material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300655] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1998.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1197 is added to read as follows:

§ 180.1197 Hydrogen peroxide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide up to 120 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

[FR Doc. 98–12037 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[FRL–5969–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Today's direct final rule eliminates errors and clarifies ambiguities in the used oil management standards. Specifically, this rule clarifies when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the used oil management standards and when it is not, that the requirements applicable to releases of used oil apply in States that

are not authorized for the RCRA base program, that mixtures of conditionally exempt small quantity generator (CESQG) wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Today's rule also amends three incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations.

The U.S. Environmental Protection Agency (EPA) is issuing this regulation as a direct final rule. In the Proposed Rules section of today's **Federal Register**, EPA is proposing identical amendments and soliciting public comment on them. For more information on the direct final rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: This direct final rule will become effective on July 6, 1998 unless EPA is notified by May 20, 1998 that any person intends to submit relevant adverse comment and such comment is submitted by June 5, 1998. If the Agency receives such comment, it will publish timely notification in the **Federal Register** withdrawing the amendment(s) that was the subject of adverse comment.

ADDRESSES:

Intent To Submit Comments

Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Alex Schmandt by mail at Office of General Counsel (2366), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (202) 260–1708, by fax at (202) 260–0584, or by Internet e-mail at schmandt.alex@epamail.epa.gov.

Submitting Comments

Commenters must send an original and two copies of their comments referencing docket number F–98–CUOP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–CUOP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Viewing Docket Materials

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–CUOP–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline. For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

Rulemaking Details. For more detailed information on specific aspects of this rulemaking, contact Tom Rinehart by mail at Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by phone at (703) 308–4309, or by Internet e-mail at rinehart.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Direct Final Rulemaking Process

EPA is issuing this regulation as a direct final rule. In the Proposed Rules section of today's **Federal Register**, EPA is proposing identical amendments and soliciting public comment on them. If relevant adverse comment is received on one or more of the amendments in the rulemaking, EPA will publish timely notification in the **Federal Register** withdrawing the amendment(s) that is the subject of adverse comment. Any amendments in today's rulemaking that do not receive relevant adverse comment will become effective on the date set out above, notwithstanding any adverse comment on other portions of today's rulemaking. A relevant comment will be considered to be any comment substantively criticizing an amendment. The accompanying notice of proposed rulemaking may serve as the basis of a subsequent final rule if an amendment that is the subject of adverse comment is withdrawn as described above. For instructions on notifying EPA of your intent to comment and for instructions on how to submit comments, please see the **ADDRESSES** section above.

Internet Availability

This rule and the following supporting materials are available on the Internet:

Docket Item: Petition for Review.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Petitioners' Preliminary and Non-binding Statement of Issues to be Raised on Appeal.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Letter describing Edison Electric Institute's outstanding issues and proposals for resolving these issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter describing Edison Electric Institute's issues including a request that EPA issue a technical correction to 40 CFR 279.10(i).
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter requesting that EPA resolve outstanding issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Settlement Agreement.
From: Edison Electric Institute, et al, U.S. Environmental Protection Agency, and U.S. Department of Justice.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Memorandum that describes an abbreviated state authorization revision application procedure for state rule changes in response to minor federal rule changes or corrections.
From: Michael Shapiro, Director, Office of Solid Waste.
To: Regional Waste Management Division Directors.

Follow these instructions to access this information electronically:

WWW URL: http://www.epa.gov/epaoswer/hazwaste/usedoil/index.htm.

FTP: ftp.epa.gov.

Login: anonymous.

Password: your Internet e-mail address.

Path: /pub/epaoswer.

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Outline of Today's Document

I. Authority
II. Background and Summary of Rule
III. Regulatory Amendments
A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil
B. Response to Releases of Used Oil
C. Mixtures of CESQG Wastes and Used Oil
D. Reference to the Used Oil Fuel Specification
E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil
IV. State Authority
V. Regulatory Requirements
A. Executive Order No. 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Submission to Congress and the General Accounting Office
VI. Effective Date

I. Authority

These regulations are issued under the authority of sections 1004, 1006, 2002(a), 3001 through 3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background and Summary of Rule

