynolds has the only commercially available treatment facility that is capable of meeting those LDR treatment standards. However, as discussed below in section II., EPA had concerns about concentrations of certain hazardous constituents in the leachate from Reynolds treatment process residue, especially because such treatment residues had been delisted and were being disposed in units which were not subject to RCRA subtitle C standards [62 FR 1994–62 FR 1995 (January 14, 1997)]. The EPA initially extended the national capacity variance until July 8, 1997. At that time, after reexamination, the Agency found that Reynolds was providing treatment and disposal capacity which is protective of human health and the environment (RCRA section 3004(h)(2)), and accordingly found that there is adequate treatment capacity for K088 wastes. [62 FR 37694 (July 14, 1997)]. The national capacity variance was further extended three months to allow generators to make necessary logistic arrangements (Id. at 37694).

The Agencys decision rested upon two principal factors. Reynolds process destroys most of the most hazardous constituent in K088 wastes—cyanide—immobilizes most of the toxic metals, and destroys all polycyclic aromatic hydrocarbons (62 FR 37694, 62 FR 37696). In addition, Reynolds disposal

of treatment residue in units not subject to subtitle C regulation will end, and all future disposal must be in units which must comply with subtitle C standards (Id. at 37697). The immediate mechanism for addressing, the concerns about ''protective'' disposal capacity was the September 3, 1997, issuance of a unilateral administrative order under RCRA section 7003 (UAO), which required Reynolds to comply with RCRA Subtitle C management standards at its treatment facility in Gum Springs, and at its mining site located in Bauxite, Arkansas, where the treatment residue had been used as fill material in reclamation activities.[1] The company agreed to comply with the terms of the UAO in a letter to EPA dated September 5, 1997. At the Gum Springs facility, the UAO and amended UAO require Reynolds to: (1) Manage the kiln residue and the kiln residue leachate as a hazardous waste; (2) conduct 30-day compliance sampling of the kiln residue; (3) discontinue placement of the kiln residue into Cell #1 of the Reynolds on-site monofill, and initiate and complete construction of a clay cap on that cell that meets RCRA requirements; and (4) upgrade Cell #2 of the newly regulated monofill by, *inter alia*, installation of a double composite liner with leachate collection capabilities and to meet all RCRA subtitle C standards applicable to landfills. At the Hurricane Creek facility, the Order requires Reynolds to: (1) Control access to the E–40 mine pit; (2) conduct an environmental impact study; (3) submit a hydrogeological investigation plan; (4) submit a revised ground water monitoring plan; (5) complete one year of ground water monitoring, subject to continued monitoring; and (6) remove existing and discontinue construction of roadways which utilize kiln residue.

II. Repeal of Final Rule Granting Reynolds Delisting Petition

A. Highly Alkaline Nature of Reynolds Treatment Residue

As noted above, subsequent to issuing the final rule granting Reynolds delisting petition, EPA obtained additional information gathered after operations at the Gum Springs facility began. Specifically, EPA received and analyzed data regarding the actual leachate from cell #1 of the monofill at Gum Springs produced from residue generated by Reynolds K088 treatment process as well as data from Reynolds Hurricane Creek mining site. As explained in greater detail in the proposed rule, those data indicate that the monofill leachate contains levels of hazardous constituents significantly higher than the delisting levels [62 FR 41005, 62 FR 41007, (July 31, 1997)]. Those data also show that the leachate is corrosive with a pH in the range of 12.5–13.5 therefore making it a characteristically hazardous waste as defined by section 261.22. In light of those actual field data, EPA has concluded that the Agencys 1991 determination under section 260.22 that no other hazardous constituents or factors that could cause the K088 treatment residue resulting from Reynolds treatment process to be hazardous are present in the waste at levels of regulatory concern need to be revised.

Specifically, EPA now concludes that although significant treatment is occurring (see sections I.C. and II. B. 2.f.), the highly alkaline nature of the treatment residue is a factor which warrants retaining it as a hazardous waste. Mobility of arsenic and cyanide, remaining in the residue following treatment increases in a highly alkaline disposal environment such as that utilized by Reynolds. As a result, these compounds leach from the residue at hazardous levels. In addition, the leachate is a hazardous waste because it exhibits the hazardous waste characteristic of corrosivity. Therefore, based on this new data, the treatment residue should no longer be delisted.

