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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[RCRA–1998–0015; FRL–7537–4]

RIN 2050–AF07

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule eliminates drafting errors and ambiguities in the used oil management standards. Specifically, this rule clarifies when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the RCRA used oil management standards and when it is not; that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil are subject to the RCRA 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.

DATES: This final rule will become effective on September 29, 2003.

ADDRESSES: Public comments and supporting materials are available for viewing in the EPA Docket Center, located at 1301 Constitution Avenue, NW, Washington, DC. The Docket ID Number is RCRA–1998–0015. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center 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.

For more detailed information on specific aspects of this rulemaking, contact Mike Svizzero by mail at Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, by phone at (703) 308–0046, or by Internet e-mail at *svizzero.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

EPA has established an official public docket for this action under Docket ID No. RCRA–1998–0015. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search'' and then key in the appropriate docket identification number.

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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 Regulatory Amendments

Today's final rule reinstates, with some modifications, three amendments to the RCRA used oil management standards of 40 CFR Part 279. These amendments were issued on May 6, 1998 as a direct final rule, but were retracted on July 14, 1998 because of adverse public comment to the amendments (see 63 FR 24963 and 63 FR 25006). One of the withdrawn amendments, applicability of the used oil management standards to PCB contaminated used oil, was a clarification of the applicability of the RCRA used oil management standards to PCB contaminated used oil. This clarification was undertaken as part of a settlement agreement to resolve a lawsuit challenging a final rule promulgated on May 3, 1993, (58 FR 26420) regarding EPA's used oil regulations. *Edison Electric Institute* v. *U.S. EPA* (D.C. Circuit No. 93–1474). Specifically, 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). The other amendments reinstated today clarify (1) that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled and (2) 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.

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 RCRA used oil management standards to used oil containing PCBs. The amendment clarifies that used oil that contains less than 50 ppm of PCBs is generally subject to regulation under the RCRA used oil management standards. However, the amendment notes that the

Toxic Substances Control Act (TSCA) prohibition against the dilution of PCB concentrations below regulatory thresholds (40 CFR 761.1(b)(5)) applies to the dilution of PCB-containing used oil. Used oil, therefore, that contains, or contained prior to dilution, 50 ppm or greater of PCBs is not subject to regulation under the RCRA used oil management standards, because the TSCA regulations at 40 CFR Part 761 provide comprehensive management of such used oil.

For used oil that contains PCB concentrations of 2 ppm or greater, but less than 50 ppm (other than those diluted to below 50 ppm), TSCA regulates the burning of used oil for energy recovery at 40 CFR 761.20(e). Such used oil is also regulated under the RCRA used oil management standards at 40 CFR Part 279. 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. 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 (if it has not been diluted) is subject to record keeping and retention requirements under TSCA (40 CFR 761.20(e)(2), (e)(4)) and is regulated under the RCRA used oil management standards. TSCA regulations prohibit the burning for energy recovery of used oil that contains (or contained prior to dilution) PCB concentrations of 50 ppm or greater (40 CFR 761.20(a)).

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

Range of PCB contamination levels in used oil (ppm)	Does RCRA regulate this used oil if it is to be burned for energy recovery? [b]	Does TSCA regulate this used oil if it is to be burned for energy recovery? [b]
Demonstrated to contain less than 2	Yes (part 279)	Yes (761.20(e)(2), (e)(4)).[a]
2 to less than 50	Yes (part 279)	Yes (761.20(e)).
50 and greater	No (part 279)	Yes (prohibited) (761.60).

[a] 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. TSCA imposes record keeping and retention requirements.

[b] Assumes no dilution. No person may avoid any provision under TSCA specifying a PCB concentration by diluting the PCBs, unless otherwise provided. See 40 CFR 761.1(b)(5).

Used oil containing less than 50 ppm PCBs that is recycled in a manner other than being burned for energy recovery is generally excluded from TSCA requirements except where: (1) Used oil was diluted to below 50 ppm PCBs, or (2) the PCB containing used oil or source of the PCB-containing used oil to be recycled was not legally manufactured, processed, distributed in commerce or used under TSCA. See 40 CFR 761.3 (definition of ''excluded PCB products''); 761.20(a)(1); and 761.20(c). However, 40 CFR 761.20(d) of the TSCA regulations 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 also 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, however.

Dilution of PCB-Containing Used Oil

The Agency received comment on the May 6, 1998 proposal (63 FR 24963) related to the applicability of the dilution prohibition of 40 CFR 761.1(b)(5) to used oil that contains PCBs. One commenter raised a concern that the May 6, 1998 proposal was unclear as to how PCB-contaminated used oils that have been diluted (below either the 50 ppm or 2 ppm TSCA PCB regulatory thresholds) are regulated.

Used oil that contains PCBs may not be diluted under TSCA to avoid a particular regulatory requirement unless otherwise specifically provided by the TSCA regulations. The TSCA PCB regulations at 40 CFR 761.1(b)(5) prohibit the dilution of PCBs to avoid regulatory requirements. This prohibition is repeated in the definition of ''excluded PCB products'' in 40 CFR 761.3. Accordingly, used oil that contained PCB concentrations greater than or equal to 50 ppm and that was subsequently diluted to a concentration of less than 50 ppm PCBs, is still regulated under TSCA as used oil that contains a PCB concentration of 50 ppm or greater. This diluted used oil is subject to comprehensive management under TSCA and, therefore, is not regulated under the RCRA used oil management standards. Likewise, used oil that contained a maximum PCB concentration of 2 ppm or greater, but less than 50 ppm, which is subsequently diluted to a concentration of less than 2 ppm, is still regulated under TSCA as used oil that contains a concentration greater than 2 ppm PCBs. (Note, however, that used oils of unknown concentration can be mixed with other such used oils in a common container and subsequently tested to determine if it is less than 2 ppm PCB. See 40 CFR 761.20(e)(2) and 761.60(g)(2)).

The TSCA regulations do allow, however, for the decontamination of used oil at PCB concentrations of 50 ppm or greater to a concentration below 2 ppm if specified decontamination methods (*e.g.*, filtering) are used. Such decontaminated used oil is exempt from most TSCA management standards (other than 40 CFR 761.20(e)(2), (e)(4) and 761.79(f)) and is regulated under the RCRA used oil management standards. See 40 CFR 761.79(a)(3) and 761.79(b).

Applicability of the Used Oil Fuel Specification to PCB-Containing Used Oil

There has been confusion in the regulated community that the presence of PCBs in used oil is one of the criteria for determining whether a used oil fuel subject to the RCRA used oil management standards meets the fuel specification standard such that it may be burned for energy recovery without further regulation under RCRA. In fact, one of the comments received in response to the May 6, 1998 proposal implied that used oil that contains PCB concentrations of 2 ppm or greater, but less than 50 ppm is off-specification used oil due to its PCB content. This is incorrect. As described above, the concentration of PCBs in used oil is relevant to determining whether a used

oil is subject to the RCRA used oil management standards. However, for those used oils subject to the RCRA used oil management standards, the presence of PCBs is not one of the criteria for determining whether a used oil fuel meets the used oil fuel specification.

However, used oil that contains PCB concentrations of 2 ppm or greater, but less than 50 ppm, and is burned for energy recovery is also subject to requirements under the TSCA PCB regulations, specifically 40 CFR 761.20(e). These TSCA requirements incorporate by reference certain RCRA Part 279 ''off-specification'' used oil requirements. (See the discussion below for an explanation of the regulation of PCB-containing used oil that is burned for energy recovery.)

RCRA Requirements

The RCRA used oil specification criteria are set forth at 40 CFR 279.11. The specification criteria establish which used oil fuels may be burned in nonindustrial burners without regulation under RCRA. The used oil fuel specification sets maximum allowable limits for arsenic, cadmium, chromium, lead, and total halogens, as well as a minimum flash point. Although the PCB regulations promulgated pursuant to TSCA are referenced in a note to Table 1 in § 279.11, the presence of PCBs in used oil is not one of the criteria for determining whether used oil that is to be burned for energy recovery meets the fuel specification for purposes of RCRA regulation.