Today's direct final rule provides technical corrections and clarifies ambiguities to existing regulatory language concerning used oil at 40 CFR part 279 and 40 CFR part 261. The clarification of the applicability of the used oil management standards to PCB contaminated used oil is undertaken as part of a settlement agreement in response to a lawsuit challenging EPA's final rule promulgated on May 3, 1993, (58 FR 26420). *Edison Electric Institute* v. *U.S. EPA* (D.C. Circuit No. 93–1474). The May 1993 rule corrected technical errors and provided clarifying amendments to the used oil management standards promulgated on September 10, 1992 (57 FR 41566). In addition, the Agency found several errors and ambiguities during review of the existing regulatory language concerning used oil. Today's rule eliminates these mistakes and clarifies ambiguities in the used oil management standards.

These clarifications and corrections are presented in four separate sections, through which the Agency is (1) clarifying that used oil containing 50 ppm or greater PCBs is not subject to regulation under the used oil management standards at 40 CFR Part 279; (2) clarifying that the response requirements at 40 CFR part 279 for releases of used oil apply in states without RCRA base program authorization; (3) clarifying that mixtures of CESQG waste and used oil are subject to the used oil management standards regardless of how that mixture is to be recycled; (4) amending the references to the used oil management standards in 40 CFR Part 261 to make them consistent with the standards at 40 CFR Part 279; and (5) clarifying that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

III. Regulatory Amendments

A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil

Today's rule amends 40 CFR 279.10(i) to clarify the applicability of the used oil management standards of 40 CFR part 279 to used oil containing PCBs. The revised language reflects EPA's intent that used oil that contains less than 50 ppm of PCBs is subject to regulation under the used oil management standards. Used oil that contains 50 ppm or greater of PCBs is not subject to regulation under the used oil management standards, because the TSCA regulations at 40 CFR part 761 provide comprehensive management of such used oil.

Table 1 shows the applicability of the RCRA and TSCA regulations as they pertain to used oil containing PCBs that is to be burned for energy recovery. Used oil that contains PCBs in the range of 2 ppm and greater and less than 50 ppm that is burned for energy recovery is regulated by both the TSCA regulations at 40 CFR 761.20(e) and the used oil management standards at 40 CFR part 279. Please note, under the TSCA regulations at 40 CFR 761.20(e)(2), used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information. Used oil that is to be burned for energy recovery and has been shown to contain less than 2 ppm PCBs is not regulated under TSCA and is solely regulated under RCRA.

TABLE 1.—REGULATION OF USED OIL CONTAINING PCBS THAT IS TO BE BURNED FOR ENERGY RECOVERY UNDER 40 CFR PART 279 OF RCRA AND 40 CFR PART 761 OF TSCA

Range of PCB contamination levels in used oil (ppm)	Does RCRA regulate this used oil if it is to be burned for energy recovery?	Does TSCA regulate this used oil if it is to be burned for energy recovery?
Demonstrated to contain less than 2	Yes	No.*
2 to less than 50	Yes	Yes.
50 and greater	No	Yes.

*Used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information.

Used oil containing less than 50 ppm PCBs that is recycled other than being burned for energy recovery is not generally subject to the TSCA requirements. See 40 CFR 761.3 (definition of excluded PCB products); 761.20(a)(1); and 761.20(c). However, 40 CFR 761.20(d) prohibits the use of used oil that contains any detectable concentration of PCBs as a sealant, coating, or dust control agent. This prohibition specifically includes road oiling and general dust control. Use of used oil as a dust suppressant is prohibited under RCRA except in a state that has received authorization from EPA to allow use of used oil as a dust suppressant. Currently no states have

received such authorization. In the event that a state were authorized to use used oil as a dust suppressant pursuant to 40 CFR 279.82, the prohibition in 40 CFR 761.20(d) would still apply.

Used oil that contains PCBs may not be diluted to obtain PCB concentrations less than 50 ppm. See 40 CFR 761.1(b). PCB-containing used oils that have been diluted so that their concentrations are less than 50 ppm are still subject to regulation under TSCA as used oil that contains PCB concentrations of 50 ppm or greater. These diluted used oils are subject to comprehensive management under TSCA and, therefore, are not regulated under the RCRA used oil management standards.