B. Agency Response to Public Comments

General. The EPA received public comments from eight interested parties. The comments were received from two Arkansas private citizens, two Arkansas local government officials, one Arkansas environmental group, the Environmental Defense Fund, counsel from a consortium of aluminum producers in the northwest U.S., and Reynolds. No adverse comments were received regarding repeal of the delisting.

1. Issues Not Directly Related to the Proposed Repeal

Interested parties submitted comments related to the following areas which are not part of today's final action by EPA:

- Waste management and waste disposal issues;
- Permitting issues;
- Hazards to human health and the environment;
- Additional analyses/investigations;
- Land Disposal Restrictions/ effectiveness of Reynolds' treatment process;
- Toxicity Characteristic Leaching Procedure;
- Perceived delays in EPA's decision-making; and
- Enforcement issues/unlawful disposal/Arkansas Department of Pollution Control & Ecology Consent Administrative Order/draft EPA RCRA section 7003 order.

Because these comments address issues that did not directly bear upon the decision to repeal the delisting exclusion, EPA will not respond to them as part of this rulemaking. Any additional observations provided in this document respecting those issues are simply informational and do not form a basis for a final action by EPA. Importantly, no commenter felt that the delisting exclusion should be retained.

a. Waste Management and Waste Disposal Issues. Several comments related to whether Reynolds' management of the leachate and residue was responsible, in light of the nature of the waste, whether the waste should remain in place or be immediately removed from Cell #1 of the landfill at Gum Springs or from the mine pit and a research and development landfill at the Hurricane Creek facility, and what oversight authority EPA will exercise to ensure that the State of Arkansas inspects and oversees the Reynolds operation. These are enforcement and oversight issues and are separate and distinct from today's final rule which merely repeals a previous exclusion. Although comments of this nature did not bear on the substance of today's rulemaking, EPA notes that investigations are being conducted under the UAO which pertain to some of these issues, and it is premature to comment on any potential future enforcement response by the Agency. The State is authorized to administer the RCRA program, and EPA will conduct additional oversight activities as appropriate.

b. Permitting Issues. A second broad group of comments related generally to permitting issues such as ecological and human health assessments, ground water and surface water monitoring, a health and safety plan for Reynolds' operations, landfill operations, incompatibility of the landfill liner and leachate collection system, commingling of waste from Cells #1 and #2, public participation in permitting, and siting issues. Again, these issues are not relevant to the question decided by today's final action whether to repeal a previous exclusion. Indeed, these concerns support EPA's decision to

[1] The Unilateral Administrative Order issued September 3, 1997 was amended on October 31, 1997.

again impose regulatory controls on the spent potliner waste generated by Reynolds. The Agency believes that the permitting issues raised by the commenters are best addressed during the State's permitting process for the Reynolds Gum Springs facility.

c. Hazards to Human Health and Environment. Some commenters alleged that the Reynolds operation might be the cause of two eagle kills in the area and of adverse health effects being alleged by workers at the Hurricane Creek facility. Commenters were also concerned that the area's water supply be protected. The Agency believes that the imposition of hazardous waste management controls through the UAO and this repeal will help ensure that appropriate requirements apply to better protect human health and the environment. While no direct evidence linking the eagle kills to Reynolds' waste was provided by the commenter, the appropriate State and Federal agencies are investigating that concern as well as complaints of the workers.

d. Additional Analysis/Investigations. Other comments related generally to the need for additional analysis or investigation. Commenters requested information on the performance of toxicological assays and investigations of past and present threats to human health and the environment. The evaluation of the threats to human health and the environment and toxicological assays relate to the permitting and enforcement processes and should be raised as part of those processes. Again, the concerns only tend to support todays action: bringing the wastes back into the RCRA regulatory system for hazardous waste management.

e. Toxicity Characteristic Leaching Procedure (TCLP). Several comments generally addressed use of the TCLP to evaluate the residue. Commenters claimed that there was a failure of the testing system and analytical methods used to identify the potential problems with the residue. They also indicated that information regarding the potential failure of the testing program was in the Agencys possession since January 1992, and additionally addressed Reynolds development of replacement tests for the TCLP. Whether the TCLP correctly predicts behavior of the waste in a landfill is not the focus of EPAs decision today to repeal Reynolds delisting. As explained in the proposal, the Agencys decision to repeal is based, in part, on sampling results from actual landfill leachate, not on the results of a TCLP analysis of the residue itself. To the extent comments addressed the validity of the TCLP test method itself, revision or modification of the TCLP is beyond the scope of todays action.

f. Perceived Delays in EPAs Decision-Making. Commenters complained that the Agency did not respond timely in repealing the delisting and questioned why it took the Agency more than fourteen months to propose repeal of the delisting. They also comment that the Agency never sought copies of all the data in Reynolds possession concerning the performance of the treatment technology and generation of hazardous constituents in treated materials disposed at various locations. The Agency believed it appropriate to base its decision upon a reasoned evaluation of all available facts. It concluded that rather than acting precipitously, the Agency should gather enough information to allow an informed decision. To this end, it conducted separate sampling events at the two Reynolds facilities. The Agency then received and reviewed these results and proposed a decision. The EPA believed that it was necessary to accept public comment on the decision and therefore did not use an emergency rulemaking or direct final rule to repeal the delisting as some commenters suggested.

g. Enforcement Issues. Another group of comments raised issues with respect to EPAs enforcement authorities. These types of issues related to a draft of the RCRA 7003 order, the ADPC&E Consent Administrative Order (rescinded September 14, 1997), and allegations that the waste has been illegally disposed. These issues relate to EPAs exercise of its enforcement authority and its enforcement discretion, not to todays decision. However, as a point of information, the Agency is requiring further investigation regarding the disposal of wastes placed at the Hurricane Creek facility. Interim measures have already been implemented to control and monitor environmental concerns at the Hurricane Creek facility. The UAO requires Reynolds to close Cell #1 at the Gum Springs Landfill and the mine pit at Hurricane Creek by installation of an engineered clay cap, which is consistent with Superfund and RCRA presumptive remedies for closure of landfills.

Commenters also suggested that Reynolds may have illegally disposed of hazardous waste for a variety of reasons, for example, claims that the delisting is void by reason of certain perceived failures on Reynolds part. The EPA does not believe that there is a sufficient factual basis to find that the delisting was void because of Reynolds actions or perceived omissions. The decision whether to enforce the terms of the delisting rests within the Agencys discretion.

2. Comments Directly Pertaining to the Repeal of the Delisting

- Technical Corrections;
- Retroactive Application of Repeal;
- Interim Status of the Monofill;
- Public Participation/Notice and Comment;
- Delisting Violations; and
- Delisting vs. LDR issues.

a. Technical Corrections. Reynolds submitted comments which provided a number of clarifications and corrections to the proposed rule. It averred that EPA had inaccurately characterized use of the delisted kiln residue as ''fill material'' in an ''unlined'' mine pit. Further, Reynolds stated that the material was used in mine reclamation activities at the Hurricane Creek facility because the pH of the residue beneficially contributed to neutralization of acidic bauxite mining residues. It claimed that the material was placed in areas of the facility underlain by a substantial clay layer having a very low permeability exceeding EPAs design specifications for hazardous and non-hazardous landfills. The Agency does not adopt the position that the clay layer underlying the mine pit fulfills the EPA design requirements for composite liners for solid waste landfills (*see* section 258.40(b)), nor does it meet the composite liner requirements for hazardous waste landfills (*see* sections 264.301(c)(1), 265.301(a), and 265.19). The mine pit is not equipped with a complete composite liner system which combines an upper liner of a synthetic flexible membrane and a lower layer of soil at least two feet thick as exists in the solid waste landfill at the Gum Springs plant. Neither did Reynolds demonstrate that the method of placement was actually beneficial to neutralization of the acidic bauxite mine residues.

