

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261(n) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

(n) *Merrill Barber (SR 60) bridge, mile 951.9 at Vero Beach.* The draw shall open on signal, except that from 7:45 a.m. to 9 a.m., 12 noon to 1:15 p.m., and 4 p.m. to 5:15 p.m., Monday through Friday, except federal holidays, the draw need open only at 8:30 a.m., 12:30 p.m., and 4:30 p.m. From October 1 through May 31, from 7 a.m. to 6 p.m., except federal holidays and as provided above, the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

Dated: August 28, 1990.

Robert E. Kramek,

Rear Admiral U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-21767 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 14**

RIN 2900-AE15

Recognition of Organizations, Representatives, Attorneys, and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulations to amend existing procedures and requirements regarding accreditation of certain individuals as representatives of claimants for benefits administered by VA. These amendments are designed to improve VA's ability to assure the availability of high-quality representation for claimants.

EFFECTIVE DATE: These rules are effective October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hipolit, Deputy Assistant General Counsel (Q22A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2440.

SUPPLEMENTARY INFORMATION: On December 11, 1989, VA published in the Federal Register (54 FR 50772-73) two proposed amendments to existing regulations in 38 CFR part 14. One authorizes accreditation as claim representatives of individuals working at least 1,000 hours annually for organizations recognized by VA to represent veterans' benefit claimants. The second establishes criteria for the accreditation of county veterans' service officers as claim representatives based on recommendation and supervision by State organizations recognized by VA to represent veterans' benefit claimants.

VA received four comments on these rules, two from State departments of veterans affairs and two from veterans' service organizations. Three of these commenters endorsed the rules as proposed.

One commenter opposed one aspect of the proposed rule, suggesting that the requirement of at least 1,000 hours of part-time employment for recognition as a service organization claim representative would limit participation by volunteers and certain part-time workers in claim representation and thus hinder the service organizations in assisting claimants. VA believes this commenter is misreading the amendments, which specifically allow accreditation of a claim representative if the representative is "either a member in good standing" of the service organization "or a paid employee of such organization working for it no less than 1,000 hours annually" (emphasis added). Thus, membership in good standing alone will qualify an individual to serve as a claim representative. Only if accreditation is based on employment will the minimum requirement of 1,000 hours of work annually apply. Accordingly, the amendment will not exclude anyone currently eligible for accreditation, but instead will expand availability of representatives to aid in veterans' claims.

As explained in the preamble to the proposed rule, the rationale for the requirement of full-time employment has been that the representative should be sufficiently dependent upon remuneration from the recognized organization as to assure accountability in the performance of responsibilities involved in the claim process. However, VA believes less-than-full-time employment does not connote lack of

accountability when the representative works a considerable number of hours annually for the recognized organization and is thus significantly dependent upon the organization as a source of livelihood. Further, as the commenter noted, the part-time status of an employee does not insulate the employer from responsibility for the employee's failure to perform properly the responsibilities incident to his or her position.

VA has concluded the proposed amendment to authorize accreditation of employees of recognized organizations working at least 1,000 hours annually will not undermine the purpose of VA regulations regarding recognition of organizations and representatives to assure that claimants for veterans' benefits receive qualified, responsible representation in the preparation, presentation, and prosecution of claims. This amendment is therefore adopted without change.

The second proposed amendment would set out criteria under which a State organization which has been recognized by VA to represent claimants could seek accreditation of county veterans' service officers as representatives, even though such officers are not employed by the State organization. The two commenters on this amendment approved of VA's proposal. One commenter did make reference to training of volunteer service officers. The amendment establishes criteria in the regulation regarding adequate training, testing, and monitoring of county service officers to assure quality representation of veterans' benefit claimants. Further, the regulations provide recognized State organizations with clear and uniform standards to apply in determining whether to certify county service officers as qualified to represent claimants. Although it was not explicitly stated in the proposed rule, VA contemplated that county representatives, as an assurance of accountability, would be employees of the county government. Accordingly, the second amendment is adopted with a minor change to clarify this point.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are therefore exempt from the initial and final regulatory-flexibility analyses requirements of §§ 603 and 604. The reason for this certification is that the

regulatory amendments will have only a limited, beneficial effect on claimants and their representatives.

These amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no Catalog of Federal Domestic Assistance number for these regulations.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Organization and functions (Government Agencies), Veterans.

Approved: August 9, 1990.

Edward J. Derwinski,
Secretary.

PART 14—[AMENDED]

In 38 CFR Part 14, Legal Services, General Counsel, in § 14.629(a), paragraph (a)(2) is revised, and an authority citation is added at the end of paragraph (a), to read as follows:

§ 14.629 Requirements for accreditation of representatives, agents, and attorneys

(a) * * *

(2) Is either a member in good standing or a paid employee of such organization working for it not less than 1,000 hours annually; is accredited and functioning as a representative of another recognized organization; or, in the case of a county veteran's service officer recommended by a recognized State organization, meets the following criteria:

(i) Is a paid employee of the county working for it not less than 1,000 hours annually;

(ii) Has successfully completed a course of training and an examination which have been approved by a VA District Counsel within the State; and

(iii) Will receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claim process; and

(Recordkeeping requirements contained in § 14.629 were approved by the Office of Management and Budget under OMB control number 2900-0018)

(Authority: 38 U.S.C. 210 (b)(1) and (c)(1) and 3402)

[FR Doc. 90-21836 Filed 9-14-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3821-2]

Radionuclide NESHAP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of stay.