RCRA's used oil management standards have historically applied to used oil containing less than 50 ppm PCBs and not to used oil containing concentrations of 50 ppm or greater. Prior to the promulgation of Part 279 in September 1992, the used oil management standards applied to used oil that contained less than 50 ppm PCBs pursuant to 40 CFR Part 266, subpart E. The preamble to the September 1992 rule that recodified the provisions from the old Part 266 clearly indicates EPA's intent not to regulate PCB-contaminated used oil at levels of 50 ppm and greater under the RCRA used oil management standards (see 57 FR 41566, 41569, 41583; September 10, 1992), but the text of the rule did not reference the 50 ppm standard. Instead, the regulatory text at 40 CFR 279.10(i) purported to exclude from the used oil management standards those PCB-contaminated used oils already ''regulated under'' the TSCA PCB regulations at 40 CFR Part 761, which as explained above is a potentially broader universe of material. Because the September 10, 1992 RCRA rule excluded PCB-contaminated used oil already ''regulated under'' the TSCA regulations, it could have been interpreted as excluding used oil containing PCBs at less than 50 ppm from the RCRA used oil management standards.

The May 3, 1993 RCRA rule (58 FR 26420) sought to clarify that the Part 279 standards apply to used oils containing less than 50 ppm PCBs, but did so in a manner that inadvertently created the impression that the used oil management standards also applied to PCB-contaminated used oils at levels of 50 ppm and greater. Today's rule clarifies the scope of the RCRA used oil management standards as EPA has consistently interpreted them.

B. Response to Releases of Used Oil

Today's rule amends 40 CFR 279.22(d), 279.45(h), 279.54(g) and 279.64(g) to clarify that the response requirements for releases of used oil apply in states that are not authorized for the RCRA base program pursuant to RCRA Section 3006, 42 U.S.C. 6926, and, hence, that are not authorized for the used oil management standards. (Base program authorization refers to the RCRA program initially made available for final authorization, reflecting Federal regulations as of July 26, 1982.) At this time, Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, the Northern Mariana Islands and American Samoa do not have an authorized RCRA base program.

The text and the 1992 preamble discussion of the four provisions enumerated above appear to limit the cleanup requirements for a release of used oil to those states and territories that have an authorized used oil management program. Specifically, §§ 279.22(d), 279.45(h), 279.54(g) and 279.64(g) provide that the cleanup requirements apply to releases of used oil that ''occurred after the effective date of the *authorized used oil program for the State* in which the release is located'' (emphasis added). Furthermore, the preamble discussion of these provisions state that ''[T]his requirement does not apply to past releases of used oil that occurred prior to the effective date of the used oil program within an *authorized state* in which the facility is located.'' 57 FR 41566 at 41586, 41592, 41596, 41600, September 10, 1992 (emphasis added).

Notwithstanding any ambiguity in the regulatory text, EPA's intent in limiting the cleanup requirements—to releases of used oil that occurred after the effective date of the *authorized used oil program for the State* in which the release is located—was to provide a temporal limitation on when the response to release requirements were to take effect. The federal used oil management standards incorporated into Part 279 created for the most part a new regulatory scheme for the management of used oil. (If these standards were to include cleanup requirements for spills of used oil it was important to clarify that such cleanup requirements would only apply to spills that occurred after the new requirements were in effect.) The language in §§ 279.22(d), 279.45(h), 279.54(g) and 279.64(g) provided a temporal limitation by imposing the cleanup requirements on those releases that occur ''*after the effective date* of the authorized used oil program for the State in which the release is located.'' The 1992 preamble discussion of the response to releases requirements makes this point explicitly in stating that ''[T]his requirement does not apply to *past releases* of used oil that *occurred prior to the effective date* of the used oil program within an authorized state in which the facility is located.'' 57 FR 41566 at 41586, 41592, 41596, 41600, September 10, 1992. The language, therefore, clarified that the regulation applied prospectively only and that other authorities would be used for pre-existing releases.

Today's rule clarifies that the cleanup requirements apply to releases of used oil that occurred after the effective date of the *recycled used oil management program in effect in the State* in which the facility is located. In states that do not have RCRA authorization, the recycled used oil management program in effect is the federal program of used oil management standards at 40 CFR Part 279, which became effective in these states on March 8, 1993. See 58 FR 26420, May 3, 1993. In authorized RCRA states, only states that are authorized for the used oil management standards have a recycled used oil management program in effect; these programs take effect on the effective date of the final rule that authorizes the state for the used oil management standards.