Reynolds further disagrees with EPAs evaluation of the leachate numbers as compared to the health-based numbers. Tables included in the proposed rule seemed to compare health-based limits to delisting levels and actual leachate levels. For clarification, delisting levels are obtained by multiplying health-based levels by a calculated dilution attenuation factor (DAF) (*see* 62 FR 41006 and 62 FR 41007).

Reynolds also complained of the absence of an articulation of EPAs sampling protocol, quality assurance and quality control data used in sampling at the Hurricane Creek and Gum Springs facilities. The EPAs sampling protocol, quality assurance

and quality control information are available and will be placed in the record.

b. Retroactive Application of Repeal. One commenter questioned why the proposed repeal of the delisting only covered future generation of the residue and did not address the waste previously disposed at the Hurricane Creek or the Gum Springs site.

Generally, a rule may only have prospective application. *See Bowen* vs. *Georgetown University Hosp.*, 488 U.S. 204 (1988). Moreover, the residue generated during the effective time period of the delisting was not hazardous waste subject to RCRA subtitle C regulation; therefore, that residue could legally be disposed of as a solid waste. Because EPA is merely repealing the Reynolds delisting exclusion as of the effective date of todays rule, EPAs action will not, in itself, bring the residue generated during the operation of the delisting exclusion back within the RCRA subtitle C regulatory system. However, if Reynolds should actively manage (*i.e.*, treat, store, or dispose) the waste disposed of during the operation of the delisting subsequent to the effective date of this repeal, it would potentially have to manage it as a RCRA subtitle C hazardous waste. *See* 55 FR 8762–63 (National Contingency Plan preamble); and, *Chemical Waste Management, Inc.* vs. *EPA*, 869 F.2d 1526 (D.C. Cir. 1989).

c. Interim Status of Reynolds Landfill Cell #2. Several commenters expressed concern regarding Reynolds ability to obtain interim status as part of the delisting repeal. There was also concern that the Agency was granting Reynolds a *de facto* temporary permit to operate the new landfill cell. Commenters were concerned that a permitting decision was being made without the requisite public participation or public review and comment. Although this issue is not being decided in todays decision to repeal the delisting, it was addressed in the proposal, and thus the Agency feels compelled to offer an explanation.

First, interim status is not granted. It occurs by operation of law without resort to an administrative approval process. *See New Mexico* vs. *Watkins*, 969 F.2d 1122, 1130 (D.C. Cir. 1992). There is no statutory or regulatory provision for public comment and review of a facilitys claim of interim status. Moreover, the State of Arkansas, not EPA, has the authority to determine that the Reynolds facility does not qualify for interim status. Second, Reynolds already has interim status for portions of its facility and the original UAO may constitute a ''new requirement'' resulting in an expansion of that status, section 270.72(a)(6), and (Arkansas Pollution Control and Ecology Commission Regulation No. 23, section 270.72(a)(6)). Third, there are other provisions in the applicable Federal and State laws indicating that Cell #2 may qualify for interim status. This final rule to repeal the delisting exclusion, however, does not constitute a finding that Reynolds has met interim status, permitting or land disposal restriction requirements.

d. Notice and Comment. Four commenters requested that a public hearing be held to discuss issues relating to the Reynolds Metals Company. A number of issues tangential to repeal of the delisting were raised to support these requests. One commenter stated that there was an attempt by the Agency to bypass all of the legally mandated public notice, review, and comment protections by giving Reynolds a back door to Subtitle C interim status. This comment is addressed in the prior subsection. None of the commenters contested the decision to repeal the delisting but instead sought to raise additional issues. The Agency does not believe that it is appropriate to delay the pending repeal decision in order to discuss these issues that go beyond today's final action—the repeal of the delisting—in the context of a public hearing. It is important to note that a public hearing is not mandated by either RCRA or its implementing regulations as relates to today's decision. In providing the public the opportunity to comment on this action, EPA elected to adopt the procedures provided by section 260.20(d) for making a hearing request. That provision, as well as the Administrative Procedures Act, 5 U.S.C. 553 (which governs the Agency's general rulemaking process), provides that it is within the Agency's discretion to determine when a hearing is necessary. The EPA believes that a public hearing on the repeal of the delisting is not necessary and that comments germane to this action from interested parties are being adequately addressed through the notice and comment process.

e. Delisting Violations. Commenters assert that Reynolds has violated the terms of the original exclusion because it did not report information that was ''true, accurate, or complete'' as required by the certification requirements of Reynolds delisting exclusion. They also assert that Reynolds did not report information in its possession which indicated that landfill leachate contained elevated levels of arsenic, cyanide, fluoride, and pH. On this basis, the commenters contend that the delisting is void and has been void for some time prior to today's action. Any decision to take action with regard to an alleged violation is within EPA's enforcement discretion. The EPA does not currently believe that there is a sufficient factual basis to support a finding that violations have occurred that would void the delisting exclusion, *ab initio.* The exclusion explicitly outlines the information Reynolds was required to submit as part of the delisting. Historically, the Agency has not required submission of information about leachate from landfills where a delisted waste has been disposed, nor did it require Reynolds to report this information. Reynolds did report the monofill leachate data to the appropriate State solid waste offices. While it is unfortunate that this information was not brought to EPA's attention immediately, the delay in getting the data to EPA does not necessarily translate into a violation of the certification requirement contained in the Reynolds delisting. Furthermore, the delisting regulations as well as the exclusion provide that the determination whether the certification was false, inaccurate or incomplete lies in the sole discretion of the EPA. Based on current information, EPA does not believe a violation of the certification requirements occurred.

One commenter also stated that the proposed repeal does not include an evaluation of whether Reynolds has violated any solid waste regulations. Regulation of solid waste primarily belongs to the States; therefore, violation of the State's solid waste regulations should be addressed by the State. Inasmuch as this action relates to the limited determination that the Reynolds delisting exclusion should be repealed, further response is unnecessary.

f. Delisting vs. *LDR Determinations.* A commenter asked how EPA harmonizes the findings in the July 14 National Capacity Variance Final Rule, 62 FR 37694 (July 14, 1997) with those in the proposed repeal, particularly with respect to total cyanide, amenable cyanide, and mobilization of cyanide in the alkaline environment of the Reynolds monofill. The commenter states the substantial increases in leachable cyanide or cyanide amenable to being mobilized in the environment, and as discussed in the proposed repeal of Reynolds delisting, seem to contradict the conclusions reached in the July 14 Rule.

There is no contradiction. Land disposal treatment standards require ''substantial treatment''; they do not mandate that a nonhazardous residue

result from treatment (*see* RCRA section 3004(m)(2), 42 U.S.C. 6924(m)(2)). Few residues from treated listed waste have been delisted even after being treated to satisfy LDR requirements (*see* 62 FR 37697). The fact that residue resulting from treatment using Reynolds' process remains hazardous does not mean that it has not been substantially treated. As shown in the July document, 90 percent of the cyanide is removed in the process, PAHs (polycyclic aromatic hydrocarbons) are completely destroyed and eleven metals are immobilized. Further, as the residue must be disposed of consistent with regulations applicable to hazardous wastes, land disposal of the residue will be protective of human health and the environment. As a result of today's rule, Reynolds' treatment residue will once again be subject to hazardous waste controls, notwithstanding the fact that it has been substantially treated.

C. Final Agency Decision

For reasons stated in both the proposal and this notice, EPA believes that exclusion of Reynolds' residue from the treatment of K088 spent potliner from the list of hazardous wastes contained in section 261.32 should be repealed. The EPA, therefore, is repealing the final rule published at 56 FR 67197 (December 30, 1991) granting Reynolds' petition for an exclusion from K088 hazardous waste listing contained in sections 261.31 and 261.32 for certain solid waste generated at Reynolds Metals Company, Gum Springs, Arkansas. As a result of today's rule, Reynolds must manage the treatment residue as a hazardous waste.