SUMMARY: Today's action announces a further 180-day stay, pending reconsideration and judicial review, of subpart I of 40 CFR part 61 ("Subpart I"). National Emission Standards for Hazardous Air Pollutants for Radionuclide Emissions from Facilities Licensed by Nuclear Regulatory Commission and Non-DOE Federal Facilities (54 FR 51654 December 15, 1989). EPA is issuing this stay pursuant to the authority inherent to EPA's general rulemaking authority under Clean Air Act section 301(a), 42 U.S.C. 7601(a), and also pursuant to section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, which grants the Administrator discretion to postpone the effective date of Agency rules pending judicial review, which for subpart I is ongoing in United States Court of Appeals for the DC Circuit. This action continues in place the existing stay originally granted by the Administrator pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), 54 FR 51654 (December 15, 1989), and subsequently extended pursuant to the presently applicable authorities on March 15, 1990, 55 FR 10455 (March 21, 1990), and on July 12, 1990, 55 FR 29205 (July 18, 1990).

EFFECTIVE DATES: Effective September 11, 1990, subpart I of 40 CFR part 61 is stayed until March 10, 1991.

FOR FURTHER INFORMATION CONTACT: Fran Cohen, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460, (202) 475-9610.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, National Emissions Standards for Hazardous Air

Pollutants ("NESHAPs") controlling radionuclide emissions to the ambient (outdoor) air from several source categories, including emissions from Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities. This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654; to be codified at 40 CFR part 61, subpart I ("Subpart I")). At the same time, EPA granted reconsideration of subpart I. 54 FR 51667-51668. In so doing, EPA established a 60-day period to receive further information and comment from the public on these issues, and also granted a 90-day stay of subpart I as provided by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B). That stay expired on March 16, 1990. On March 15, 1990, EPA announced that it was continuing in place the existing stay for 120 days pending judicial review pursuant to section 10(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. 705, 55 FR 10455 (March 21, 1990). On July 12, 1990, EPA announced that it was extending the existing stay 60 more days pursuant to APA section 10(d), and the additional authority inherent to EPA's general rulemaking authority under Clean Air Act section 301(a), 42 U.S.C. 7601(a), 55 FR 29205 (July 18, 1990).

At least 11 petitions for review, made pursuant to Clean Air Act section 307(b), 42 U.S.C. 7607(b), challenging EPA's radionuclide NESHAPs (54 FR 51654 December 15, 1989) have been filed with the United States Court of Appeals for the DC Circuit. Some of these petitions take issue with the rulemaking generally, while others are narrowly addressed to particular source categories such as subpart I. For instance, the Nuclear Management and Resources Council, Inc. ("NUMARC") has petitioned only insofar as the rules apply to nuclear power plants and fuel fabrication facilities (DC Circuit Case No. 90-1073), and thus its petition challenges only aspects of subpart I. In any event, all petitions have been consolidated by the court, *sua sponte*, under the heading *FMC Corp. v. EPA*, No. 90-1057 (DC Cir.).

EPA decided to reconsider subpart I on the basis of assertions that the NESHAP would conflict with existing standards and regulations implemented by the Nuclear Regulatory Commission ("NRC"), including those pertaining to radioisotope therapies. See 54 FR 51667-51668. Moreover, EPA was concerned with the issue, raised by the Nuclear Regulatory Commission, whether the NESHAP provides additional health benefits or is necessary to protect public

health with an ample margin of safety. *Id.*

In conducting reconsideration proceedings, EPA has received numerous comments reiterating the view that regulation is not necessary in light of the existing NRC-implemented regulatory scheme, and asserting that the record does not justify the additional and allegedly burdensome regulation contemplated by the subpart I NESHAP. In response to these comments, EPA has been investigating the nature of these facilities, their interaction with NRC, and the record bases for the rule, as well as meeting with various of the commenters to exchange information and further explain the requirements of subpart I. EPA's investigation is active and ongoing, and EPA anticipates that it will have information sufficient to rule on the pending petitions and to conclude reconsideration in an additional 180 days.

B. Issuance of Stay

EPA today further stays, pending reconsideration and judicial review, for an additional 180 days until March 10, 1991, the NESHAP for NRC-Licensees and Non-DOE Federal Facilities, 40 CFR part 61, subpart I. This stay is issued pursuant to the authority inherent to EPA's general rulemaking authority under Clean Air Act section 301(a), 42 U.S.C. 7601(a), and also pursuant to section 10(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. 705, which grants the Administrator discretion to postpone the effective date of Agency rules pending judicial review, which for subpart I is ongoing in the United States Court of Appeals for the DC Circuit. It is intended to continue in place the stay initially issued by EPA pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), on December 15, 1989, 54 FR 51668, and extended for 180 days by subsequent stays issued on March 15, 1990, and July 12, 1990, pursuant to APA section 10(d) and Clean Air Act section 301(a). 55 FR 10455 (March 21, 1990); 55 FR 29205 (July 18, 1990).

EPA has an ongoing proceeding for reconsideration of subpart I, announced on December 15, 1989, 54 FR 51667-51668. These proceedings are currently active, and EPA is accumulating and analyzing the information necessary to determine whether the subpart I NESHAP is necessary to protect public health with an ample margin of safety or whether it conflicts with existing NRC-implemented regulations. EPA requires an additional 180 days to complete this task. Because reconsideration has not concluded and no final decision has been made by the Agency as to whether

to propose modification to subpart I, and given the ongoing judicial review proceedings on the DC Circuit, justice requires that the stay of the effective date of subpart I be continued for 180 days. EPA believes that most facilities subject to this rule are in compliance and that, during the short period provided by this stay, their emissions are unlikely to increase. Thus, granting the stay would have little or no potential to have any adverse effects on public health, and is therefore consistent with the public interest.

Dated: September 10, 1990.

William K. Reilly,
Administrator.

[FR Doc. 90-21893 Filed 9-14-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3830-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environment Protection Agency (EPA or Agency) today is finalizing its decision to deny a petition submitted by Allegan Metal Finishing Company (Allegan), Allegan, Michigan, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

This rulemaking finalizes the proposed denial for Allegan's petitioned wastes published on November 7, 1989 (see 54 FR 46737). The effect of this action is that these wastes must continue to be handled as hazardous in accordance with 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

EFFECTIVE DATE: September 17, 1990.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (room M2427), Washington DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through

Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-ALDF-FFFFF". The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine: (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

Allegan petitioned the Agency for a one-time upfront exclusion (for wastes that have not yet been generated) based on a bench-scale waste treatment process (i.e., scaled down version of a proposed treatment system), untreated waste characteristics, and process descriptions. After evaluating the petition, EPA proposed, on November 7, 1989, to deny Allegan's petition to exclude its wastes from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 46737).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to deny Allegan's petition.

II. Disposition of Delisting Petition

A. Allegan Metal Finishing Company, Allegan, Michigan

1. Proposed Denial

Allegan Metal Finishing Company (Allegan), located in Allegan, Michigan, electroplates carbon steel with zinc chloride/zinc cyanide on a job shop basis. Allegan petitioned the Agency for a one-time upfront exclusion of wastewater treatment sludges, presently contained on-site in two sand seepage lagoons and proposed to be physically

and chemically stabilized with 10 percent (by weight) reclaimed lime. Allegan's petitioned wastes are presently listed in 40 CFR 261.31 as EPA Hazardous Waste No. F006—

"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see 40 CFR part 261, appendix VII).

In support of its petition, Allegan submitted: (1) Partial descriptions of its manufacturing and treatment processes, including schematic diagrams; (2) a partial list of raw materials (and Material Safety Data Sheets for all tradename materials) used in the manufacturing processes; (3) descriptions of procedures for stabilizing the lagoon sludges; (4) results from total constituent and EP analyses on representative samples (bench-scale) of the lime-stabilized lagoon sludges; (5) results from total oil and grease analyses on representative samples (bench-scale) of the lime-stabilized lagoon sludges; (6) results from the characteristics testing for ignitability and reactivity on representative samples (bench-scale) of the lime-stabilized lagoon sludges, including reactive cyanide and reactive sulfide analyses; and (7) total constituent analyses for those constituents listed in 40 CFR 261, appendix IX on one sample of the reclaimed lime, which is to be used in full-scale stabilization of the lagoon sludges.

The Agency evaluated the information and analytical data provided by Allegan in support of its petition and determined that the hazardous constituents found in the petitioned wastes could pose a threat to human health and the environment. Specifically, the Agency's evaluation of analytical data provided by Allegan indicates that the bench-scale lime-stabilized lagoon sludges exhibit concentrations of leachable cadmium and lead that yield compliance-point concentrations exceeding the Agency's health-based levels used in delisting decision-making. The Agency used its vertical and horizontal spread (VHS) landfill model to evaluate the potential mobility of the hazardous inorganic constituents

detected in the EP extract of representative samples of Allegan's bench-scale lime-stabilized lagoon sludges. Based on this evaluation, the Agency determined that Allegan failed to substantiate its claim that the hazardous constituents of concern will not leach and migrate at concentrations above the delisting health-based levels. See 54 FR 46737, November 7, 1989, for a more detailed explanation of why EPA proposed to deny Allegan's petition.

2. Agency Response to Public Comments

The Agency received comments regarding its decision to deny Allegan's petition from two interested parties. Both of the commenters opposed the Agency's proposed denial decision. The comments submitted related to the following areas:

(1) Characteristic and listed hazardous wastes; (2) the Agency's use of the VHS model to evaluate the petitioned wastes; (3) the health-based levels used by the Agency to evaluate the petitioned wastes; (4) use of site-specific information to evaluate the petitioned wastes; (5) consideration of post-delisting waste disposition; (6) the completeness of Allegan's petition; (7) the Agency's delay in the evaluation of Allegan's petition; (8) the effect of Allegan performing as a job-shop electroplater on the evaluation of the petition; and (9) the potential impact of the denial decision on other F006 generators and small business electroplaters. The specific comments made by the two interested parties and the Agency's responses to them are discussed below.

Characteristic and Listed Hazardous Wastes

The first commenter stated that the data provided in Allegan's petition confirm that the petitioned wastes pass each of the RCRA characteristic tests and are not otherwise hazardous. The commenter thus believed that the Agency should grant Allegan's petition for its lime-stabilized lagoon sludges. This commenter also believed that a waste deemed hazardous solely for failing one of the characteristic tests would be subject to less stringent controls than those listed wastes.

The Agency believes that the commenter may not fully recognize the difference between a waste that is characteristically hazardous and a waste listed as hazardous under 40 CFR part 261, subpart D. The EP toxicity characteristic, in particular, was designed to bring into the RCRA Subtitle C hazardous waste management system wastes that present a hazard to human health due to their propensity to leach

significant concentrations of specific constituents (*i.e.*, those listed in Table 1 of 40 CFR 261.24). The EP toxicity characteristic was *not* designed to identify those wastes that are *not* hazardous; it, like the other characteristics, was developed to allow the Agency to identify a hazardous waste by a distinct measurable property. A waste is clearly hazardous due to EP toxicity; nevertheless, passing the EP toxicity test does not reflect that a waste is not otherwise hazardous. The Agency established criteria to identify and "list" hazardous wastes because the Agency also recognized that wastes may be hazardous even if they leach hazardous constituents at levels less than the EP toxicity characteristic levels. For example, wastes may be listed as hazardous if, pursuant to the criteria contained in 40 CFR 261.11, these lesser concentrations in combination with other factors are deemed to pose a substantial present or potential threat to human health and the environment.

The Agency agrees that Allegan's petitioned wastes may not exhibit the characteristic of EP toxicity or other characteristics; however, Allegan's petitioned wastes are listed as F006 wastes because they contain hazardous constituents listed in appendix VII of 40 CFR part 261, and thus the waste must be evaluated for these constituents. Furthermore, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which a waste was listed, if there is a reason to believe that such additional factors could cause the waste to be hazardous. For the reasons stated in the proposed denial (54 FR 46737, November 7, 1989), the Agency believes that Allegan's petitioned wastes have the potential to harm human health and the environment and thus should not be removed from Subtitle C control.

The Agency notes that, contrary to the commenter's claim regarding differing standards, all wastes identified as hazardous under RCRA are subject to the same management criteria regardless of whether the wastes are characteristic or listed hazardous wastes. Specifically, characteristic and listed hazardous wastes must be managed in accordance with 40 CFR part 260 through 268 and the permitting standards of 40 CFR part 270. Facilities may dispose of wastes as non-hazardous only if the wastes do not exhibit the characteristics of hazardous waste and if the wastes are not otherwise hazardous (*i.e.*, listed as

hazardous under 40 CFR part 261, subpart D) unless they are specifically excluded from RCRA regulation.

Agency's Use of the VHS Model

Both commenters challenged the Agency's use of the VHS model for various reasons. The first commenter believed that the application of the VHS model unjustly subjects Allegan, a generator of a listed hazardous waste, to a more exacting standard (i.e., a standard "above and beyond the already accepted limits of the EP toxicity standard") than a generator whose waste is classified as hazardous solely because it exhibits one of the hazardous waste characteristics. Further, both commenters believed that the threshold levels established by the Agency in conjunction with the VHS model are inappropriate and unfair. Both commenters noted that the delisting health-based level for cadmium of 0.01 ppm is 100 times more stringent than the EP toxicity characteristic level for cadmium of 1 ppm.

The commenter's concerns regarding the stringency of the delisting health-based levels as compared to the EP toxicity characteristic levels are unfounded because the objectives of the characteristic and delisting regulations are different. As stated previously, the hazardous waste characteristics were designed to identify broad classes of solid wastes that are clearly hazardous, while delisting standards are those below which a petitioned waste is not hazardous. For example, in accordance with 40 CFR 261.24, a waste whose extract concentrations of cadmium are equal to or above the EP toxicity characteristic level for cadmium is clearly a hazardous waste. The Agency's delisting health-based levels (used in conjunction with various fate and transport models, as appropriate) are those levels which the Agency uses to determine, on a waste-specific basis, whether a waste is non-hazardous. Because the delisting process was established to identify the potential hazards a waste might present and whether particular wastes should remain subject to Subtitle C regulation, the Agency believes that its use of delisting levels of concern that are more stringent than the EP toxicity characteristic levels is both appropriate and fair.

The first commenter indicated that, although the Agency's decision to deny Allegan's petition is based, in part, on leachable levels of cadmium and lead, the petitioner uses neither of these constituents in the manufacturing

processes generating the petitioned wastes.

The Agency notes that the total constituent concentrations of lead and cadmium in the treated waste showed levels as high as 210 and 20 ppm respectively. These data alone indicate that lead and cadmium must be present in the manufacturing, treatment, or stabilization processes generating the petitioned wastes. For example, one potential source of the lead and cadmium may be from the reclaimed lime used in the stabilization process which, for the single sample collected and analyzed, had total lead and cadmium levels of 15 and 4.9 ppm, respectively. Thus, although information provided in the petition indicate that lead and cadmium are not used in the manufacturing process, other sources (such as the treatment and stabilization processes) may have resulted in the presence of these contaminants in the petitioned wastes and, thus, the extracts of the wastes.

The first commenter did not believe that the Agency justified its use of the VHS model to evaluate Allegan's petitioned wastes. The commenter specifically questioned why the Agency thought the VHS model was appropriate in this case. The commenter cited the ruling in *McLouth Steel Products Corp. v. EPA*, 838 F.2d 1317 (D.C. Cir. 1988) and the Agency policy regarding application of models addressed in 53 FR 21640, June 9, 1988, as evidence of inappropriateness in the Agency's application of the VHS model for evaluating Allegan's petition.

The Agency disagrees with the commenter's belief that the Agency did not justify its use of the VHS model. As noted in the proposal, the Agency believes that disposal in a landfill is the most reasonable worst-case scenario for Allegan's petitioned wastes because stabilized wastes typically are disposed of in land-based units. In fact, Allegan stated in its petition that it plans to dispose of its treated wastes at a landfill. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency proposed the use of the VHS model because this model predicts the potential for ground-water contamination from wastes that are land-disposed. (The VHS model accomplishes this in its consideration of three basic steps: (1) Generation of a leachate from the waste, (2) migration of the leachate to the underlying aquifer, and (3) migration of the contaminated ground water in the aquifer to a nearby receptor well.) For this reason the

Agency maintains its belief that the VHS model is an appropriate evaluation tool for Allegan's wastes.

Furthermore, using the VHS model in evaluating Allegan's petition is consistent with the McLouth decision. The McLouth decision allows the Agency to treat the model as a non-binding policy so long as the Agency exercises discretion in individual delisting cases and remains open to challenges to its use. Subsequent to this decision, the Agency indicated in 53 FR 21640 that "EPA will treat the model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the VHS model where proposed to be applied." In this case, the Agency considered the VHS model as appropriate for use and requested comments on its use as applied to the evaluation of Allegan's wastes (see 54 FR 46737, November 7, 1989, proposed rulemaking for Allegan's petitioned waste).

The Health-Based Levels Used by the Agency

The second commenter stated that the use of a cadmium concentration threshold level of 0.01 ppm for evaluation of Allegan's petitioned wastes was a premature application of EPA treatment standards now being proposed and commented upon in the Land Disposal Restrictions for Third Scheduled Wastes (see 54 FR 48372).

The Agency believes that the commenter has misunderstood the source of the 0.01 ppm level of concern for cadmium used in the evaluation of Allegan's petitioned wastes. The Agency's delisting level of concern for cadmium is based on the Maximum Contaminant Level (MCL) promulgated under the Safe Drinking Water Act (SDWA). The SDWA requires EPA to promulgate National Primary Drinking Water Regulations (NPDWRs) for contaminants in drinking water which may cause any adverse effect on the health of persons and which are known or anticipated to occur in public water systems. These NPDWRs are to include MCLs. The Agency believes that the promulgated MCL is an appropriate level of concern for cadmium because the major exposure route of concern for Allegan's petitioned wastes under a landfill disposal scenario, as stated in the proposed rulemaking, is the ingestion of contaminated ground water. Thus, the Agency notes that it relied on a promulgated MCL for cadmium, not a proposed treatment standard from the Land Disposal Restrictions, to evaluate Allegan's petitioned wastes.

The first commenter questioned whether EPA had followed appropriate rulemaking procedures in adopting the health-based levels used in its evaluation of delisting petitions. This commenter also compared the 0.01 mg/l health-based level directly with the EP toxicity standard of 1.0 mg/l for cadmium, indicating that it is unnecessary, inconsistent, and unfair to use the former number to evaluate Allegan's wastes by application of the VHS model, as discussed in the previous section.

The Agency believes that appropriate rulemaking procedures were followed in adopting the health-based levels used in the evaluation of Allegan's petitioned wastes. Although health-based levels are not promulgated in the delisting regulations, the use of these numbers for the hazardous constituents of concern for Allegan's waste was subject to public comment during the proposed rulemaking comment period on this delisting petition. The commenter's contention that it is improper to use the health-based level of 0.01 mg/l for cadmium, as opposed to the much higher EP toxicity standard of 1.0 mg/l for this metal, may be due to the misunderstanding of the Agency's delisting evaluation technique. The Agency uses the health-based levels and the EP toxicity standards for different purposes under different circumstances. As previously discussed, if a waste fails the EP toxicity test, it is characteristically hazardous. However, a waste may still be hazardous even if the EP toxicity test shows that the leachable concentrations of the waste do not exceed the EP toxicity standards (i.e. the maximum concentrations of contaminants specified in 40 CFR 261.24). In the determination of the EP toxicity characteristic, waste volume and the mobility of the hazardous constituents are not considered. In contrast, the health-based levels used in delisting evaluations are those below which a waste is not hazardous. This determination involves the use of the VHS model to predict the potential hazard from the ingestion of contaminated ground-water at a hypothetical receptor well (or compliance point) located downgradient from the disposal site. The calculated compliance-point concentrations are then compared with the Agency's health-based levels. The Agency's evaluation of Allegan's petition in this regard has been described in detail in the November 7, 1989 proposed rule.

Use of Site-Specific Information to Evaluate the Petitioned Wastes

The first commenter argued that the Agency should evaluate Allegan's petition without the application of the VHS model, and should rely upon the waste characteristics and site-specific conditions. For example, the commenter believed that the Agency should have considered ground-water monitoring data from the lagoons containing the raw wastes (i.e., the petitioned wastes prior to lime stabilization). Both commenters also believed that it was unnecessary to apply the VHS model which has its sole intent of the determination of uncontrolled waste management because Allegan proposed to dispose of its wastes in a controlled manner.

As addressed in the November 7, 1989 proposed rule, the Agency believes it is inappropriate to consider extensive site-specific factors, because a waste once delisted is no longer subject to RCRA control and may therefore be transported to any disposal unit at an unspecified location of unknown site conditions. Thus, the Agency considers a reasonable worst-case disposal scenario for petitioned wastes such as Allegan's. Results of ground-water monitoring data evaluations are only used by the Agency as a check on the reasonable worst-case scenario performed in order to provide an additional level of confidence in delisting decisions. In this case, since land disposal is the most reasonable worst-case scenario for Allegan's wastes, the Agency believes that the use of the VHS model is appropriate as previously discussed.

In addition, the Agency believes that it would be inappropriate to evaluate the ground-water monitoring data collected from Allegan's lagoons because the monitoring data would not be indicative of the impact of the treated waste on the underlying aquifer.

Note: Allegan was seeking a one-time upfront exclusion of lagoon sludges treated by a stabilization process, a waste that is not currently generated or disposed of.

Ground-water monitoring for the original unit containing untreated waste generally will not provide useful information on the potential for the treated waste to impact ground-water quality. Treatment or stabilization is expected to alter the chemical/physical composition of a waste and the mobility of waste constituents; thus, a treated or stabilized waste is inherently different from a waste in its untreated form. The Agency believes that ground-water monitoring data from a unit used to manage treated waste, if such data were

available, would be useful in evaluating the hazards of the treated or stabilized waste. However, as stated previously, ground-water monitoring data are not available for Allegan's petitioned treated wastes.

Furthermore, even if the Agency were to consider the existing ground-water monitoring data collected for Allegan's lagoons in the evaluation of Allegan's petition, the lack of unacceptable toxicant levels (e.g., hazardous constituent concentrations above health-based levels) alone is not sufficient evidence to grant an exclusion. Ground-water monitoring data showing no contamination may indicate that either contamination has not yet occurred or has not been detected, but do not indicate whether the waste will cause ground-water contamination in the future at the site assessed or at other potential sites. In addition, because wastes may be moved to a different location following exclusion, the evaluation of ground-water monitoring data from the current location does not reflect the potential to contaminate other sites which may have different hydrogeological conditions. Therefore, the Agency evaluates toxicant mobility using fate and transport models. If the Agency believes that a waste will leach unacceptable levels of hazardous constituents under reasonable worst-case conditions, then the Agency may consider the waste hazardous and subject to Subtitle C control, even though relevant ground-water monitoring data may not indicate ground-water contamination. The commenter's view that "this proposed rule in fact expressly recognizes that modeling is not as accurate as actual field data" appears to be a misinterpretation of the Agency's consideration of ground-water monitoring data in delisting decisions described in the November 7, 1989 proposed rule. See the proposed rule previously published in the Federal Register clarifying the Agency's use of ground-water data in delisting decisions (54 FR 41930, October 12, 1989).

Consideration of Post-Delisting Waste Disposition

Both commenters argued that Allegan's petition should be granted conditional upon meeting specified post-delisting requirements and disposition, such as ultimate disposal in a licensed Michigan Type II landfill.

The Agency believes that it would have been inappropriate to evaluate Allegan's petitioned wastes based on Allegan's intention to dispose of the wastes in a "controlled manner".

especially based on a condition specifying disposal in a Michigan Type II landfill. The Agency evaluates all delisting petitions with the understanding that, if the petitioned waste is excluded, it will be removed from Federal regulation as a hazardous waste.

Both commenters cited several precedents where the Agency has imposed post-delisting conditions. This Agency notes that, in all precedents cited, those conditions were waste-specific post-delisting conditions. For example, the majority of conditional exclusions require continuous analysis of the petitioned wastes to ensure that specified delisting levels are met. Further, in all cases where the Agency has imposed post-delisting conditions, the petitioned wastes were still evaluated based on a reasonable worst-case disposal scenario, without considering site-specific conditions.

The Agency further recognizes that, even though Allegan's closure plan requires the designation of a disposal facility acceptable to the Michigan Department of Natural Resources (MDNR), the petitioned wastes may in the future be relocated to a disposal site having different characteristics. For this reason, the Agency does not believe that delisting evaluations should be based on the prediction or specification of future storage or disposal conditions. Again, the Agency maintains that its formulation of a delisting decision is waste specific, not disposal-site specific. As such, the Agency does not believe that it is appropriate to establish conditions in a waste exclusion that specify the disposal practices of any petitioned waste. The Agency believes that the use of a generic fate and transport model, such as the VHS model, is appropriate to model a reasonable worst-case disposal scenario in the evaluation of Allegan's petitioned wastes. The Agency believes that its use of this approach will ensure protection of human health and the environment.

Petition Completeness

Both commenters stated that they did not understand how Allegan could have used the appropriate sampling and compositing protocols, yet the Agency stated that a more complete characterization of the petitioned wastes might have shown the presence of other hazardous constituents.