C. Mixtures of CESQG Wastes and Used Oil

Today's rule harmonizes the applicability of 40 CFR Part 261 and Part 279 to mixtures of conditionally exempt small quantity generators (CESQG) wastes and used oil that are to be recycled. Although CESQG wastes are not regulated as hazardous wastes, mixtures of CESQG wastes and used oil that are to be recycled are regulated as used oil under the used oil management standards. Notwithstanding EPA's regulatory intent, the CESQG provision, 40 CFR 261.5(j), that references the applicability of the used oil management standards to mixtures of CESQG wastes and used oil that are to be recycled, appears to limit the applicability of the used oil management standards to mixtures that are to be recycled *by burning for energy recovery.* Section 261.5(j), therefore, incorrectly suggests that mixtures of CESQG wastes and used oil that are to be recycled in a manner other than by burning for energy recovery, such as by re-refining, would not be subject to the used oil management standards. Indeed, because CESQG wastes are not regulated as hazardous wastes, § 261.5(j) would suggest that such mixtures that are re-refined would not be subject to

regulation under RCRA Subtitle C or the used oil management standards.

The used oil management standards, however, apply to used oil to be recycled irrespective of what form of recycling is to be employed. By its terms, the presumption in 40 CFR 279.10(a) that used oil is to be recycled (such that used oil is presumptively subject to the used oil management standards, unless it is disposed or sent for disposal), encompasses any type of recycling. The recycling presumption does not, for instance, condition the applicability of the used oil management standards on whether used oil is recycled by burning for energy recovery or by re-refining. To the extent that Part 279 applies to used oil that is to be recycled without regard to how the used oil is to be recycled, Part 279 applies equally to mixtures of used oil and CESQG wastes that are to be recycled irrespective of how that mixture is to be recycled.

The regulatory provisions that address mixtures of CESQG wastes and used oil to be recycled, § 261.5(j) and § 279.10(b)(3), are both intended to clarify that mixtures of CESQG wastes and used oil are subject to the used oil management standards, notwithstanding the conditional exemption of small quantity generator wastes from regulation as a hazardous waste. The apparent limitation contained in § 261.5(j), which would limit the applicability of the used oil management standards to mixtures to be burned for energy recovery, is an artifact of the pre-1992 used oil regulations at 40 CFR Part 266, which only regulated the burning of used oil. When the expanded used oil management standards were promulgated on September 10, 1992, the Agency inadvertently failed to amend § 261.5(j) to reflect the broader scope of the new Part 279. Indeed, the corresponding provision in Part 279 that addresses mixtures of CESQG wastes and used oil to be recycled, § 279.10(b)(3), does not contain the apparent limitation found in § 261.5(j) that would limit the applicability of the used oil management standards to mixtures to be burned for energy recovery. Today's rule amends § 261.5(j) as it should have been amended in 1992 to reflect the greater scope of Part 279 and to eliminate any potential ambiguity over the applicability of the used oil management standards to mixtures of CESQG wastes and used oil to be recycled.

D. References to the Used Oil Fuel Specification

Today's rule amends 40 CFR 261.6(a)(3)(iv)(A)–(C) to reflect the recodification of the used oil requirements at 40 CFR Part 279. The three provisions address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations. All three provisions incorrectly reference the pre-1992 used oil fuel specification provision, § 266.40(e), which was recodified in 1992 at § 279.11. These provisions should have been amended in 1992.

E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil

Today's rule amends 40 CFR 279.74(b) to clarify that the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification (on-specification used oil) must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The preamble to the November 29, 1985 rule (50 FR 49164 at 49189) clearly describes the agency's intent to only track on-specification used oil that is to be burned for energy recovery one step beyond the initial marketer. When these recordkeeping requirements were recodified at 40 CFR 279.74(b) (57 FR 41566, September 10, 1992), the regulations required that a marketer must keep a record of each shipment of used oil to an on-specification used oil burner. However, the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification might choose not to market the used oil directly to an on-specification used oil burner (i.e. a non-industrial oil burner). Instead, the on-specification used oil might be marketed to a fuel oil distributor for subsequent sale as fuel oil. In this situation, § 279.74(b) could be interpreted to require the initial marketer of the on-specification used oil to keep a record of all subsequent shipments of that used oil until the on-specification used oil reaches a used oil burner. Today's rule clarifies that the initial marketer of on-specification used oil must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The initial marketer need not keep a record of any subsequent transfers of this used oil. For example, the initial marketer would need to keep a record of a shipment of on-specification used oil to a fuel oil distributor, but the initial marketer would not need to keep records of shipments of this used oil from the fuel oil distributor to fuel oil burners or other fuel oil distributors.

