

not have any 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 foreign markets. A regulatory impact analysis, therefore, is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information and the burden estimate should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503. The collections of information in this proposed regulation are authorized by 12 U.S.C. 1829b and 1951-1959 and 31 U.S.C. 5311-5328. The likely recordkeepers are financial institutions (as defined in 31 CFR 103.11(i)).

Estimated number of respondents and/or recordkeepers: 60,000.

Estimated total annual recordkeeping burden: 9.9 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 165.4 hours.

Estimated annual frequency of responses: Upon request.

Drafting Information

The principal author of this document is the Office of Financial Enforcement. However, other offices at the Department of the Treasury assisted in its development. Technical assistance was also provided by the staff of the Board of Governors of the Federal Reserve and the staff of the Money Laundering Section of the Department of Justice.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth in the preamble, 31 CFR part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951-1959); and Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5328).

2. It is proposed to amend § 103.33 by adding new paragraph (h) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(h) With respect to transmittals of funds:

(1)(i) A transmitter's financial institution shall include in any transmittal order, at the time it is sent to a receiving financial institution, the following information:

(A) The name and address of the transmitter of the transmittal order;

(B) The amount of the transmittal of funds;

(C) The execution date of the transmittal order;

(D) The identity of the recipient's financial institution; and

(E) Either the name and address or the account number of the recipient of the transmittal order, if received with the transmittal order.

(ii) Any receiving financial institution that acts as an intermediary bank, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(A) The name and address of the transmitter of the transmittal order;

(B) The amount of the transmittal of funds;

(C) The execution date of the transmittal order;

(D) The identity of the recipient's financial institution;

(E) Either the name and address or the account number of the recipient of the transmittal order, if received with the transmittal order; and

(F) Either the name and address or numerical identifier of the transmitter's financial institution.

(iii) Any receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a

corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(A) The name and address of the transmitter of the transmittal order;

(B) The amount of the transmittal of funds;

(C) The execution date of the transmittal order;

(D) The identity of the recipient's financial institution;

(E) Either the name and address or the account number of the recipient of the transmittal order, if received with the transmittal order; and

(F) Either the name and address or numerical identifier of the transmitter's financial institution.

Dated: August 11, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93-20871 Filed 8-30-93; 8:45 am]

BILLING CODE 4810-25-P

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R-0807]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comments on enhanced recordkeeping requirements relating to certain wire transfers by financial institutions. These proposed recordkeeping requirements are being promulgated jointly by the Board and the Department of Treasury (Treasury). A companion notice of proposed rulemaking, published elsewhere in this issue of the Federal Register by Treasury and the Board (joint notice) sets forth the substantive provisions of the proposed recordkeeping requirements. This notice sets forth a proposed regulation for codification at 12 CFR part 219, subpart B, which extensively cross-references the substantive provisions set forth in the joint notice.

Under the joint notice, each domestic financial institution involved in either a domestic or international wire transfer will have to collect and retain certain information. The amount and type of information collected and retained will depend upon the nature of the financial

institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution. The recordkeeping requirements applicable to international wire transfers are required by statute to be effective before January 1, 1994. For ease of implementation, Treasury and the Board propose to make the proposed recordkeeping requirements applicable to both domestic and international wire transfers effective on December 31, 1993.

DATES: Comments are due on or before October 4, 1993.

ADDRESSES: Each comment on the provisions of this proposed notice (as supplemented by the joint notice) should be sent separately to both the Treasury and the Board at the following addresses:

Treasury: Mr. Peter Djinis, Director, Office of Financial Enforcement, Department of the Treasury, room 5000 Annex, 1500 Pennsylvania Avenue, NW, Washington, DC 20220;

Board: Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Mr. Wiles, Secretary, Board of Governors of the Federal Reserve System, should refer to Docket No. R-0807. Comments may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW.

Inspection of Comments: Comments may be inspected at the Federal Reserve Board, 20th and Constitution Avenue, NW, Washington, DC, in room B-1122 between 9 a.m. and 5 p.m., as provided in part 261 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8. Comments may also be inspected at the Department of Treasury between 10 a.m. and 4 p.m. in the Treasury Library, which is located in room 5030, 1500 Pennsylvania Avenue, NW, Washington, DC. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library at (202) 622-0990.

FOR FURTHER INFORMATION CONTACT:

Treasury: A. Carlos Correa, Assistant Director, Rules and Regulations Section, Office of Financial Enforcement, Department of the Treasury, (202) 622-0400.

Board: Gayle Brett, Manager, FedWire, Division of Reserve Bank Operations and Payment Systems (202) 452-2934; Oliver Ireland, Associate

General Counsel (202) 452-3625, or Elaine M. Boutilier, Senior Attorney, Legal Division, (202) 452-2418, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: The statute generally referred to as the Bank Secrecy Act (Pub. L. 91-508, codified at 12 U.S.C. 1829b and 1951-1959, and 31 U.S.C. 5311-5328) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. The primary purpose of the Bank Secrecy Act is to identify the source, volume and movement of funds into and out of the country and through domestic financial institutions. The Bank Secrecy Act was amended last year in the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development Act of 1992, Public Law 102-550 (referred to hereafter as the 1992 Amendment) to specifically authorize the Treasury and the Board jointly to prescribe regulations to require maintenance of records regarding domestic and international funds transfers.

The 1992 Amendment authorizes the Board and the Treasury to promulgate recordkeeping requirements for domestic wire transfers by insured depository institutions whenever the agencies determine that such records have a high degree of usefulness in criminal tax or regulatory investigations or proceedings. In addition, the 1992 Amendment requires the Treasury and the Board to issue final regulations with regard to the international transactions to be effective before January 1, 1994. The recordkeeping requirements for international transactions will apply to financial institutions as defined in 31 CFR 103.11(i), which include insured depository institutions and brokers and dealers in securities, as well as businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments (collectively referred to as check cashing and money transmitting businesses). In prescribing these required regulations, the Board and the Treasury must take into consideration the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment

system. The Board and the Treasury have decided that it would be simpler to issue proposed regulations for both domestic and international funds transfers simultaneously, because the recordkeeping requirements will be substantially the same.

The number of wire transfers completed daily is substantial. For example, the daily average number of wire transfers made over FedWire in 1992 was 270,000, with average aggregate daily dollar amount of \$800 billion and a peak aggregate daily dollar amount of over \$1 trillion.

Money laundering is a vital component of drug trafficking and other criminal activity throughout the world, and Federal law enforcement agencies believe that a significant amount of the money laundered involves wire transfers. Proceeds from illegal activities may be processed through money laundering schemes involving domestic and/or international payments by wire transfers. Such activity has been documented in several recent investigations conducted by Treasury and other Federal law enforcement agencies. The Board and the Treasury believe that the records to be retained under this proposed rulemaking will be useful in tracing the proceeds of illegal activities and will assist in the identification and prosecution of individuals involved in such illegal activities. Accordingly, Treasury and the Board believe that maintenance of these records will have a high degree of usefulness in criminal, tax, or regulatory investigations of money laundering operations. Further, the Treasury and the Board believe that these recordkeeping requirements will not have a significant adverse impact on the cost or the efficiency of the payments system.

Codification of the Proposed Rule

To minimize potential confusion by affected entities regarding the scope of this proposed joint rule and its interaction with other anti-money laundering regulations, the substantive requirements of the proposed rule will be codified with other Bank Secrecy Act regulations, as part of Treasury's regulations in 31 CFR part 103. Because the Board is required to prescribe these regulations jointly with Treasury, the Board is proposing to add a new subpart B to 12 CFR part 219, which will cross-reference the jointly prescribed requirements in 31 CFR part 103. The current text of 12 CFR part 219, concerning reimbursement to financial institutions for assembling and providing financial records pursuant to the Right to Financial Privacy Act, will

become subpart A of 12 CFR part 219. (The Board expects to revise and update this newly designated subpart A in the near future.)

Summary Description of the Revised Proposed Rule

The joint notice, published elsewhere in today's *Federal Register* provides an extensive description of the substantive requirements of the proposed rule. While the Board is authorized to promulgate jointly proposed recordkeeping and reporting requirements with regard to domestic wire transfers by insured depository institutions, the Board is specifically required to promulgate jointly with Treasury recordkeeping and reporting requirements for international wire transfers by both insured depository institutions and nonbank financial institutions. The Board is not authorized to promulgate recordkeeping and reporting requirements for domestic wire transfers by nonbank financial institutions. (Treasury has this authority under other statutory provisions.) This limitation is reflected in the Board's proposed subpart B of 12 CFR part 219. The recordkeeping and reporting requirements proposed by the Board for international wire transfers by nonbank financial institutions, however, are identical to those proposed by Treasury for domestic (and international) wire transfers by nonbank financial institutions. Therefore, compliance by nonbank financial institutions with the proposed requirements will not be affected by this limitation in the Board's regulatory authority.

Submission of Comments

Comments on all aspects of the proposed regulation are welcome. The Treasury and the Board specifically request comment on the usefulness of the records covered by the proposed rule for law enforcement purposes and the effects that the proposed rule might have on the cost and efficiency of the payment system. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to the Board and/or Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. Neither the Board nor Treasury will recognize as confidential any materials or comments, including the name of any person submitting comments. Any material not intended to be disclosed to the public should not be included in the comments.

Initial Regulatory Flexibility Analysis

As required by 5 U.S.C. 603(b), a "description of the reasons why action by the agency is being considered" and a "succinct statement of the objectives of, and legal basis for, the proposed rule" are found elsewhere in this preamble.

The Board and the Treasury propose that the requirements in this rule be applicable to all financial institutions subject to the Bank Secrecy Act, as implemented, regardless of their size. An exemption for small entities would not be appropriate because it would permit money laundering operations to evade the recordkeeping process by using small financial institutions. This would significantly diminish the usefulness of these records for criminal, tax or regulatory investigations.

The small entities that will be affected by this proposed rule include small banks and many check cashing and money transmitting businesses. In order to minimize the economic impact on small entities, the proposed rule would allow financial institutions that send or receive transmittal orders for account holders to use existing records to satisfy some of the recordkeeping requirements. The Board and the Treasury do not believe that the proposed rule would impose reporting or recordkeeping burdens on small entities that require specialized professional skills not available to them.

List of Subjects in 12 CFR Part 219

Banks, banking, Currency, Reporting and recordkeeping requirements, Foreign banking.

For the reasons set out in the preamble, 12 CFR part 219 is proposed to be amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS

1. The title of part 219 is revised to read as set forth above.

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

§§ 219.1 through 219.7 [Designated as Subpart A]

2. Sections 219.1 through 219.7 are designated as subpart A, and a new subpart A heading is added to read as set forth above.

3. The authority citation for part 219 is designated as the authority for subpart A and continues to read as follows:

Authority: 12 U.S.C. 3415.

4. Subpart A is amended by revising § 219.1 to read as follows:

§ 219.1 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219) is issued by the Board of Governors of the Federal Reserve System (the Board) under section 1115 of the Right to Financial Privacy Act (the Act) (12 U.S.C. 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority pursuant to the Act.

5. Section 219.2 is amended by revising the introductory text to read as follows:

§ 219.2 Definitions.

For the purposes of this subpart, the following definitions shall apply:

* * * * *

6. Subpart B is added to part 219 to read as follows:

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

Sec.	
219.21	Authority, purpose and scope.
219.22	Definitions.
219.23	Recordkeeping and reporting requirements.
219.24	Retention period.

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

Authority: 12 U.S.C. 1829b (2) and (3).

§ 219.21 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219) is issued by the Board under the authority of section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b), as amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub.L. 102-550, title XV; 106 Stat. 3672, 4044), which authorizes the Board and the Secretary of the Treasury jointly to prescribe recordkeeping and reporting requirements for domestic wire transfers by insured depository institutions; and which also requires the Board and Treasury jointly to prescribe recordkeeping and reporting requirements for international wire transfers by insured depository institutions and by nonbank financial institutions. The definitions and recordkeeping and reporting requirements referenced in this subpart are jointly promulgated and administered by the Board and the Treasury and are codified in 31 CFR

103.11 and 103.33 (e), (f) and (g). Such recordkeeping and reporting requirements will assist in the prosecution of money laundering activities and are determined to have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings.

§ 219.22 Definitions.

The following terms are defined in 31 CFR 103.11 under the joint authority of the Board and the Treasury:

Accept.
Beneficiary.
Beneficiary's bank.
Execution date.
Funds transfer.
Intermediary bank.
Intermediary financial institution.
Originator.
Originator's bank.
Payment date.
Payment order.
Receiving bank.
Receiving financial institution.
Recipient.
Recipient's financial institution.
Sender.
Transmittal of funds.
Transmittal order.
Transmittor.
Transmittor's financial institution.

§ 219.23 Recordkeeping and reporting requirements.

(a) *Domestic and international funds transfers by insured depository institutions.* The Board and the Treasury are jointly authorized to promulgate recordkeeping and reporting requirements for domestic and international funds transfers by insured depository institutions whenever the agencies determine that the maintenance of such records has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. These regulations are codified at 31 CFR 103.33(e). For the purposes of this subpart, the provisions of 31 CFR 103.33(e) apply only to funds transfers by insured depository institutions.

(b) *International transmittals of funds by financial institutions other than insured depository institutions.* The Board and the Treasury are jointly required to promulgate reporting and recordkeeping requirements for international transmittals of funds by financial institutions, including brokers and dealers in securities, and businesses that issue or redeem money orders, travelers' checks or other similar instruments. In prescribing these requirements, the Board and the Treasury take into account the

usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. These regulations are codified at 31 CFR 103.33 (f) and (g). For the purposes of this subpart, the provisions of 31 CFR 103.33 (f) and (g) apply only to international transmittals of funds by financial institutions other than insured depository institutions.

§ 219.24 Retention period.

All records that are required to be retained by this subpart shall be retained for a period of five years. All these records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time that has expired since the record was made. Any records required to be retained by this part shall be made available to the Board upon request.

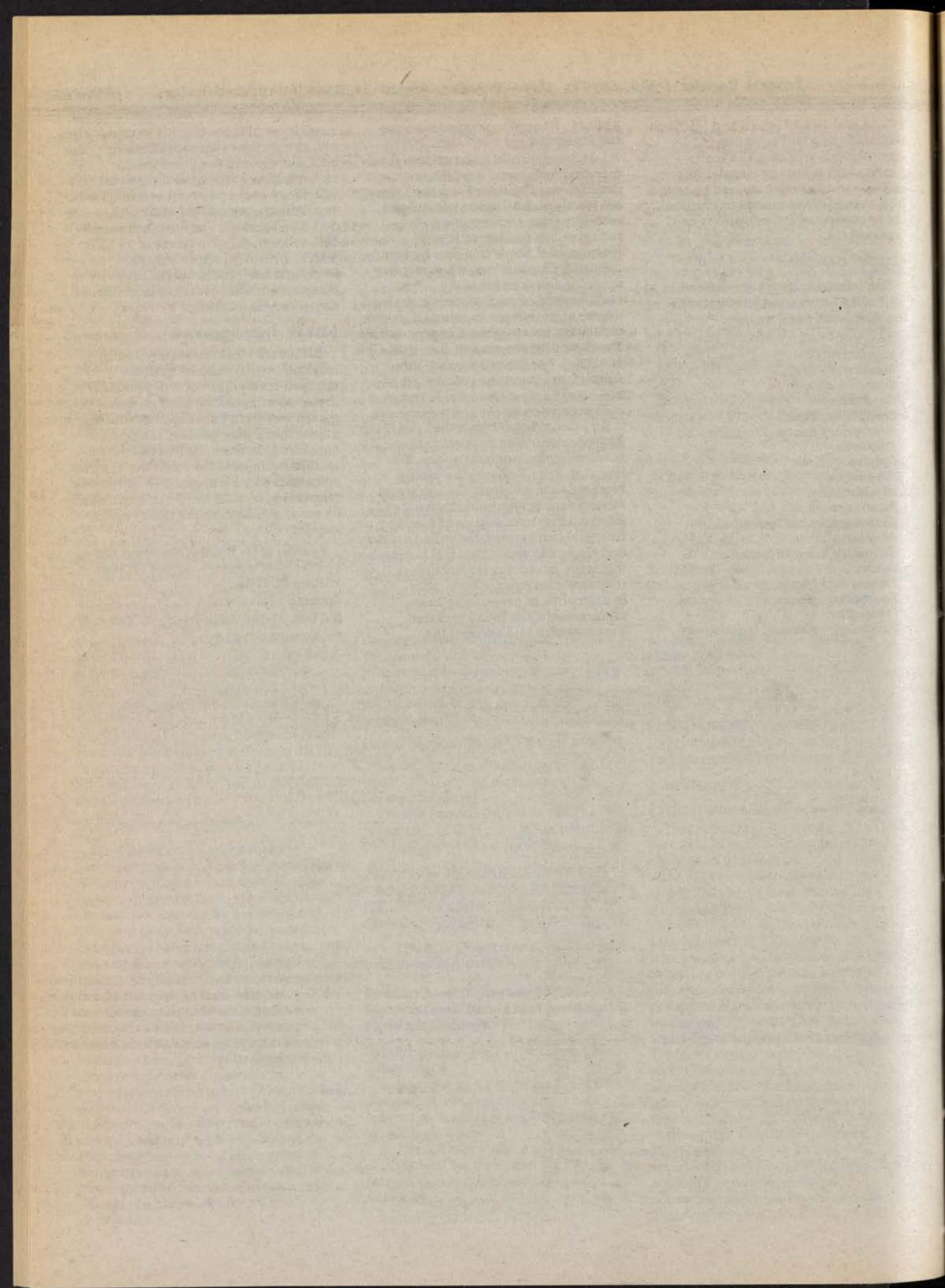
By order of the Board of Governors of the Federal Reserve System, August 19, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-20841 Filed 8-30-93; 8:45 am]

BILLING CODE 6210-01-P



Federal Register

Tuesday
August 31, 1993

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Designation of Critical Habitat for the
Silver Rice Rat; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Silver Rice Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates critical habitat for the endangered silver rice rat (Lower Florida Keys population of *Oryzomys palustris* or *O. argentatus*). This species was listed as endangered on April 30, 1991. Critical habitat was not designated at that time because it was not deemed prudent.

Federal actions that may affect critical habitat will be subject to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Act). As required by section 4 of the Act, the Service has considered the economic and other relevant impacts prior to making a final decision on areas to be included as critical habitat. Some areas have been excluded from critical habitat designation based on comments received on the proposed rule. The final critical habitat designation includes both Federal and private lands.

EFFECTIVE DATE: September 30, 1993.

ADDRESSES: The complete file for this rule is available, for inspection, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien at the above address (904/232-2580).

SUPPLEMENTARY INFORMATION:

Background

In a final rule published April 30, 1991, in the *Federal Register* (56 FR 19809), the Service determined endangered status for the Lower Keys population of the rice rat, or silver rice rat (*Oryzomys palustris* natator, or *O. argentatus*), pursuant to the Act. This small mammal is restricted to wetlands of the Lower Keys of Monroe County, Florida. The silver rice rat is known to occur on eight keys, is believed to be extirpated from one key, and likely has been extirpated on two other keys. It is endangered by conversion of its wetland habitat for commercial and residential purposes. Further details can be obtained from the 1991 *Federal Register* rule.

In the final rule listing the silver rice rat as an endangered species, the Service concluded that critical habitat designation was not prudent. A re-examination of potential threats to the species led the Service to conclude that the risk of illicit takings arising from publication of critical habitat may not be so serious as to render designation of critical habitat imprudent. The Service gave notice of its intent to propose critical habitat for the silver rice rat on August 1, 1991 (56 FR 36753) and proposed to designate critical habitat on May 7, 1992 (57 FR 19585).

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means:

- (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and;
- (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Based on information provided by Goodyear (1984), the May 7, 1992, proposal for critical habitat included nine keys or groups of keys occupied by the species, totalling about 10,062 acres: Little Pine Key, Water Keys (north of Big Torch Key, not the Water Key west of Little Pine Key), Big Torch Key, Middle Torch Key, Raccoon Key, Summerland Key, Cudjoe Key, Johnston Key, and Saddlebunch Keys. About 5,003 acres of the proposed critical habitat consisted of Federal (National Key Deer Refuge or Great White Heron National Wildlife Refuge) lands.

The Service's listing regulations 50 CFR 424.12(b)(5) require the Service to consider those physical and biological attributes essential to the conservation of the species. Such requirements, as stated in 50 CFR 424.12(b) include, but are not limited to, the following:

- (1) Space for individual and population growth, and for normal behavior;
- (2) Food, water, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, rearing of offspring; and,
- (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service has determined that physical and biological habitat features (referred to as the primary constituent

elements) that support nesting, foraging, cover and dispersal are essential to the conservation of the silver rice rat. Goodyear (1984, 1987) described essential habitat for the silver rice rat as areas containing contiguous mangrove swamps, saltmarsh flats, and buttonwood transition vegetation. These vegetational types, as well as fresh water cattail marshes, contain the primary constituent elements in critical habitat for the silver rice rat. These vegetational types can be generally identified by the presence of the following species:

- Mangrove swamp containing red (*Rhizophora mangle*), black (*Avicennia germinans*), and white (*Laguncularia racemosa*) mangroves and buttonwood (*Conocarpus erectus*);
- Salt marshes, swales, and adjacent transitional wetlands containing saltwort (*Batis maritima*), perennial glasswort (*Salicornia virginica*), saltgrass (*Distichlis spicata*), sea ox-eye (*Borrchia frutescens*), keygrass (*Monanthochloë littoralis*), and coastal dropseed (*Sporobolus virginicus*); and,
- Fresh water marshes containing cattails (*Typha domingensis*), sawgrass (*Cladium jamaicense*), and cordgrass (*Spartina* spp.).

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and after consideration of the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. The Act thus requires the Service to evaluate those economic and other impacts likely to take place due to the designation of critical habitat.

The Service prepared a draft economic analysis in conjunction with the proposal of critical habitat for the silver rice rat, and the resulting comments and information have been incorporated into a final analysis. The conclusion of that analysis is that while there is no justification for excluding areas from the proposed critical habitat for economic reasons, two areas should be excluded from critical habitat because they no longer support significant silver rice rat habitat.

The two areas total 1,032 acres and consist of 460 acres on Summerland Key

and 572 acres on Cudjoe Key. Both areas are located south of U.S. Highway 1. Based on comments from the Florida Game and Fresh Water Fish Commission and the Monroe County Environmental Resources Department, these areas have been extensively developed and have little remaining habitat suitable for the silver rice rat. The exclusion of these areas therefore will not affect the survival or recovery of the silver rice rat. The critical habitat designation has been modified for the final rule to reflect these exclusions.

Due to the relatively large extent of Federal land (National Wildlife Refuges and some military lands) in the Lower keys, the Service has considered whether available habitat on Federal lands would be sufficient for conservation of the silver rice rat. However, only three of the eight currently identified populations of the silver rice rat (Johnston, Little Pine, and the Water Keys) are protected by being located entirely on refuge or other Federal lands; the other five are partly or entirely dependent on private lands. Known populations of the silver rice rat are few, scattered, and usually at low numbers and density. All eight populations need protection in order to conserve the silver rice rat.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. By definition, critical habitat affects only Federal agency actions and does not apply to private, or local or State government activities that are not subject to Federal authorization or funding.

The principal public activity in the proposed critical habitat is the operation of the Service's National Key Deer Refuge. Seven of the nine keys proposed as critical habitat are totally or partially included in existing National Key Deer Refuge boundaries. As discussed above, in addition to the existing requirement to consult within the agency on actions that may affect the silver rice rat, the Service will now be required to consult within the agency on any actions that are likely to result in destruction or adverse modification of its critical habitat. These effects are judged to be minimal: The Service manages the refuge for the maintenance of endangered species, primarily the Key deer; the needs of the silver rice rat are not expected to conflict with any existing refuge management practices (see Summary of Comments and Recommendations below). The

endangered status of the silver rice rat already requires the Service to address the conservation needs of the species on refuge lands, through the Act and existing National Wildlife Refuge System policy. Critical habitat designation is not expected to significantly affect current management of refuge lands.

Another potential Federal agency involvement is the National Flood Insurance Program administered by the Federal Emergency Management Agency (FEMA). FEMA believes that its implementation of the flood insurance program is not an action that is subject to section 7 of the Endangered Species Act, but this legal position was contested in a lawsuit filed by the National Wildlife Federation. *Florida Key Deer v. Stickney*, Civ. No. 90-10037 (S.D. Fla., complaint filed April 2, 1990). In the lawsuit, the National Wildlife Federation contended that FEMA's provision of Federal flood insurance facilitates development that may result in the destruction or adverse modification of Florida Key deer habitat. The case was tried in U.S. District Court in Key West in April, 1993, and was submitted to the court for decision thereafter. The decision is expected soon. If FEMA is unsuccessful in the lawsuit, the agency may be required to consult regarding the impact that providing flood insurance to eligible communities has on listed species and designated critical habitat within the Florida Keys. Section 7 consultations involving the provision of Federal flood insurance could, in some instances, lead to "jeopardy" or "adverse modification of critical habitat" determinations by the Service. In these cases, FEMA could decide not to provide Federal flood insurance in certain areas of the Keys.

The permitting program of the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act may be affected by critical habitat designation. The Corps must now insure that issuance of such permits is not likely to result in the destruction or adverse modification of critical habitat for the silver rice rat; however, Corps permitting actions in those areas of the Keys where the species occurs would require consultation under section 7 of the Act, regardless of whether or not such areas are designated as critical habitat. Only private activities that require permit review and may affect the critical habitat for the silver rice rat would be affected; these activities include the filling of transitional wetlands for residential development. Private activities that do not require a Federal permit or do not involve Federal

funding would not be affected by this rule.

Some platted subdivisions within proposed critical habitat are located partially in transitional wetlands used by the silver rice rat. In order to prepare these sites for construction, filling for house pads and driveways is often necessary. This activity fragments and eliminates silver rice rat habitat. Potential indirect impacts of such development include increased numbers of free-ranging or feral domestic dogs and cats, raccoons, and black rats; the latter two species are attracted by increased food availability around human residences. Some of these fill activities require permits from the U.S. Army Corps of Engineers through section 404 of the Clean Water Act. If permit issuance is likely to result in the destruction or adverse modification of critical habitat for the silver rice rat, such issuance requires consultation between the Corps and the Service under section 7(a)(2) of the Act.

The current endangered status of the silver rice rat already requires Federal agencies to consult on any action that may affect this species, including actions authorized under the 404 program. Further, existing and anticipated Monroe County regulations and ordinances do not allow new development in silver rice rat habitat. Section 9.5-343 of the Monroe County Code requires a 100 percent "open space ratio" in mangrove and freshwater wetlands, and an 85 percent ratio in salt marsh and buttonwood habitats. Policy 204.2.1 of the Monroe County Comprehensive Plan will require a 100 percent open space ratio in all of the wetland habitats used by the silver rice rat; this policy was adopted by the Monroe County Commission in March 1993 and will be included in the Comprehensive Plan once approved by the State. The only fill or structures to be permitted in such wetlands will be utility pilings, pilings for elevated walkways and docks, and accessways to structures on uplands or already disturbed wetlands for which there is no other means of access.

The "Dwelling Unit Allocation Text Amendment", Monroe County Ordinance No. 016-1992, was passed and adopted by the Monroe County Commission on June 23, 1992, and became effective July 1, 1992. The ordinance addresses the need to improve and maintain reasonable hurricane evacuation times from the county by regulating population growth. It limits the number of building permits issued in the county annually to 255 units, a reduction from an average 552 new single family unit permits issued

per year since 1972. The annual dwelling unit allocation for the Lower Keys is 155 units. Among the large number of factors to be considered by the county in ranking and issuing permits are the habitat type present on the proposed building site and the likely presence of listed species. The only type of wetlands for which building permits would currently be considered are saltmarsh and buttonwood wetlands, but receiving a building permit would be difficult to accomplish in wetland habitat types, especially if silver rice rats (or other listed species) are known or suspected to occur on the site. As discussed above, new development even in these wetlands will soon be prohibited.

The U.S. Air Force operates a tethered aerostat radar system on a 36-acre tract on Cudjoe Key. Ongoing and planned activities at the site occur in developed areas and will not impact silver rice rat habitat. The Air Force expects no economic impacts from the designation of critical habitat.

The Charles River Laboratories maintains a breeding colony of rhesus monkeys on Raccoon Key. Monkeys were formerly supplied to the U.S. Food and Drug Administration, but that arrangement terminated in 1989. There is currently no Federal involvement with this project. Goodyear (1984) expressed concern about the damage monkeys were doing to red mangroves by stripping them of leaves, and the indirect effect this might have on the silver rice rat. Wolfe (1987a) was unable to find any evidence that the monkeys were affecting the silver rice rat. Based on a consent order from the Florida Department of Environmental Regulation, the monkeys were supposed to be caged to minimize environmental effects on the vegetation of Raccoon Key. Recent information from the National Key Deer Refuge (John Andrew, pers. comm.) indicates there are still free-ranging monkeys on Raccoon Key, and they still appear to be damaging red mangroves. Due to the lack of Federal involvement in maintaining the monkey colony, critical habitat will not affect this situation. However, destruction of habitat resulting in taking of silver rice rats could violate section 9 of the Act, which prohibits take of endangered species.

Summary of Comments and Recommendations

In the May 7, 1992, proposed rule and associated notifications, the Service requested all interested parties to submit factual reports or information that might contribute to the development of this final rule.

Appropriate state agencies, county government, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Key West Citizen on May 24, 1991. Ten comments were received in response to the proposal. Issues raised by commenters are discussed below.

Issue 1: The U.S. Army Corps of Engineers (Jacksonville District) reported the number of their permit (Clean Water Act) actions since 1989 on Summerland Key (45 actions), Cudjoe Key (75 actions), Torch Key (2 actions), and Raccoon Key (6 actions). The Corps stated that critical habitat designation would increase the time needed to obtain permits and result in higher costs to the applicants and the involved Federal agencies (the Service and the Corps) due to section 7 of the Act.

Response: The economic implications of critical habitat designation are discussed in the Critical Habitat section above and in the economic documents prepared in conjunction with this final rule. Wetland permitting actions on any of the Keys designated as critical habitat for the silver rice rat would be likely to result in section 7 consultation even if the keys were not so designated. Federal agency actions likely to affect listed species require consultation under section 7(a)(2) of the Act regardless of whether or not critical habitat is designated for the species. Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species regardless of whether critical habitat has been designated for that species. Furthermore, the county regulations and ordinances discussed above under Critical Habitat should decrease the number of future wetland permit applications under the Clean Water Act.

Issue 2: Several comments suggested modifying the proposed critical habitat by adding or deleting areas:

The Florida Game and Fresh Water Fish Commission (Commission) suggested that portions of Cudjoe and Summerland Keys were so extensively developed that they could be deleted from proposed critical habitat, but that a number of other keys might be worthy of inclusion. The Monroe County Environmental Resources Department supported the Commission's suggestions, indicated that there was a rice rat population on north Saddlebunch Key that should be included in critical habitat, and stated that, due to existing and proposed county regulations concerning the filling or developing of wetlands, they

anticipated little impact from the designation of critical habitat.

Dr. James D. Lazell, Jr., co-describer of the silver rice rat in 1978, stated that the proposed critical habitat was too small and should include Sugarloaf Keys and U.S. Navy lands north of U.S. Highway 1 on Saddlebunch Key. Dr. Numi C. Goodyear (then Spitzer), senior author of the species description, stated that the silver rice rat currently occurs on a number of keys or groups of keys additional to those proposed as critical habitat, and that all of these keys should be included as critical habitat. Two conservation organizations supported Dr. Goodyear's recommendations.

Response: As discussed earlier in this rule, areas south of U.S. Highway 1 on Summerland and Cudjoe Keys have been deleted from critical habitat. The Service has considered adding keys to the proposed critical habitat. While many keys contain one or more of the habitats used by silver rice rats, there is currently no evidence to show that they occur there. Wolfe (1987b) believed that the silver rice rat did not currently occur on Geiger and Boca Chica Keys, but that these keys provided a corridor for movement during times of high population density. Though there is no direct evidence of silver rice rats on keys aside from the nine where they were trapped by Goodyear (1987), the Service agrees that other keys may provide important habitat. Silver rice rat populations may be found on additional keys, and some keys may serve as "stepping stones" for movement between currently known populations. The Service will consider proposing additional critical habitat areas as information becomes available and as recovery plan development proceeds. Recovery plan development is currently scheduled for the silver rice rat; the plan will address the need to gather more distributional information. Addition of areas beyond those identified in the May 7, 1992, proposed rule will require a new proposal to be made. The occurrence on U.S. Navy lands on Saddlebunch Key (Wolfe 1987b) is not included in current critical habitat, but would be appropriate for addition. At this time, the Service has decided to proceed with critical habitat designation including the keys where the species is known to occur. Based on further information, the Service may propose to add or delete critical habitat for the silver rice rat, or to reclassify the species.

Issue 3: The Service's prescribed burning practices in National Key Deer Refuge threaten the silver rice rat.

Response: The Service disagrees that current burning practices in the

National Key Deer Refuge threaten the silver rice rat. Burning is necessary to maintain the pine-rockland ecosystem on upland areas, and is carried out so as to mimic natural burns that, before the presence of human fire control, would have occurred in such habitat. The Service does not anticipate that this burning program will damage wetlands or transitional habitats on which the silver rice rat depends.

Issue 4: A private individual stated that the critical habitat designation for the silver rice rat was ridiculous and was being used to steal land.

Response: Most endangered and threatened species, including the silver rice rat, are threatened by habitat loss. Critical habitat is intended to alert Federal agencies to their responsibilities to conserve essential habitat for listed species. Critical habitat designation does not take private property, or establish a nature reserve, but rather requires Federal agencies to ensure that their actions are not likely to destroy or adversely modify critical habitat.

Issue 5: A corporate representative requested that a development on Cudjoe Key be deleted from the critical habitat designation because of his concern that county and State agencies "follow" the Federal designation and this would cause a major financial setback to his corporation.

Response: The Service has considered deleting this area from critical habitat based on economic reasons, but has concluded that such a deletion is not warranted. Based on the lack of Federal agency involvement and the fact that existing county planning requirements are not likely to allow development in silver rice rat habitat, the Service does not find any economic benefits in excluding the area from critical habitat. This decision is discussed in the Service's economic analysis of designating critical habitat for the silver rice rat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. Such actions have been initiated by the Service following the listing of the silver rice rat as an endangered species. The

protection measures provided to listed species by Federal agencies are summarized below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Four Federal agencies with known or probable jurisdiction in the proposed critical habitat for the silver rice rat have been identified. Known or potential projects that will require consultation are summarized in the Critical Habitat section above.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this determination will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat, no significant economic impacts are expected from critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping

requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implication Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the silver rice rat in a Takings Implication Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights". The Takings Implication Assessment concludes that the designation does not pose significant takings implications.

References Cited

- Goodyear, N.C. 1984. Final report on the distribution, habitat, and status of the silver rice rat (*Oryzomys argentatus*). Unpubl. report to Jacksonville Office, U.S. Fish and Wildlife Service under Contract No. 14-16-0004-83-57. 59 pp.
- Goodyear, N.C. 1987. Distribution and habitat of the silver rice rat, *Oryzomys argentatus*. J. Mamm. 68:692-695.
- Wolfe, J.L. 1987a. Survey for silver rice rats (*Oryzomys argentatus*) on Raccoon Key, Monroe County, Florida, 12-15 December 1986. Unpubl. report to Key Lois Division of Charles River Laboratories, Inc., Wilmington, Mass. 4 pp.
- Wolfe, J.L. 1987b. A survey for the silver rice rat on U.S. Naval property in the Lower Florida Keys. Final report to Southern Division Naval Facilities Engineering Command. Contract No. N2467-86-M-3975. 8 pp., 5 maps.

Author

The primary author of this proposed rule is Dr. Michael M. Bentzien (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the "Critical habitat" entry for the "Rat, rice (=silver rice)", under MAMMALS, to read "17.95(a)".

3. Section 17.95(a) is amended by adding critical habitat of the silver rice rat, immediately following the entry for the Morro Bay Kangaroo Rat, as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

* * * * *

Silver Rice Rat (*Oryzomys palustris natator* (= *O. argentatus*)).

Monroe County, Florida: Little Pine Key, Water Keys, Big Torch Key, Middle Torch Key, Summerland Key north of U.S. Highway 1, Cudjoe Key north of U.S. Highway 1, Johnston Key, Raccoon Key, and Lower Saddlebunch Keys, south of U.S. Highway 1 but not including lands in T. 67 S., R. 27 E., Section 8 and north ½ of Section 17. Included are all lands and waters above mean low tide.

Within these areas the major constituent elements that are known to require special management considerations or protection are mangrove swamps containing red (*Rhizophora mangle*), black (*Avicennia*

germinans), and white (*Laguncularia racemosa*) mangroves, and buttonwood (*Conocarpus erectus*); salt marshes, swales, and adjacent transitional wetlands containing saltwort (*Batis maritima*), perennial glasswort (*Salicornia virginica*), saltgrass (*Distichlis spicata*), sea ox-eye (*Borrchia frutescens*), keygrass (*Monanthochloe littoralis*), and coastal dropseed (*Sporobolus virginicus*); and fresh water marshes containing cattails (*Typha domingensis*), saw-grass (*Cladium jamaicense*), and cordgrass (*Spartina* spp.).

* * * * *



Dated: June 8, 1993.

Bruce Blanchard,
Acting Director, Fish and Wildlife Service.
[FR Doc. 93-21070 Filed 8-30-93; 8:45 am]
BILLING CODE 4310-55-P

Federal Register

Tuesday
August 31, 1993

Part VI

Department of Transportation

Federal Highway Administration

Metric Conversion of Traffic Control
Signs; Notice

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[FHWA Docket No. 93-26]****Options for Coordinating the Metric Conversion of Traffic Control Signs**

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice; request for comments.

SUMMARY: This document solicits public comments on the options that the FHWA is considering for coordinating an orderly transition of distance, weight, and speed traffic control sign legends from English to metric units. Conversion to the modern metric system, known as the International System of Units, is required for all Federal Government agencies by the Omnibus Trade and Competitiveness Act of 1988.

DATES: Comments concerning these options must be received November 1, 1993.

ADDRESSES: Submit written, signed comments, to FHWA Docket No. 93-26, Federal Highway Administration, room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph M. Umbs, Office of Highway Safety, (202) 366-0411, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The FHWA has initiated a phased five-year plan to convert its activities and business operations to the International System of Units (SI) (metric) system of weights and measures, as required by the Omnibus Trade and Competitiveness Act of 1988 (Omnibus Act) (Pub. L. 100-418, 102 Stat. 1107, 1451). Section 5164(b) of this Act sets a deadline date of September 30, 1992, when each Federal Government agency must begin using the metric system of units in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms.

The President's Executive Order No. 12770, signed July 25, 1991, and published in the Federal Register on

July 29, 1991 (56 FR 35801), requires all Federal agencies to formulate metric transition plans. The FHWA's metric transition plan, titled "FHWA Metric Conversion Plan," was approved by the Secretary of Transportation on October 31, 1991. In advance of completing its plan, the FHWA published a Notice of Proposed Metric Conversion Policy in the Federal Register on April 5, 1991 (56 FR 14145). Comments on the proposed policy were solicited (Docket No. 91-12) from State and local governments, the highway industry, and the general public. The comment period closed on May 20, 1991. The FHWA published a Notice of Metric Conversion Policy in the June 11, 1992, Federal Register at 57 FR 24843. Under the policy, each FHWA operating office is to manage its metric conversion programs in keeping with the overall FHWA policy and plan.

Section 1053 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), (Pub. L. 102-240, 105 Stat. 1914, 2001), repealed section 144 of the Federal-aid Highway Act of 1978 (Pub. L. 95-599, 92 Stat. 2713) on metric system signing. Section 144 had prohibited the use of Federal funds for metric only signs. These Federal laws have made Federal-aid eligible to reimburse the States for costs they incur for installing metric message signs.

Purpose

This notice is being issued to present a discussion of the options the FHWA is considering for coordinating an orderly transition to metric unit sign legends. The FHWA is now seeking public comments regarding the desirability of converting sign messages to metric units, and the safety and cost implications of the various options for coordinating the State and local highway agency programs to change traffic control distance, weight, and speed limit signs to metric units. This coordination effort is intended to provide an orderly transition of highway sign legends from English units to metric units.

This notice includes a summary and discussion of the comments received regarding distance, weight, and speed signs from all sources in response to the April 5, 1991, Notice of Proposed Metric Conversion Policy, a statement of the FHWA's metric conversion policy, a summary of the approved FHWA metric conversion plan, and a discussion of the options that the FHWA is considering for coordinating changes in distance, weight, and speed signing.

Discussion of Docket No. 91-12 Comments**General**

A total of 65 responses were received from 55 commenters, including private individuals, business firms, professional associations, national trade associations, local and State highway agencies, and other governmental agencies. The majority of commenters (33) were State highway agencies (SHAs). Overall, of those providing comments, 35 percent expressed some reservations about the proposed FHWA metric conversion policy and indicated there were specific areas of concern that they thought were in need of special attention during any future conversion efforts. Eighteen percent of the comments were strongly supportive, and 47 percent indicated strong opposition to converting to the metric system of measurement.

The following is a discussion of the comments regarding signing submitted to Docket 91-12 as identified and expressed by the commenters. Also included are FHWA observations and general responses to the comments.

Metric Distance, Weight, and Speed Signing Conversion Costs

Of the 10 SHAs that commented specifically about sign conversion issues, 8 expressed serious concerns about the costs of conversion to metric unit sign messages. However, they provided very little documented data regarding specific cost impacts.

In 1974, an American Association of State Highway and Transportation Officials (AASHTO) ad hoc metrication task force documented a rough estimate of the nationwide cost of metrication to Federal, State, and local highway agencies at \$200 million. Further, the task force report predicted that signing changes, estimated at about 30 percent of total conversion costs, would constitute the major portion of the capital cost of metric conversion.

In an attempt to better understand what conversion costs would be in the 1990s, the AASHTO's current metrication task force requested that the Transportation Research Board undertake a study of the financial impact of metric conversion on SHAs and the highway industry. The financial study is one element of a larger effort being conducted under National Cooperative Highway Research Program Project 20-7, Task 54, "Financial Impacts of Conversion to the Metric System," that is intended to identify specific activities required for accomplishing metric conversion at a minimum cost and inconvenience. The effort to determine financial impact was significantly reduced from the planned

significantly reduced from the planned effort, and resulted in cost material on only two States, Alabama and North Carolina. Information from the study and other relevant sources has been incorporated into the AASHTO's publication "Guide to Metric Conversion." This document may be used to guide State and local highway agencies' metric conversion activities. Copies of this publication may be purchased from the AASHTO, 444 N. Capitol Street, NW., Washington, DC 20001.

Many of those commenting on the costs of metric conversion recommended that special Federal funding be established to reimburse States for costs associated with conversion. Several commenters noted that in 1978, Congress prohibited the use of Federal-aid funds for highway signs solely using the metric system of measurement. Although the Congress has not authorized special funding to provide reimbursement for costs associated with metric conversion, section 1053 of the ISTEA repealed section 144 of the Federal-aid Highway Act of 1978 (Pub. L. 95-599, 92 Stat. 2713) on metric system signing. Therefore, the FHWA may now reimburse States, at the appropriate pro rata share, for costs they incur in changing highway signs to reflect metric units under existing Federal-aid programs. Under the ISTEA, Surface Transportation Program funds can be used for metric unit signing on any public road including those classified as local or rural minor collectors.

Summary of FHWA Metric Conversion Policy, Plan, and Timetable

The FHWA's June 11, 1992, notice informed the public of the following overall Metric Conversion Policy and Plan.

General Policy

It is the FHWA's policy to pursue and promote an orderly changeover to the metric system for all of its programs in accordance with the statutory requirements, Executive Order 12770, Department of Commerce policy guidance, and DOT guidance. Metric conversion of the FHWA's direct procurement operations will be governed by the Federal Acquisition Regulations issued by the General Services Administration (GSA), as well as other applicable GSA and DOT regulations and policies.

Plan Elements and Target Dates

The major elements of FHWA's metric conversion plan and their respective

implementation dates are listed in the following timetable.

METRIC TRANSITION TIMETABLE

Program elements/activities	Target dates (completed)
I. FHWA metric conversion plan.	(Approved 10/31/91).
II. Initiate revision of pertinent laws and regulations that serve as barriers to metric conversion.	(1991).
III. Full metric conversion of FHSA manuals, documents, and publications.	1994.
IV. Full metric conversion of FHWA data collection and reporting.	1995.
V. Newly authorized Federal Lands Highway and Federal-aid construction contracts in metric units only.	September 30, 1996.

It should be recognized that meeting the above dates for FHWA actions does not imply that the conversion of all sign messages to metric units will be completed by the highway agencies by September 30, 1996. Under some of the options discussed later in this notice, the actual implementation actions by the State, local, and other Federal highway agencies may stretch well beyond 1996.

A copy of the FHWA Metric Conversion Plan may be obtained upon written request to the FHWA Contract Administration Branch, HNG-22, room 3211, 400 Seventh Street SW., Washington DC 20590 or by calling (202) 366-0355.

Discussion of Metric Distance, Weight, and Speed Signing Options

The States are moving ahead to evaluate public acceptance of metric unit message signs, metric unit legend format, metric unit abbreviations, sign location/placement, and to identify the types of signs that are candidates for conversion. Pilot projects are now being conducted by several States. The FHWA will evaluate these State projects, and is considering several options for coordinating the change to metric distance, weight, and speed signing in keeping with the overall FHWA metric conversion policy. Distance signing would include those signs that display the distance to a physical feature (e.g. a curve, an exit, or a city), bridge clearance signs, narrow bridge or lane width, mile post markers, and mile post-

based exit numbers. The FHWA is seeking public comments on the options that it is considering for coordinating an orderly transition of distance, weight, and speed traffic control sign legends from English to metric units. Respondents should be as specific as possible on the options proposed, particularly with respect to the projected time-frames for implementation and any projected cost impacts.

Public Information and Outreach Initiatives

Any option to change the displays on highway distance, weight, and speed signs to metric units would be preceded by public information and outreach initiatives. The extent and types of activities will vary depending on the coordination option chosen. Additional information regarding these activities is contained in the "Discussion of Options" section below.

Discussion of Options

Option 1—Conversion Through Routine Maintenance

The FHWA could accept an option whereby States and other road jurisdictions replace English unit signs as they wear out with metric unit signs, as long as the plans require that all English speed, weight, and distance signs would be converted over the next four to seven years. This option also would allow each jurisdiction to develop its maintenance conversion plan on replacement criteria other than obsolescence. Individual plans would be made available to the FHWA for information.

Gradually replacing signs as they wear out with metric unit message signs has the advantage of holding conversion costs to a minimum, at least initially. The conversion could be spread somewhat evenly over the conversion period. The primary disadvantage of this option would be the potential confusion caused to the motoring public as some signs appear in English units and others appear in metric units during the four to seven year changeover. A national educational program on metric conversion probably could not fully compensate for this confusion.

This option would allow each State to develop and implement its own plan for conversion to metric, and would have the advantage of tailoring implementation to each State's unique situation. It would also probably hold down conversion costs. The conversion could be spread over seven years, or be completed in a very short time span depending on a State's desires or

resources. With the mix of conversion programs that could occur in adjacent States, however, transition to metrics over a seven year period could be chaotic for interstate travelers. To minimize confusion, signs should be replaced systematically (i.e., by route or significant section when a number of signs are scheduled for replacement with that route).

Option 2—Quick Conversion

The FHWA could encourage the conversion of all signs to metric units over a relatively short time (i.e., six months to one year) through a concentrated national effort. Similar conversion methods were highly successful when all of the States implemented the fifty-five mile per hour energy conservation program in 1974, when Canada converted to metric units, and when rural sections of the Interstate system were allowed to return to a sixty-five mile per hour speed limit in 1987. This method generally would not require the installation of new signs nor the relocation of existing signs. Only the parts of the existing signs that display English unit messages would be affected. The English unit message could be covered with the metric unit message or replaced with a metric unit message. In most cases it would be possible to overlay or replace the English unit messages on existing sign panels at a fraction of the price of installing new signs.

The quick conversion option would involve the systematic phasing-in of metric unit signs by major highway corridors or highway classification. Priority roads would be converted quickly while other roads would be phased in over a longer time period (up to one year). Converting all signs to metric units in a short period of time using overlay panels would require a well-coordinated effort of moderate cost

with an extensive public information and education effort. While this strategy may have worked well for previous programs, the larger scale of this program, multiplicity of signs, and extensive coordination required between different jurisdictions may make this quick conversion more practical if accomplished first on specific priority jurisdictions or road systems.

An alternative quick conversion plan would encourage the changing of sign messages by type of sign, beginning with speed limit signs. One possible way to implement the speed limit signs conversion, would be to encourage the use of dual English and metric messages. This would draw attention to these very important regulatory signs and to the overall program to convert sign messages to metric units.

A short implementation period may, in the long run, be the least disruptive and most effective method of metric conversion for the public.

Approximately six million signs could be revised by overlaying/replacing English unit messages on site. By systematically phasing in metric unit signs by major highway corridors or highway classification, these costs would be moderate. This option has the advantage of combining some of the best features of the other options. A quick conversion could be accomplished on the Interstate System or other important highway corridors during a "metric month." A transition period of one year could be allowed to accomplish the conversion on other state highways, with local roads converted as existing signs wore out. A concentrated public education and awareness program immediately before the quick conversion takes place has the best potential for a successful public relations effort.

Option 3—Transition With Dual Metric and English Unit

The FHWA could encourage a two-phase metric conversion process. The first phase, to be completed by September 30, 1996, would encourage the posting of both metric and English unit messages for speed, weight, and distance signs. During the second phase, to be completed at a date to be determined jointly with the AASHTO, all of the English unit speed, weight, and distance messages would be removed, and all sign messages would be expressed in metric units.

The sign modification costs for a two-phase approach would be very high, perhaps the most expensive of the options being considered in sign costs. In many cases supplemental sign panels, supplemental supports, or even separate new signs would be needed to accommodate both the metric and English unit messages. The public relations marketing costs needed to support this very costly option could be lower than other options. However, this option has almost no educational value since many motorists will ignore the metric unit messages while dual messages are in place. This option could also result in an information overload for some motorists.

Comments and information pertaining to the information and options presented above should be addressed to the docket established for this notice.

Authority: Sec. 5164, Pub. L. 100-418, 102 Stat. 1107, 1451; Pub. L. 102-240, 105 Stat. 1914; 23 U.S.C. 109(d); 23 U.S.C. 315, and 49 CFR 1.48.

Issued on: August 23, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93-21099 Filed 8-30-93; 8:45 am]

BILLING CODE 4910-22-P

Environmental Protection Agency

Tuesday
August 31, 1993

Part VII

Environmental Protection Agency

40 CFR Part 260 et al.

Hazardous Waste: Testing and Monitoring
Activities; Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 260, 261, 264, 265, 268, and 270****[FRL-3981-7]****RIN 2050-AC32****Hazardous Waste Management System; Testing and Monitoring Activities****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, for testing and monitoring activities. These amendments replace the current Second Edition, including Updates I and II, of the EPA approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, by incorporating by reference the Third Edition (and its first update) into the RCRA regulations. These amendments also revise Appendices II—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) and III—Chemical Analysis Test Methods to 40 CFR part 261, delete Appendix X—Method of Analysis for Chlorinated Dibenzo-p-dioxins and Dibenzofurans, Method 8280, to 40 CFR part 261, and revise Appendices I—Toxicity Characteristic Leaching Procedure (TCLP) and IX—Extraction Procedure (EP) Toxicity Test, to 40 CFR part 268. This action is necessary to provide better and more complete analytical test methods for RCRA-related testing. The intent of this amendment is to provide up-to-date technologies in order to promote cost effectiveness and flexibility in choosing analytical test methods.

EFFECTIVE DATE: August 31, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1993.

ADDRESSES: The official record for this rulemaking (Docket No. F-93-WTMF-FFFFF) is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (room M-2427), and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages of

material from any one regulatory docket at no cost; additional copies cost \$0.15 per page.

Copies of the Third Edition of SW-846 and of Update I to the Third Edition are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 783-3238. The GPO document number is 955-001-00000-1. New subscriptions to SW-846 may be ordered from GPO at a cost of \$319.00. Those persons who have copies of the Third Edition of SW-846 that were purchased from GPO and wish to receive the final version of Update I and future revisions can do so by renewing their subscriptions with GPO for \$221.00. There is a 25% surcharge for foreign subscriptions and renewals.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or call (703) 920-9810; or, for hearing impaired, call TDD (800) 553-7672 or (703) 486-3323. For technical information, contact Kim Kirkland, Office of Solid Waste (OS-331), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4761.

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I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended [42 U.S.C. 6905, 6912, 6921, 6922, 6924, 6925, 6926, 6930, and 6935].

II. Background Summary and Regulatory Framework

EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Use of some of these methods

is required by specific regulations, as discussed below. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

Several of the hazardous waste regulations under Subtitle C of RCRA require that specific testing methods described in SW-846 be employed for certain applications. Any reliable analytical method may be used to meet other requirements in 40 CFR Parts 260 through 270. For the convenience of the reader, the Agency lists below a number of sections found in 40 CFR parts 260 through 270 that require the use of a specific method for a particular application, or the use of appropriate SW-846 methods in general:

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (*i.e.*, delisting petitions);

(2) Section 261.22(a)(1) and (2)—Evaluation of waste against the corrosivity characteristic;

(3) Section 261.24(a)—Leaching procedure for evaluation of a waste against the toxicity characteristic;

(4) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of a waste to determine if free liquid is a component of the waste;

(5) Section 266.112(b)(1)—Certain analysis in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;

(6) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;

(7) Sections 268.40(a), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste extract to determine compliance with Land Disposal treatment standards;

(8) Sections 270.19(c)(1) (iii) and (iv), and 270.62(b)(2)(i) (C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and

(9) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2) (i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantitation conducted for a trial burn in support of an application for a permit to burn

hazardous waste in a boiler and industrial furnace.

In other situations, this EPA publication functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in responding to RCRA-related sampling and analysis requirements.

SW-846 is a document that will change over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW-846 to support changes in the regulatory program and to improve method performance. Therefore, EPA solicits any available data and information that may affect the usefulness of SW-846.

III. Response to Comments From the January 23, 1989 NPRM

A. Overview of Proposed Rule

On January 23, 1989 (54 FR 3212-3229), the Agency proposed to amend its hazardous waste testing and monitoring regulations under subtitle C of RCRA by: (1) Adding new methods to SW-846; (2) revising existing methods in SW-846; (3) requiring the use of the Third Edition, as amended by Update I, for all testing for which SW-846 methods are specifically mandated in current Subtitle C regulations; and (4) requiring the use of minimum Quality Control procedures found in Chapter One of SW-846 for all testing pursuant to Subtitle C of RCRA. The proposal discussed in detail the advantages of the Third Edition over the Second Edition, including the Third Edition's use of a standard method format and the inclusion of a number of new and revised methods in the Third Edition.

The Agency solicited comments on each of these proposed changes. Items B through D of this section summarize the comments that were received and the actions taken by the Agency in response to those comments.¹

B. Substitution of the Third Edition for the Second Edition Including Addition of New Methods and Revision of Existing Methods

The Agency proposed to replace the Second Edition of SW-846, including Updates I and II of the Second Edition, with methods contained in the Third Edition, as amended by Update I of the

Third Edition. The Agency proposed this substitution because the methods contained in the Third Edition as amended by Update I expand the scope of the Second Edition or are improved versions of the methods in the Second Edition.

Except as discussed below and in the background document in the official record for this rulemaking, the Agency did not receive any significant negative comments on the proposal to replace the Second Edition of SW-846 methods with the versions contained in the Third Edition as amended by Update I. Therefore, the Agency has made this replacement by revising 40 CFR 260.11 to incorporate the Third Edition as amended by Update I by reference. Consistent with that change, a footnote in 40 CFR 260.11 discussing a distinction between the Second and Third Edition has been deleted. A listing of all parts found in the Third Edition of SW-846 as amended by Update I is provided below:²

SW-846 Third Edition, Update I

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¹ Other comments, together with the Agency's response thereto, have been placed in the official record for this rulemaking. (Docket No. F-93-WTME-FFFFF)

² A suffix of "A" in the method number indicates revision one (the method has been revised once).

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In compiling the Third Edition of SW-846, the Agency revised many methods in the Second Edition, reprinted some methods from the Second Edition unaltered (except for format), and added many new methods. The Agency requested comments specifically on the new and revised methods in its January 23, 1989 proposal.

The comments received by the Agency on the addition of new methods and revision of existing methods were technical in nature. Specific details on these comments and the Agency's response to significant comments may be found in the background document to this rulemaking. The Agency has incorporated the majority of the suggested changes into the final Update I package, as described in detail in the background document. Some of the comments raised issues that resulted in additional proposed technical clarifications set forth in the February 8, 1990, Notice of Data Availability and Reopening of Comment Period. A discussion of the comments received on the February 8 notice is provided in section IV of this preamble.

C. Methods Format

In response to earlier comments, the Agency proposed to adopt a standardized ten-part format for all of its methods. This format was developed by technical experts from within EPA to clarify the methods and ensure uniform application and consideration of technical details in its methods.

The Agency did not receive any substantial comments on this issue and has therefore revised the SW-846 methods according to the proposed format.

D. Mandatory Use of Revised Chapter One

The Agency proposed to replace the existing Chapter One of the Third Edition with a revised version, and to make selected Quality Assurance and Quality Control procedures in the revised Chapter One mandatory for all RCRA testing. This proposal was made to ensure that any data used to make decisions regarding RCRA compliance would be of known and documented quality.

The Agency's proposal to replace Chapter One of SW-846 with a revised Chapter One and to require use of selected sections of Chapter One for all testing pursuant to Subtitle C of RCRA was commented on extensively. In evaluating these comments, the Agency further revised the proposed Chapter One and solicited comments on the revisions on February 8, 1990 (55 FR 4440-4445). At that time, the Agency declared its intention to make all of Chapter One mandatory for RCRA testing and requested comment on this change. Comments received in response to the February 8, 1990 notice are discussed below in section IV. As stated in section IV, the Agency has decided not to finalize the mandatory use of Chapter One at this time.

IV. Response to Comments From the February 8, 1990 Notice

A. Overview of Notice

On February 8, 1990, a Notice of Data Availability and Reopening of Comment Period was published in the Federal Register (55 FR 4440-4445). Issued with this notice was a revised Chapter One of SW-846 entitled "Report on Minimum Criteria to Assure Data Quality" (document number EPA/530-SW-90-021). The revisions were, to a large extent, based on comments received on the January 23, 1989 proposal. The Agency requested comments on eleven topics generally related to quality control definitions and parameters, which included the deletion of appendices III and X to 40 CFR part 261.

The notice stated that the Agency was considering making the revised Chapter One mandatory for all RCRA testing, with the exclusion of certain reasonable and legitimate exceptions noted within the notice. Items B through K of this section summarize the major comments that were received and the action taken by the Agency as a result of those

comments. A complete description of all significant comments and the Agency's responses may be found in the background document to this rulemaking.

B. Revised Chapter One

The Agency received many comments regarding the proposed revisions to Chapter One and the proposal to make all of Chapter One mandatory for RCRA testing. Comments were received regarding two major issues, which included: (1) The mandatory use of Chapter One for all RCRA analyses, and (2) the apparent discrepancy between Agency and regulated community requirements.

Several commenters, primarily analytical laboratories, objected to the mandatory use of Chapter One because they felt it could not be implemented in practical terms. They pointed out that, under Chapter One, each project would require individual Quality Assurance Project Plans (QAPjPs) and that a laboratory taking samples from many clients could not, in any practical way, attempt to meet the different QAPjPs for each client. Furthermore, one commenter argued that the laboratory performing the analyses should not be required to write different QAPjPs for each project.

The Agency has noted some confusion regarding whether it intended that the responsibility for producing the QAPjP lies with the laboratory or the member of the regulated community that provides the samples. The Agency believes that the member of the regulated community should be responsible for ensuring that a QAPjP is prepared because the burden of complying with the analytical requirements in the Agency's hazardous waste regulations is placed upon generators, transporters, and owners and operators of hazardous waste management facilities, not laboratories or consultants they may employ. In addition, the member of the regulated community is the only one in a position to know such things as how the data will be used, what decisions the data will support, and the required precision and accuracy of the measurements. The laboratory performing the measurements may not be in a position to know these details. Therefore, the Agency believes that the member of the regulated community should be responsible for the preparation of the QAPjP (*i.e.*, selection of the required methods, accuracy, precision, and sensitivity of the analysis). This is no different from the current situation that prevails in the laboratory services sector. The laboratory is responsible for meeting the

requirements established by the client. This might require lower detection limits or better precision for some projects than for others. The Agency recognizes that, in a laboratory production environment, different samples with different analytical requests can present a management problem. The Agency believes, however, that laboratories already face such problems when meeting client needs, and are able to develop appropriate solutions.

Other commenters objected to the mandatory use of the Chapter One QA/QC procedures for all RCRA testing, since the Agency does not require the use of the methods contained in SW-846 for all RCRA testing. They argued that Chapter One of SW-846 should not apply when the methods in SW-846 are not being used.

In addressing this comment, the Agency notes the difference between the mandatory use of an analytical method and the proposed imposition of mandatory QC. These two items are distinct and different. The proposed QC requirements were designed to ensure that, no matter what method was used, the resulting data would be of known and documented quality. The Agency believes that the regulated community should be given as much flexibility as possible in selecting the most cost effective method for data gathering. However, no matter what method is used, the Agency believes that data must be of a quality sufficient to meet the requirements of the application. The proposed QC requirements were designed to achieve that end.

Based upon the above comments, as well as others received concerning whether Chapter One should be mandatory for all testing, the Agency has determined that requiring minimum quality control procedures for all RCRA testing requires further study. Thus, the Agency has decided to finalize the revised Chapter One only as guidance.

In addition, Chapter One provides guidance as to how data generated using QA/QC procedures can be assured through one document, the QAPjP. However, the Agency believes that existing documents (Standard Operating Procedures (SOPs), procedure manuals or other comparable plans) which fulfill the Agency's QA/QC recommendations may be appropriate and more cost-effective to members of the regulated community. Therefore, the Agency does not believe it is necessary for a separate QAPjP to be prepared for routine sampling analyses or activities if comparable documents are available and referenced.

C. Trace Analysis vs. Macroanalysis

The comments on the Agency's proposal to include language in SW-846 allowing the analyst latitude regarding sample size, dilution, concentration and choice of analytical methodology when macroanalysis (*i.e.*, analysis of high concentration samples) is performed were supportive of the Agency's position.

Therefore, the Agency has provided latitude for the sample size and/or sample dilution when macroanalysis is performed, as discussed in the notice. Macroanalysis refers to the analysis of samples in which the amount of the constituent being tested for exceeds the normal range covered by the analysis method. The methods contained in SW-846 may be used for macroanalysis if the sample size and/or dilution is adjusted such that the concentration of the final sample is in the range covered by the method. When a smaller sample is used or when a sample is diluted, the detection limit for the method will increase by a corresponding factor. If an instrumental detection limit for a particular compound is 10 nanograms (ng) (*i.e.*, the instrument making the measurement can measure 10 ng of material) and the amount of sample used for the measurement is 1 milliliter (mL), then the corresponding detection limit, for that sample, is 10 ng/mL or 0.01 parts per million (ppm). If the sample is diluted to 100 mL and 1 mL of the diluted material is used for the measurement, the detection limit will correspond to 100 times the original detection limit or 1 ppm. Dilution, therefore, affects detection limits. Likewise, if a larger amount of sample is used for the analysis, the detection limit is lowered by that factor. However, the instrumental detection limit remains at 10 ng regardless of the sample size used. In the case of macroanalysis, however, this increase in detection limit is of no consequence as long as the concentration of the sample is adjusted to the concentration range covered by the method. Thus, the following paragraphs have been added to Chapter Two, "Choosing the Correct Procedure," to provide guidance in this area and explain the limits to which the analyst must adhere when exercising this latitude:

The methods presented in SW-846 were designed through sample sizing and concentration procedures to address the problem of "trace" analyses (<1000 ppm), and have been developed for an optimized working range. These methods are also applicable to "minor" (1000 ppm–10,000 ppm) and "major" (>10,000 ppm) analyses, as well as to "trace" analyses, through use of appropriate sample preparation techniques

that result in analyte concentration within that optimized range. Such sample preparation techniques include:

- (1) Adjustment of size of sample prepared for analysis,
- (2) Adjustment of injection volumes,
- (3) Dilution or concentration of sample,
- (4) Elimination of concentration steps prescribed for "trace" analyses,
- (5) Direct injection (of samples to be analyzed for volatile constituents).

The performance data presented in each of these methods were generated from "trace" analyses, and may not be applicable to "minor" and "major" analyses. Generally, extraction efficiency improves as concentration increases. Caution: Care should be taken when analyzing samples for trace analyses subsequent to analysis of concentrated samples due to the possibility of cross-contamination.

D. Equipment, Standards and Reagent Preparation

The comments on the Agency's proposal to include language in SW-846 explicitly permitting the analyst latitude regarding the choice of glassware, equipment, and preparation of standards and reagents for use in SW-846 test methods were supportive of the Agency's position. Therefore, the Agency has added the following statement to the Disclaimer, at the beginning of SW-846, and to Chapter Two allowing this latitude:

Since many types and sizes of glassware and supplies are commercially available, and since it is possible to prepare reagents and standards in many different ways, those specified in these methods may be replaced by any similar types as long as this substitution does not affect the overall quality of the analyses.

E. Holding Times

The Agency proposed making changes to SW-846 that will also permit the analyst latitude in the implementation of holding times and to consider the results of samples not analyzed within the specified holding times to be minimum values.

Although most comments indicated agreement with the proposal to allow flexibility for the holding times given in SW-846, several commenters believed that applying the proposed change to the varied matrices and levels of contaminants encountered in environmental samples is inappropriate. Two primary concerns raised by these commenters regarded: (1) Accurately answering the question of whether the threshold was exceeded if the "minimum value" is applied in situations where the measured concentration was just below the regulatory threshold, and (2) abuse of the program if the implementation of holding times was left to the discretion of the analyst.

The Agency agrees with the first comment that one cannot conclude a waste concentration is below a specified level when the holding time for a sample of that waste is exceeded, and the data show the sample concentration is below the regulatory threshold. The data can be viewed as providing a minimum concentration only. If these data show, however, that the minimum concentration is above the regulatory threshold, then one can conclude that the waste is hazardous. Data generated after holding times are exceeded may only be used to prove a waste is hazardous, not that the waste is non-hazardous.

The Agency disagrees with the second comment that, by adopting this approach, the analyst is given too much discretion regarding implementing holding times, since the data can only be used as discussed above.

Based on these comments, the Agency has included in Chapter Two of SW-846 a provision for the use of data from samples after their holding time has been exceeded for the purpose of showing a waste has exceeded a regulatory limit. The Agency emphasizes that analyses performed after holding times expire will represent minimum values and will not be appropriate for demonstrating that a waste is below a regulatory limit. Holding times must be met whenever one is demonstrating that the concentration is less than a regulatory limit. Specifically, the following paragraph has been added to Chapter Two:

Samples must be extracted/analyzed within the specified holding times for the results to be considered reflective of total concentrations. Analytical data generated outside of the specified holding times must be considered to be minimum values only. Such data may be used to demonstrate that a waste is hazardous where it shows the concentration of a constituent to be above the regulatory threshold but cannot be used to demonstrate that a waste is not hazardous.

F. Representative Sampling

The Agency received several comments regarding representative sampling. Specifically, commenters expressed concern that the Agency was redefining representative sampling, that the Agency approach does not take special sampling problems (i.e., mixed radioactive and hazardous waste) into account, and that more guidance is needed concerning sampling of high-volume wastes.

The comments raised by the public are still under consideration by the Agency. In order to address these comments the Agency will need to issue

additional guidance. The Agency intends to issue extensive guidance covering all aspects of sampling, including representative sampling. This guidance will replace Chapter Nine of SW-846 and will be proposed and available for public comment in the future.

This effort includes consideration of sampling strategies that can minimize costs without sacrificing acceptable data quality for making RCRA decisions. The on-going work includes identifying approaches and valid statistical tools for data evaluation and interpretation. Until this guidance is available, appropriate sampling strategies should be decided on a case-by-case basis utilizing as guidance Chapter Nine of SW-846 and the comment responses found in the background document for this rulemaking.

G. Analysis of Nonaqueous Liquids for Elemental Species

Two commenters urged EPA not to adopt Method C—Bomb, Acid Digestion, as found in American Society for Testing and Materials (ASTM) Method E926-88, "Methods of Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," until data are available on its applicability. A request has been made that, before being proposed or recommended, the method should be tested for all of the matrix types. One commenter, on the other hand, indicated that he or she had evaluated this method for its ability to digest oils for metals and found that "[t]his work demonstrated that the method was appropriate for metals of environmental concern, even though it is not a complete digestion."

In recommending this method the Agency relies, to some extent, on the acceptance procedures used by ASTM. Before ASTM recommends a method for a particular use, it is evaluated by a committee composed of experts in that testing area. If the committee accepts the method, it is adopted and published by ASTM. This review process is scientifically rigorous and ensures the method is suitable for its intended use. While ASTM method recommendations are not binding on the Agency, the Agency may recognize an ASTM method as satisfactory.

Since this method is generally accepted for hydrocarbon materials, the Agency believes that recommending it without a reevaluation or soliciting information on its applicability is proper, given Agency concurrence regarding the respective ASTM recommendation and review procedures. In response to public comment, however, the Agency

evaluated this method, and others, for determining metals in a limited number of waste oils. The results of this study indicate that the method is adequate for this purpose. A copy of this study is contained in a background document accompanying this rule. This study supports the conclusion of the third commenter regarding the applicability of the method for metals in oil analysis.

Furthermore, since waste oil is generally considered one of the most difficult matrices, the Agency believes this method will be applicable to a very wide range of matrices. No substantive data was submitted showing that the method does not work for its intended application. As a result, the Agency has chosen to promulgate the method. As more information becomes available, the Agency will update the method to include performance data for additional, or more specific, matrices.

The Agency maintains that methods used for RCRA-related testing should be applicable to the specific matrix and analytes of concern. The Agency disagrees with the commenters, however, that testing of the method for additional nonaqueous matrices is necessary before the method is recommended. It is not possible to validate any method for all matrices of potential interest. The method has been found to produce acceptable results for metals in oil. Users of this method may wish to validate its use for other matrices using the QC guidance set forth in Chapter One of SW-846. (See SW-846, Chapter One, section 4.4.3 "Laboratory Control Procedures.")

Therefore, the Agency is incorporating by reference "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926-88, Test Method C—Bomb, Acid Digestion Method in § 260.11(a) of the RCRA regulations.

H. Method of Standard Additions and Matrix Spikes

The Agency received comments supportive of the Agency's position that the method of standard additions (MSA) be applied when matrix interferences are suspected. The Agency has and continues to require MSA for certain determinations of elemental species in EP Toxicity and TCLP leachates, for certain data provided in support of delisting petitions, for analysis of new matrices, and for analysis when matrix interferences are present. Directions for applying MSA are found in Method 7000, and have been retained in the Third Edition of SW-846 and Update I.

The Agency believes that matrix spikes can be useful in detecting bias

and therefore has retained guidance related to matrix spikes in Chapter One and in some methods contained in SW-846.

I. Spike Recovery Correction

In the February 8, 1990 notice, the Agency set out its intent to require that reported values be adjusted for analytical bias using matrix spike recovery as one of the minimum Quality Control procedures required for all RCRA testing. The purpose of this requirement was to provide more accurate data in those situations where there was a significant analytical bias in the data due to low recoveries of the analytes of interest. Many of the commenters to the February 8, 1990 notice indicated that the requirement for spike recovery correction should not be mandatory. In particular, a number of commenters raised questions relative to the practical aspects of implementation of the requirement (e.g., how to add the spike, how many compounds must be spiked, how many samples must be spiked) as well as the burdensome nature of implementation for wastes with matrix interference problems. Wastes with matrix interferences often require dilution in an attempt to reduce or eliminate the interferences. As a result, detection limits could be elevated and one might not be able to determine if a compound of interest is present below the regulatory threshold. In addition, interferences may not equally affect the sample and the spike. Commenters also expressed concern about bias correction when applied to a constituent that is poorly recovered from a sample matrix. In the case of zero percent recovery, one may not be sure that the laboratory could have detected the presence of the analyte if it were present.