In the course of reviewing the petition, the Agency evaluated the sampling and compositing protocols utilized by Allegan. In Allegan's first submittal, Allegan submitted samples consisting of samples only from the south lagoon stabilized with lime. Following the

initial review of the petition, the Agency 1) requested that Allegan sample both lagoons, and 2) specified that Allegan utilize appropriate sampling and compositing protocols. Allegan's second round of sampling again did not adhere to appropriate sampling and compositing protocols outlined by the Agency. Moreover, the two samples analyzed were obtained by dividing up one composite sample collected from only one lagoon. The Agency, therefore, requested Allegan to perform a third round of sampling. The Agency subsequently determined that Allegan had used the appropriate sampling and compositing protocols in its third round of sampling.

As noted above, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics and must present sufficient information for the Agency to determine whether the petitioned wastes contain any constituents at hazardous levels. In each of the requests for additional information sent to Allegan, the Agency not only required that appropriate sampling and compositing be used, but also requested more complete descriptions of the processes generating the wastes. From a review of the Material Safety Data Sheets (MSDS) of materials used in Allegan's processes, as well as the ground-water monitoring data from the lagoons containing the unstabilized wastes, it appeared that the raw wastes may contain several hazardous organic constituents that should have been analyzed for in the lime-stabilized lagoon sludges. For example, ground-water monitoring data submitted by Allegan showed levels of chloroform which exceeded the delisting health-based level. Nevertheless, Allegan did not provide any analytical data for chloroform in the lime-stabilized lagoon sludges. Allegan's submissions did not present sufficient information to rule out the possibility that the petitioned wastes could be contaminated by other hazardous constituents. Therefore, although Allegan did utilize the appropriate sampling and compositing protocols for characterizing the petitioned wastes, it did not provide sufficient information to show that the wastes were not hazardous due to the presence of other constituents.

Agency's Delay in the Evaluation of Allegan's Petition

The first commenter argued that the Agency's review of Allegan's petition extending over 3½ years (i.e. from June 1986 to November 1989) is contrary to the spirit of the delisting strategies and procedures announced in the March 3, 1988 Federal Register notice (53 FR 6822). This commenter further stated that the Agency's delay has resulted in Allegan being faced with land disposal restrictions for its wastes.

First, the Agency disagrees with the commenter's claim that the Agency caused the delay. As delineated before, the Agency had provided sufficient opportunities for Allegan to submit needed data to demonstrate that the petitioned wastes were not hazardous. However, Allegan never completed its petition. Although the Agency believes it could have dismissed this petition based on its continued deficiencies (see 53 FR 6822), the Agency chose to propose a denial because the available information had provided sufficient basis for such a decision. Therefore, the commenter's claim is unfounded. The Agency believes that Allegan's incomplete submissions were a key factor in any apparent delay in processing Allegan's petition. The first commenter also felt that the Agency should not have imposed on April 6, 1988 "a 6-week response period by retroactive application of the Agency's March 3, 1988 dismissal policy (53 FR 6822) to this pre-existing petition". The Agency maintains that its review of Allegan's petition is in compliance with the announced delisting strategies and procedures. The March 3, 1988 notice, which was sent to all petitioners at that time (including Allegan), clearly indicates that the Agency "is announcing strategies and procedures it intends to apply in reviewing existing and anticipated petitions . . ." The notice also stipulates that the Agency may require the petitioners to respond to an information request within 6 months, and that the Agency may also establish a shorter time period for the petitioners to respond if the requested information can be prepared in less than 6 months. Therefore, the Agency did not impose an unreasonable requirement on Allegan's petition as the commenter stated.

Effect of Allegan Performing as a Job-Shop Electroplater on the Evaluation of the Petition

The second commenter believed that, based on exclusions granted by EPA for other F006 wastes, the denial of Allegan's petition is an example of

"extraordinarily exacting standards" for job-shop electroplaters who submit delisting petitions.

The Agency disagrees with the commenter. Allegan's petition was for wastes contained in two sand seepage lagoons that were to be stabilized with lime. At the time the lagoons were sampled, no additional wastes were being added to the lagoons. In order for Allegan to successfully petition for an exclusion, Allegan only needed to provide samples representative of the lime-stabilized lagoon sludges and not of the on-going job-shop discharges. The sample collection and analysis requirements of wastes for Allegan were identical to those requirements for any facility submitting a petition for a waste contained in a land-based unit. The sampling requirements would have been the same if Allegan were a captive electroplating operation.

The commenter's observation that more "captive" F006 wastes were excluded in the past than "job-shop" F006 wastes might reflect that job-shop wastes generally contained higher concentrations of hazardous constituents of concern. Therefore, the Agency does not believe that "extraordinarily exacting standards" were used to evaluate job-shop petitions as the commenter concluded.

Potential Impact of the Denial Decision on F006 Generators and Small Businesses

Both commenters indicated that they felt that the petition review process and the basis for the Agency's decision on Allegan's petition will have a potential impact on small businesses and generators of F006 waste. In particular, the second commenter believed that the length of time to review this petition would discourage small businesses and job shop electroplaters from initiating and pursuing a delisting.