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). Therefore, these corrections and clarifications will become effective immediately only in those States without interim or final authorization, not in authorized States.

Today's rule corrects and clarifies the scope of certain regulatory requirements and is, therefore, considered to be no more 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 used oil management standards are not required to modify their programs to adopt today's rule. However, EPA strongly urges States to do so.

Given the minor scope of today's amendments, those States that are authorized for the used oil management standards may submit an abbreviated authorization revision application to the Region for today's amendments. 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 because today's rule merely corrects and clarifies the scope of certain regulatory requirements (§ 271.21(b)(1)). EPA expects that this simplified process will expedite the review of the authorization submittal for this rule.

V. 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.

OMB has reviewed this rule and has determined it to be ''not significant'' under the terms of the Executive Order.

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 today's rule will not impact any small entity because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's intended result. Therefore, I certify 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.

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 any 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 does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's intended result. 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.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Effective Date

Because the regulated 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.

List of Subjects

40 CFR Part 261

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

40 CFR Part 279

Conditionally exempt small quantity generator (CESQG), Environmental protection, Hazardous waste, Polychlorinated biphenyls (PCBs), Solid waste, Recycling, Response to releases, Used oil, Used oil specification.

Dated: April 20, 1998.

Carol 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), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 261.5 [Amended]

2. Section 261.5(j) is amended by removing both phrases, ''if it is destined to be burned for energy recovery''.

§ 261.6 [Amended]

3. In § 261.6 paragraphs (a)(3)(iv)(A)–(C) are amended by revising the reference ''266.40(e)'' to read ''279.11''.

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

4. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

5. Section 279.10 is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

* * * * *

(i) *Used oil containing PCBs.* Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this part. Used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this part, but is subject to regulation under 40 CFR part 761.

6. Section 279.22 is amended by revising paragraph (d) to read as follows:

§ 279.22 Used oil storage.

* * * * *

(d) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

7. Section 279.45 is amended by revising paragraph (h) to read as follows:

§ 279.45 Used oil storage at transfer facilities.

* * * * *

(h) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

8. Section 279.54 is amended by revising paragraph (g) to read as follows:

§ 279.54 Used oil management.

* * * * *

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, an owner/operator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

* * * * *

9. Section 279.64 is amended by revising paragraph (g) to read as follows:

§ 279.64 Used oil storage.

* * * * *

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a burner must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

10. Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

* * * * *

(b) *On-specification used oil delivery.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

* * * * *

[FR Doc. 98–11376 Filed 5–5–98; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC67

Disaster Assistance; Public Assistance Program Appeals; Hazard Mitigation Grant Program Appeals

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction of final rule.

SUMMARY: This document corrects the final rule published on Wednesday, April 8, 1998 (63 FR 17108). The rule pertains to review and disposition of appeals related to Public Assistance grants and the Hazard Mitigation Grant Program.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104, about HMGP appeals; or Melissa M. Howard, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3053, facsimile (202) 646–3304, about Public Assistance appeals.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency published a final rule on April 8, 1998 that changed from three to two the number of appeals allowed from decisions made about Public Assistance grants and the Hazard Mitigation Grant Program. As published the final rule contained two incorrect citations, the one in the Supplementary Information, and the other in the rule. In the Background statement of the Supplementary Information, the text read 44 CFR 202.206 and should have read 44 CFR 206.206. In the rule, § 206.206(e)(2) read 44 CFR 206.440 and should have read 44 CFR 206.206.

Accordingly, the final rule published as FR Doc. 98–9207 on April 8, 1998, 63 FR 17108, is corrected as follows:

(a) On page 17108, in the third column, under Supplementary Information, Background, in the first paragraph the second sentence is corrected to read as follows: