

means that parents have been fully informed of all information relevant to the placement decision. The obligation to fully inform parents includes informing the parents that the public agency is required to have a full continuum of placement options available to meet the needs of children with disabilities, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.

The part B regulations at 34 CFR 300.504-300.505 also require that parents must be given written notice a reasonable time before a public agency

proposes to initiate or change the identification, evaluation, educational placement or provision of a free appropriate public education to the child. This notice to parents must include a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected. The requirement to provide a description of any option considered includes a description of the types of placements that were actually considered, e.g., special school or

regular class, as well as any specific schools that were actually considered and the reasons why these placement options were rejected. Providing this kind of information to parents will enable them to play a more knowledgeable and informed role in the education of their children.

Authority: 20 U.S.C. 1411-1420; 29 U.S.C. 794.

Dated: October 26, 1992.

Lamar Alexander,

Secretary.

[FR Doc. 92-26319 Filed 10-29-92; 8:45 am]

BILLING CODE 4000-01-M

Friday
October 30, 1992 •

Part VII

**Environmental
Protection Agency**

40 CFR Part 261

**Hazardous Waste Management System;
Definition of Hazardous Waste; "Mixture"
and "Derived-From" Rules; Final and
Proposed Rule**

Environmental Protection Agency

40 CFR Part 261

[FRL-4528-8]

Hazardous Waste Management System; Definition of Hazardous Waste; "Mixture" and "Derived-From" Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action responds to public comment on two proposals (57 FR 7636, March 3, 1992, and 57 FR 21450, May 20, 1992) to modify EPA's hazardous waste identification rules under the Resource Conservation and Recovery Act (RCRA). Because of the large number of comments received by the Agency and the need to evaluate all of the technical information provided by the public, EPA is today removing the April 28, 1993 expiration date from its reinstatement of the "mixture" and "derived-from" rules published on March 3, 1992 (see 57 FR 7628). This action will assure continuity of the existing national hazardous waste program while EPA determines the most appropriate approach for modification of the rules.

EFFECTIVE DATE: Pursuant to Section 3010(b)(1) of RCRA, this rule is effective on October 30, 1992.

FOR FURTHER INFORMATION CONTACT:

For general information on EPA's hazardous waste rules, contact the RCRA/Superfund Hotline at (800) 424-9346 or (703) 920-9810. For technical information on this rule contact Mr. William A. Collins, Jr., Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4791.

SUPPLEMENTARY INFORMATION: On March 3, 1992, EPA published an interim final rule reinstating its "mixture" and "derived-from" rules under RCRA (see 57 FR 7628). This reinstatement was in response to a December 6, 1991 decision of the United States Court of Appeals for the District of Columbia Circuit in which the Court vacated the "mixture" and "derived-from" rules due to notice-and comment deficiencies in the 1980 promulgation of these rules (*Shell Oil Company v. EPA*, 950 F.2d 741 DC Cir. 1991). The "mixture" and "derived-from" rules address when listed hazardous waste which is mixed with other wastes or otherwise managed after generation can be determined to no longer be hazardous. At the Court's suggestion, EPA reinstated the rules on an interim basis and solicited comment

on these rules both in the reinstatement and a lengthy proposal published on May 20, 1992 (57 FR 21450). Because at the time of reinstatement EPA believed that revisions to these rules could be completed by April 28, 1993, the notice included a termination date or "sunset provision" of April 28, 1993 in the reinstated "mixture" and "derived-from" rules (40 CFR 261.3(e)).

EPA received an enormous volume of public comments and technical information on these proposals, and many of the commenters expressed serious concern over the "sunset provision," doubted whether the Agency could develop adequate revisions to these rules in such a timeframe, and urged EPA to maintain the *status quo* by retaining the "mixture" and "derived-from" rules until revisions could be made. Many of commenters were States, who are also responsible for implementing the RCRA program. Although some industry commenters urged the Agency to retain the "sunset provision" and issue revised rules in whole or in part by the April 28, 1993 date, most conceded that such revisions would be unlikely given the complexity of issues and the relatively short timeframe.

For the reasons discussed in the reinstatement notice (which were supported by many of the commenters on the proposals), EPA continues to believe that the Agency must assure continuity of the hazardous waste program while developing appropriate revisions. Therefore, in response to those commenters who urged the Agency to provide additional time for evaluation of revisions to the "mixture" and "derived-from" rules and who expressed concern about the expiration date, EPA is removing the "sunset provision" from its hazardous waste identification rules. Accordingly, the "mixture" and "derived-from" rules remain in effect until EPA takes final action to revise these rules.

EPA intends to promulgate revisions to the "mixture" and "derived-from" rules in 12 to 24 months. Today's action is intended to assure that EPA will have sufficient time to obtain and evaluate advice and technical data from all interested parties before making these final revisions to its hazardous waste identification program. The Agency is evaluating comments received to date and intends to have further discussions with interested parties. In a separate notice in today's *Federal Register*, EPA is withdrawing the proposed Hazardous Waste Identification Rule (HWIR) published on May 20, 1992.

Compliance with Regulatory Requirements

1. Effective date

Section 3010(b)(1) of RCRA allows EPA to promulgate an immediately effective rule where the Administrator finds that the regulated community does not need additional time to come into compliance with the rule. Because today's action merely preserves the continuity of existing hazardous waste identification rules while EPA fully considers alternatives, the regulated community does not need additional time to come into compliance. For that reason, EPA also believes that it has good cause to promulgate an immediately effective rule under the Administrative Procedures Act, 5 U.S.C. 553(d)(3).

2. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement to perform a regulatory impact analysis (RIA). This rule preserves existing rules during an interim period of time. EPA estimates that the cost savings of alternatives discussed in the proposal published on May 20, 1992 (57 FR 21450) would range from \$60 million to \$1.8 billion per year. In developing revisions to the mixture and derived-from rules, EPA will complete an RIA of all the alternatives that will be considered in developing a final rule. Therefore, EPA will prepare an RIA during the development of the modifications to the "mixture" and "derived-from" rules, which EPA expects to promulgate within the next 12 to 24 months.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have such an impact. Because today's rule merely preserves existing rules while EPA fully considers alternatives, the Administrator of EPA hereby certifies that the regulation will not have a significant impact on a substantial number of small entities.

4. Paperwork Reduction Act

This rule contains no information collection requirements which need approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.
Reporting and recordkeeping
requirements.

For the reasons set out in the
preamble, 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, and
6922.

§ 261.3 [Amended]

2. In 261.3, paragraph (e) is removed.

Dated: October 26, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-26397 Filed 10-29-92; 8:45 am]

BILLING CODE 6560-50-M

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 261****[FRL-4528-7]****Hazardous Waste Management
System; Definition of Hazardous
Waste; Mixture and Derived From
Rules****AGENCY:** Environmental Protection
Agency.**ACTION:** Notice of withdrawal of
proposed rule.

SUMMARY: This action withdraws a proposed regulation (May 20, 1992; 57 FR 21450) to modify the hazardous waste identification rules under the Resource Conservation and Recovery Act (RCRA). The proposal presented a range of alternatives for revising the identification of wastes that warrant regulation under subtitle C of RCRA, including a proposal for Concentration Based Exemption Criteria (CBEC) and an Expanded Characteristics Option (ECHO). The proposal also addressed issues related to regulation of contaminated media and contingent management of wastes that may be hazardous if improperly disposed.

EPA is withdrawing this proposal because many parties that would be affected by EPA's decision on a final rule raised a broad range of policy and technical issues which the Agency believes must be addressed. Therefore, EPA will address in future proposed rules these issues raised through comment on the withdrawn HWIR proposal.

FOR FURTHER INFORMATION CONTACT: For general information on EPA's hazardous waste rules contact the RCRA/Superfund hotline at 800-424-9346 or 703-920-9810. For technical

information on this rule contact Mr. William A. Collins, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202-260-4791.

SUPPLEMENTARY INFORMATION: On March 3, 1992, EPA published an interim final rule reinstating its "mixture" and "derived-from" rules under RCRA (see 57 FR 7628). This reinstatement was in response to a December 6, 1991 decision of the United States Court of Appeals for the District of Columbia Circuit in which the Court vacated the "mixture" and "derived-from" rules due to notice-and-comment deficiencies in the 1980 promulgation of these rules (*Shell Oil Company v. EPA*, 950 F.2d 741 (DC Cir. 1991)). The "mixture" and "derived-from" rules address when listed hazardous waste either mixed with other wastes or otherwise managed after generation, is hazardous waste. At the Court's suggestion, EPA reinstated the rules on an interim final basis and solicited comment on these rules both in the reinstatement and in a lengthy proposal published on May 20, 1992 (57 FR 21450) called the Hazardous Waste Identification Rule (HWIR). Today's action formally withdraws the HWIR proposal.

The proposed HWIR presented a range of alternatives for revising identification of solid wastes that warrant regulation as hazardous waste under subtitle C of RCRA, including proposal of a Concentration Based Exemption Criteria (CBEC) as well as an Expanded Characteristics Option (ECHO).

EPA's decision not to move forward with the proposed HWIR comes after outreach to the many parties that would be affected by EPA's decision on a final rule. There were a broad range of policy and technical issues raised to EPA in comments on HWIR. EPA has

determined that a new proposal is needed to assure that a rulemaking on these important issues is appropriate and has a sound technical basis.

Elsewhere in today's Federal Register, EPA is issuing in final one portion of the proposal; that is, the Agency deleting a "sunset" provision which would have caused the interim final "mixture" and "derived-from" rules to expire on April 28, 1993. Therefore, the mixture and derived from rules remain in effect as interim final rules, and are unaffected by this notice.

EPA plans to hold a series of public meetings to solicit input on how best to ensure that waste mixtures containing hazardous wastes and wastes derived from the treatment, storage or disposal of hazardous wastes do not pose unreasonable risks to health and the environment. This effort will complement EPA's ongoing program to improve RCRA regulations. In these public meetings, participants will be asked to discuss with EPA appropriate procedures and standards to govern safe management of mixtures and derivatives of hazardous waste. EPA intends for this effort to result in a more risk-based RCRA program. EPA also will solicit additional input on how to best address cleanup wastes under these rules.

Consistent with Public Law 102-369 (October 6, 1992), EPA intends to propose and promulgate revisions to the "mixture" and "derived-from" rules in 12 to 24 months. The Agency will prepare an appropriate regulatory impact analysis (RIA) as part of this rulemaking.

Dated: October 26, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-26398 Filed 10-29-92; 8:45 am]

BILLING CODE 6560-50-M