Used oil that is to be burned for energy recovery and that meets the RCRA fuel specifications of § 279.11 (''on-specification'' used oil) is not regulated under the authority of Part 279 provided that: (1) Certain conditions for used oil fuel marketers are met, and (2) the used oil is not mixed or contaminated with hazardous waste. (Applicable on-specification used oil fuel marketer requirements can be found at §§ 279.72, 279.73, and 279.74(b).) This is the case, notwithstanding that a used oil fuel may contain PCBs. Although the RCRA regulations do not identify the presence of PCBs in used oil as relevant to the determination of whether the used oil is on- or off-specification, the presence of PCBs in used oil is relevant for determining the applicability of the TSCA regulations for the burning of used oil.

TSCA Requirements

The TSCA rules (specifically, 40 CFR 761.20(e)(2)) establish a presumption that detectable quantities of PCBs are present in used oils to be burned for energy recovery. The presumption can be overcome if a marketer determines through testing or other specified procedures that the used oil fuel does not contain quantifiable levels (2 ppm) of PCBs. TSCA rules found at 40 CFR 761.20(a) also prohibit burning for energy recovery of used oil that contains (or contained prior to dilution) PCBs at concentrations of 50 ppm and greater. In addition, §§ 761.1(b)(5) prohibits dilution to attain PCB concentrations either below 50 ppm or below 2 ppm. (However, see decontamination provisions at 40 CFR 761.79(a)(3) and 761.79(b).)

The TSCA regulations establish requirements for the marketing and burning for energy recovery of used oils containing detectable quantities of PCBs at concentrations of 2 ppm or greater, but less than 50 ppm (40 CFR 761.20(e)). Some of these requirements are incorporations by reference of Part 279 requirements for the marketing and burning for energy recovery of off-specification used oil. Therefore, by operation of the TSCA rules, used oil that is on-specification under the RCRA rules may nevertheless be subject to certain requirements specified in the RCRA rules for off-specification used oil.

Specifically, for used oil burners, the TSCA rules reference some of the RCRA off-specification burner requirements of Part 279 Subpart G, including restrictions on burning, notification requirements, tracking requirements, certification requirements and record keeping requirements. (See 40 CFR 761.20(e)(3)–(4)). For used oil marketers, the TSCA rules, with limited exceptions, restrict marketing to qualified incinerators, to marketers who market off-specification used oils, and to off-specification burners as defined in the RCRA Part 279 regulations (See 40 CFR 761.20(e)(1)). The TSCA rules also reference the RCRA regulatory provisions for marketers in Part 279 Subpart H, including record retention, notification, tracking, and certification. The fact that the TSCA rules incorporate by reference these RCRA standards does not by itself mean that PCB-containing used oil is regulated under RCRA authority or that such used oil is off-specification as defined by Part 279.

B. Mixtures of CESQG Waste and Used Oil

Today's rule harmonizes the applicability of 40 CFR Part 261 and Part 279 to mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil that are to be recycled. Specifically, the rule makes clear that mixtures of CESQG waste 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 waste 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. Since Part 279 applies to used oil that is to be recycled without regard to how the used oil is to be recycled, Part 279 also applies to mixtures of used oil and CESQG wastes that are to be recycledirrespective of how that mixture is to be recycled.

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. Therefore, 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. This amendment does not impose additional regulatory requirements on this category of CESQG waste. These wastes have been and continue to be regulated under 40 CFR 279.10(b)(3).

The Agency received one comment opposing this amendment from a state in response to the May 6, 1998 proposal. The comment stated that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil should only be regulated as used oil if it is to be recycled by burning for energy recovery. This comment opens up the merits of the original rule (§ 279.10(b)(3)) and that is not the intent of today's final rule. Today's final rule intends only to make certain conforming changes to § 261.5(j) to correctly reflect EPA's original intent in the September 10, 1992 Part 279 used oil management standards rule. EPA addressed the merits of the original rule in that previous rulemaking and EPA is not reopening that issue in this final rule. Even if EPA were to reopen this issue in today's rulemaking and to address the merits of this issue, EPA would come to the same conclusion as it did in the previous rulemaking. EPA is not aware of any reason for distinguishing used oil being burned for energy recovery from used oil being recycled in other ways, and the commenter did not provide any. Notwithstanding this clarification of the federal regulations, the state may regulate mixtures of CESQG waste and used oil more stringently than the federal used oil management program.