III. Effective Date

This rule will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. Although, in the proposed rule, EPA proposed making the final rule effective 60 days after publication in the **Federal Register** to allow Reynolds the opportunity to make arrangements with a hazardous waste disposal facility or claim interim status for its facility, the EPA has good cause to believe that no additional time is necessary for Reynolds to come into compliance with today's rule. In response to the UAO issued on September 8, 1997, Reynolds submitted a revised part A application to ADPC&E dated September 2, 1997, claiming the inclusion of the spent potliner monofill under their interim status for the Gum Springs facility and indicating their agreement to manage the material as a hazardous waste. The UAO is protective and provides that the waste will be disposed of safely, consistent with all hazardous waste requirements. Further, although other issues relating to Reynolds' treatment process may affect a broader audience, this rule affects only Reynolds. Reynolds commented on the proposal and, like other commenters, did not object to the repeal. The EPA finds that the good cause requirement contained in 5 U.S.C. 553 has been met, allowing this rule to be effective immediately upon its publication.

IV. Regulatory Impact Analysis Under Executive Order (E.O.) 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the E.O., which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. 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 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 E.O.

The EPA has determined that today's final rule is not a significant rule under E.O. 12866 because it is a site-specific rule that directly affects only the waste treatment residue from the Reynolds' Gum Springs, Arkansas, facility.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

Today's rule will directly affect only the Reynolds Company therefore, no small entities will be adversely affected. The EPA certifies, pursuant to the provisions at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 350l *et seq.*, authorizes the Director of the OMB to review certain information collection requests by Federal agencies. The EPA has determined that this rule will not impose any new recordkeeping or reporting requirements that would require OMB approval under the provisions of the Paperwork Reduction Act of 1980.

VII. Unfunded Mandate 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, Tribal, and local 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. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or Tribal governments or the private sector.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Because today's proposed rule directly affects only the Reynolds Gum Springs, Arkansas, facility, EPA finds that the rule does not impose any enforceable duty upon State, local, and Tribal governments. Thus, today's rule is not subject to the requirements of sections 203 and 205 of the UMRA.

List of Subjects in 40 CFR Part 261

Environmental protections, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 2002(a), 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 18, 1997.

Robert E. Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, title 40, chapter I 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.

Appendix IX to Part 261 Table 2—[Amended]

2. Appendix IX to part 261, Table 2—Wastes is amended by removing the entry ''Reynolds Metals Company, Gum Springs, Arkansas'' and its related text.

* * * * *

[FR Doc. 97–31404 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 97–23]

Simplification of Service Contract Filing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules to discontinue the requirement that service contracts be filed in double envelopes. This should reduce duplication and Commission and carrier costs, as well as facilitate the submission of service contract filings at the Commission.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION:

I. Background

The rules of the Federal Maritime Commission (''Commission''), at 46 CFR 514.7(g)(1)(i) and (ii), require service contracts to be filed in double envelopes. This requirement originated with the Commission's initial service contract rules, when all filings were in paper form and was intended to facilitate the separation of service contracts from their associated essential terms filings. Service contract essential terms are now filed electronically in the Commission's Automated Tariff Filing and Information system (''ATFI''). As a consequence, the double-envelope procedure has become superfluous.

The Commission received 38,747 service contract filings during fiscal year 1997. Each filing is now required to be ''filed in single copy contained in a double envelope.'' This proposal will thus reduce by half the number of envelopes that must be filed with and handled by the Commission's staff. This will result in cost savings and processing efficiencies for the industry and Commission.

Because the removal of this obsolete requirement eliminates, rather than creates, a regulatory requirement, this revision is being promulgated as a final rule effective upon publication in the **Federal Register**.

This final rule does not impose any additional reporting or recordkeeping requirements from those which were previously approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, as amended. (OMB Control No. 3072–0055, expires May 31, 1998.)

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The subject final rule is not a major rule under the Small Business Regulatory Flexibility Act (5 U.S.C. 804(2)) because it will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

List of Subjects in 46 CFR Part 514

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Freight forwarders, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1702, 1707 and 1716), the Federal Maritime Commission amends Part 514 of Title 46 of the Code of Federal Regulations as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.7 is amended by revising paragraph (g)(1) to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(g) * * *

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in an envelope, which contains no other material, addressed to: ''Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.'' The envelope shall state ''This Envelope Contains a Confidential Service Contract.'' If multiple service contracts are filed in an envelope, the pages of each individual contract should be fastened together. The top of each page of a filed service contract shall be stamped ''Confidential.''

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