The Agency believes that the decision to deny Allegan's petition will not have an adverse impact on small businesses and generators of F006 wastes, because this rule affects only one facility in one industrial segment. The Agency denied Allegan's petition based on the presence of significant leachable levels of cadmium and lead. Not all facilities involved in electroplating operations follow the same procedures during manufacture of plated parts, nor do all manage the resultant metal-laden plating rinsewaters in the same manner. For example, many facilities recover chromium and nickel, thereby reducing constituent levels in the plating wastes. Because of the differences inherent in electroplating operations, the Agency does not believe that the decision to

deny Allegan's petition will adversely affect the broad category of electroplaters.

The Agency recognizes that the petition review process in the past has been lengthy in some cases. However, the length of time required to review a petition is partially due to the submission of petitions that lack information necessary to completely support a decision, as was the case for Allegan's petition. Incomplete information and the iterative requests for information significantly lengthened the time of review for Allegan's petition. The Agency has implemented strategies and procedures to facilitate reaching more expeditious decisions on petitions (see 53 FR 6822, March 3, 1988). However, the length of time necessary to complete a delisting is also dictated, to a large extent, by the statutory requirement that EPA follow formal rulemaking procedures.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Allegan's petitioned wastes should not be excluded from hazardous waste control. The Agency, therefore, is denying Allegan Metal Finishing Company's petition, for a one-time upfront exclusion of its wastewater treatment sludges described in its petitions as EPA Hazardous Waste No. F006 and contained in its two on-site sand seepage lagoons at its Allegan, Michigan facility. Consequently, these petitioned wastes must continue to be handled as hazardous wastes in accordance with 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule does not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its wastes as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 USC 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The denial of this petition does not impose an economic burden on this facility, because prior to submission and during the review of the petition, this facility should have handled its wastes as hazardous. The denial of this petition means that the petitioner is to continue managing its wastes as hazardous in the manner in which it has been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or a delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities. The facility included in this notice may constitute a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities, is small. Accordingly, I hereby certify that this regulation does not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 USC 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and Disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 USC 6921.

Dated: August 28, 1990.

Don. R. Clay,
Assistant Administrator, Office of Solid
Waste and Emergency Response.
[FR Doc. 90-21894 Filed 9-14-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 281

[FRL-3831-3]

New Mexico: Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of State of New Mexico Application for Final Approval.

SUMMARY: The State of New Mexico has applied for final approval of its underground storage tank program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the New Mexico application and determined, subject to public review and comment, that the New Mexico underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting approval to the State to operate its program unless adverse public comment shows the need for further review. The New Mexico application for final approval is available for public review and comment.

DATES: Final authorization for the New Mexico underground storage tank program shall be effective at 1 p.m. on November 16, 1990 unless EPA publishes a prior Federal Register action withdrawing this final rule. All comments on the New Mexico final approval application must be received by the close of business on October 17, 1990.

ADDRESSES: Copies of the New Mexico final approval application are available during the hours between 8 a.m. and 5 p.m. at the following addresses for inspection and copying: Environmental Improvement Division, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87503, Phone: 505/827-3982; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; and U.S. EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655-6755. Written comments should be sent to Program Manager, Underground Storage Tank Program, Attention William Rhea, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/ 655-6755.

FOR FURTHER INFORMATION CONTACT:

New Mexico State Program Officer,
Underground Storage Tank Program,
Attention James Duck, U.S. EPA Region
6, Dallas, Texas 75202, Phone: 214/655-
6755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. To qualify for final authorization, a State's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(b)).

On September 25, 1989, the State of New Mexico submitted an official application for final approval. Prior to its submission, the State of New Mexico provided an opportunity for public notice and comment in the development of its underground storage tank program as required under § 281.509(b). The EPA review of the application determined that existing State regulations establishing June 1, 2008, as the regulatory deadline for upgrading of existing underground storage tanks could not be found to be no less stringent than the Federal requirements found at 40 CFR 281.31. Subsequent to notification of this finding, on March 9, 1990, the State, following a public comment period and a public hearing on the proposal, repealed all State UST regulations pertaining to new tank standards, general operating requirements, release detection, release reporting, response and corrective action, tank closure and financial responsibility. The State then adopted by reference the corresponding Federal UST regulations which became fully effective on July 26, 1990. On July 2, 1990, EPA received an amended application from the State reflecting the adoption of the Federal regulations by reference as State regulations.

B. Decision

After reviewing the amended New Mexico application, I conclude that the State's program meets all of the requirements necessary to qualify for final approval. Accordingly, the State of New Mexico is granted final approval to operate its underground storage tank program. The State of New Mexico now has the responsibility for managing underground storage tank facilities within its borders and carrying out all

aspects of the UST program. The State of New Mexico also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA U.S.C. 6991e.

The State of New Mexico is not authorized to operate the UST program on Indian lands and this authority will remain with EPA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, Underground storage Tanks.

Authority: This notice is issued under the authority of secs. 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 21, 1990.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 90-21895 Filed 9-14-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Dkt. 86-265]

Fee Collection Program; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule (55 FR 19148, May 8, 1990) relating to the procedures for implementation of a fee collection program under 47 U.S.C. 158 (1989). The final rules were adopted to implement changes in that program under the Omnibus Budget Reconciliation Act of 1989.

EFFECTIVE DATE: September 17, 1990.