C. 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.

The Agency received one comment opposing this amendment from a state in response to the May 6, 1998 proposal. The commenter was concerned that the proposed amendment does not require tracking of used oil that meets the used oil fuel specification to the point to which it is burned for energy recovery, and thus does not provide adequate protection. The Agency disagrees with this comment. This comment opens up the merits of the original November 29, 1985 rule and that is not the intent of today's rule. As with the issue above discussing mixtures of CESQG waste and used oil, the Agency is not reopening the merits of this issue, because the Agency addressed the merits of this issue in the preamble to the November 29, 1985 rule (50 FR 49164 at 49189). Today's amendment does not represent a change in the requirements, but only clarifies the Agency's intent that only the initial marketer of on-specification used oil must keep a record of each shipment of used oil to the facility to which it delivers the used oil. In the September 23, 1991 supplemental notice of proposed rulemaking (56 FR 48000), EPA did not propose to change the tracking requirements or the management requirements, originally promulgated in 1985 for used oil that meets the used oil fuel specification. In drafting the 1992 rule, EPA only intended to recodify the tracking requirements from the now superseded Part 266. It has always been the Agency's position that used oil that is to be burned for energy recovery that meets the used oil fuel specification is a commodity that will be properly handled like any other fuel. The Agency has always intended that used oil that is to be burned for energy recovery only be regulated under the Used Oil Management Standards until it has been determined to meet the used oil fuel specification. Once it has been determined to meet the fuel specification and the marketer complies with 40 CFR 279.72, 279.73, and 279.74(b), the used oil is no longer regulated by the Used Oil Management Standards. If the used oil is not burned for energy recovery and is recycled by other means or disposed, it is regulated as used oil under the Used Oil Management Standards. Even if the Agency were to address the merits of this issue, we would continue to take the position as we are taking in today's amendment, because, for the reasons discussed above, the Agency believes that the tracking requirements would provide adequate protection. The commenter has provided no new information or arguments that would lead us to change this long-standing position. Notwithstanding this clarification of the federal regulations, a state may regulate used oil more stringently than the federal used oil management program.

III. State Authority

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal

regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

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.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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 entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden since it does not represent any change in requirements, but only clarifies the Agency's intent with respect to certain provisions in the Used Oil Management Standards. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR Part 279) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0124 (EPA ICR No. 1286.06).

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by email at *auby.susan@epa.gov*, or by calling (202) 260–4901. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that today's rule will not have a significant economic impact on a substantial number of small entities. Today's rule will not impact any small entity because it does not impose regulatory requirements or otherwise substantively change existing requirements. The rule eliminates drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if the rule were viewed as a change, the rule would result in lesser regulatory impact than under existing requirements.

D. Unfunded Mandates Reform Act

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

sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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 drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if the rule were viewed as a change, the rule would result in lesser regulatory impact than under existing requirements. 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. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if today's rule were viewed as a change, it would result in lesser regulatory impact than under existing requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Today's rule does not have tribal implications, as specified in Executive Order 13175. Specifically, today's rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if today's rule were viewed as a change, it would result in lesser regulatory impact than current requirements. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

H. Executive Order 13211: Energy Effects

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

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 29, 2003.

V. 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: July 23, 2003.

Marianne L. Horinko,

Acting Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

§ 261.5 [Amended]

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

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

■ 1. 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)).

■ 2. 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 unless, because of dilution, it is regulated under 40 CFR Part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing 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. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Part or Part 761 of this chapter.

■ 3. 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. 03–19275 Filed 7–29–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 072303B]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 2003 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the