The Agency already has recognized that spike recovery correction is a complex issue and that there is a need for further evaluation and more detailed guidance on the specific implementation procedures. Therefore, in response to public comment received on the February 8, 1990, Federal Register notice, in a Federal Register notice published on November 24, 1992 (57 FR 55114), the Agency has already announced its decision not to proceed with the proposed spike recovery correction requirement in its Subtitle C analytical procedures, and has withdrawn the requirement for bias correction of analytical spiked samples from the TCLP. The November 24, 1992 rule withdrew the spike recovery correction requirement from the TCLP and, except for technical and format changes made in a June 29, 1990, final

rule revising the TCLP (55 FR 26986), returned the QA provisions of the TCLP to those promulgated on March 29, 1990 (55 FR 11796). As a result, matrix spike recoveries must be calculated (as set forth in revised section 8.2 of the TCLP) and the method of standard additions must be employed as the quantitation method for metallic contaminants when appropriate as specified in the method (as set forth in revised section 8.4 of the TCLP). In addition, the Agency made a technical correction to the regulatory language in section 8.4 to specify the use of initial calibration quantitation methods for metallic contaminants. The Agency felt this technical correction was appropriate because, at present, the method of standard additions is inapplicable to organic contaminants. Wastes identified as hazardous through TCLP testing utilizing matrix spike recovery correction must be managed as hazardous wastes, unless and until such wastes are reevaluated using recalculations of existing data or the TCLP test procedure as described in November 24, 1992 rule or otherwise reevaluated and found to be non-hazardous.

J. Reagent Grade Water

Several commenters asked that the Agency's definition of Reagent Grade Water be clarified. Specifically, they requested that the Agency adopt objective limits for defining "reagent grade water." In response to these comments the Agency has added definitions of reagent water and organic-free reagent water to Chapter One. Specific details on these definitions may be found in the revised Chapter One which provided that for a method blank to be acceptable, the concentration in the blank of any analyte of concern should be no higher than the highest of the following:

- (1) The method detection limit,
- (2) Five percent of the regulatory limit for that analyte, or
- (3) Five percent of the measured concentration in the sample.

Reagent water and organic-free reagent water will generally provide acceptable method blanks.

K. Appendices III and X to 40 CFR Part 261

The Agency received few comments on the proposal to delete Appendices III and X of 40 CFR part 261. All were in favor of deleting Appendix X, but several found Appendix III useful as a reference.

The Agency has chosen to proceed with removal of Appendix X of Part 261 as proposed in the Notice. The Agency has also decided to proceed with

revising Appendix III of part 261 whereby Tables 1 through 3 are removed and a note is added referencing the reader to SW-846. The information contained in the tables of Appendix III, "Chemical Analysis Test Methods", is provided in SW-846 Third Edition, Chapter Two, "Choosing the Correct Procedure." This chapter can be used in place of the tables of Appendix III. Removal of the appendix tables does not change the methods that are to be used in a given situation.

Since Appendix III of part 261 is being revised to refer to SW-846 and since §§ 260.22(d)(1)(i) and 270.19(c)(1)(iii) reference that appendix, those sections are also being revised to instead reference SW-846.

V. Technical Changes

The Agency is taking this opportunity to make several technical changes resulting from adoption of the Third Edition of SW-846 and correcting minor technical errors. These changes include:

- Revising appendix II of part 261 by deleting the Toxicity Characteristic Leaching Procedure (TCLP), and adding a note referencing the TCLP, Method 1311 found in SW-846; and revising § 261.24 by removing the reference to the TCLP found in appendix II, and adding in its place a reference to SW-846 Method 1311.
- Revising appendices I and IX of part 268 by deleting the reference to the TCLP found in appendix II, part 261 from appendix I of part 268 and deleting the EP Toxicity Test, Method 1310 from appendix IX of part 268 and adding notes respectively referencing the TCLP, Method 1311 and the EP, Method 1310 found in SW-846; and revising references to appendix II of part 261 and appendix IX of part 268 in §§ 268.7(a), 268.40(a) and 268.41(a) to instead reference SW-846 Methods 1311 and 1310.

- Deleting the Liquid Release Test, Method 9096 from SW-846 Third Edition and First Update.

- Removing the 47 analytical test methods incorporated by reference in § 260.11(a).

- Deleting references to equivalent methods in §§ 261.22(a)(1) and (2) and 261.24(a).

- Deleting the reference to Method 5.2 in § 261.22(a)(1) and adding in its place the reference to Method 9040.

- Adding clarification that references to SW-846 in §§ 264.190(a), 264.314(c), 265.190(a), 265.314(d), 270.19(c)(1)(iii) and (iv), 270.62(b)(2)(i)(C) and (D), and 270.66(c)(2)(i) and (ii) are to SW-846 as incorporated by reference in § 260.11

- Revising § 270.6 to cross reference § 260.11

Since these are technical changes that do not affect the implementation of the regulations, the Agency is simply providing notice of the changes without opportunity for comment. These changes are discussed in detail below.

A. Revising Appendix II of Part 261 by Deleting the Toxicity Characteristic Leaching Procedure (TCLP), and Adding Reference to the TCLP, SW-846 Method 1311 to Appendix II and § 261.24.

The TCLP is being removed from appendix II of part 261 and replaced with a note referencing SW-846 because this method is contained in the Third Edition of SW-846 (i.e., Method 1311) and there is no need to maintain multiple copies of this method (one in appendix II of part 261 and one incorporated by reference) in the regulations. This technical change is being undertaken to eliminate redundancy and to remove the possibility that a discrepancy might exist between two versions of the method. This revision only changes where the method is found. It does not change the content or intended use of the method. Since this is clearly a technical change, the Agency is making this change without notice and comment.

Since the TCLP is being removed from appendix II and replaced with a note referencing SW-846, and § 261.24 refers to appendix II, § 261.24 is being revised to also refer to Method 1311 in SW-846.

B. Revising Appendices I and IX of Part 268 by Deleting the Reference to the TCLP Found in Appendix II, Part 261, From Appendix I of Part 268 and Deleting the EP Toxicity Test From Appendix IX of Part 268; and Adding References to the TCLP, SW-846 Method 1311 and the EP, SW-846 Method 1310 in the Respective Appendices and in §§ 268.7(a), 268.40(a) and 268.41(a).

Since the TCLP is being removed from appendix II, part 261 and replaced with a note referencing SW-846 Method 1311, and since appendix I of part 268 and §§ 268.7(a), 268.40(a) and 268.41(a) refer to appendix II of part 261, appendix I, part 268 and §§ 268.7(a), 268.40(a) and 268.41(a) are being revised to also refer to Method 1311 in SW-846.

The Extraction Procedure (EP) Toxicity Test is also being removed from appendix IX of part 268 and replaced with a note referencing SW-846 because the method is contained in the Third Edition of SW-846 (i.e., Method 1310), and there is no need to maintain multiple copies of this method (one in appendix IX of part 268 and one incorporated by Reference) in the

regulations. This revision only changes where the method is found. It does not change the content or intended use of the method.

Since the EP is being removed from appendix IX of part 268 and replaced with a note referencing SW-846 Method 1310, and since §§ 268.7(a) and 268.40(a) refer to this appendix, §§ 268.7(a) and 268.40(a) are also being revised to refer to Method 1310 in SW-846.

C. Deleting the Liquid Release Test, Method 9096 From SW-846 Third Edition and Update I

The Liquid Release Test, SW-846 Method 9096, was included in SW-846 Third Edition and Update I inadvertently. It was not EPA's intention to include the Liquid Release Test in that publication, since Method 9096 has not yet been proposed. EPA is, therefore, deleting Method 9096 from SW-846 Third Edition and Update I. It is the Agency's intention to propose Method 9096 as part of Update II to SW-846.

D. Removing the 47 Analytical Test Methods Incorporated by Reference in § 260.11(a)

The Agency is today removing the 47 methods incorporated by reference in § 260.11(a). This action is being taken since the 47 methods are contained in the Third Edition of SW-846, which is being incorporated by reference today in its entirety. Therefore, specific reference to the 47 methods is redundant and is being removed.

E. Deleting References to Equivalent Methods in §§ 261.22(a)(1) and (2) and 261.24(a)

The Agency notes that anyone may petition to add an equivalent testing or analytical method to SW-846 for use in the RCRA program under provisions of §§ 260.20 and 260.21 of these regulations. Because these provisions have always been available to the public, in today's rule the Agency is removing references to equivalent methods in §§ 261.24(a).

F. Deleting the Reference to Method 5.2 in § 261.22(a)(1) and Adding in its Place the Reference to Method 9040

The EPA method number for pH is incorrectly referenced in § 261.22(a)(1) as Method 5.2. Therefore, the Agency is deleting the reference to Method 5.2 in that section and replacing it with the correct reference to Method 9040.

G. Adding Clarification that References to SW-846 in §§ 264.190(a), 264.314(c), 265.190(a), 265.314(d), 270.19(c)(1) (iii) and (iv), 270.62(b)(2)(i) (C) and (D), and 270.66(c)(2) (i) and (ii) are to SW-846 as Incorporated by Reference in § 260.11

Finally, the Agency is today clarifying for the reader references to SW-846 and its methods in §§ 264.190(a), 264.314(c), 265.190(a), 265.314(d), 270.19(c)(1) (iii) and (iv), 270.62(b)(2)(i) (C) and (D), and 270.66(c)(2) (i) and (ii) by adding the phrase "as incorporated by reference in § 260.11" after "SW-846" in those sections.

H. Revising § 270.6 to cross reference § 260.11

The Agency is modifying § 270.6 to refer to § 260.11. Since § 260.11 applies to 40 CFR parts 260 through 270, revising § 270.6 References is repetitious and unnecessary.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain

final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule promulgates standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. Therefore, the rule is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

As required by 40 CFR 271.21(e)(2), States that have final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's rule is determined based on the date of final rule promulgation in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in fulfillment of the Federal regulations promulgated today until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official applications for final authorization within 12 months after the effective date of today's rule are not required to include in their applications requirements equivalent to the requirements in today's rule. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective dates of today's rule must include requirements at least as stringent as the requirements in the final rule in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Effective Date

Section 3010 of RCRA provides that regulations promulgated pursuant to Subtitle C of RCRA shall take effect six months after the date of promulgation. However, HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need six months to come into compliance. Since today's rule provides greater flexibility to the regulated community in testing and monitoring solid waste, the Agency believes the regulated community does not need six months to come into compliance. For that same reason, the Agency believes that good cause exists under the Administrative Procedures Act, 5 U.S.C. section 553(d), for not delaying the effective date of this rule under 30 days after its publication in the Federal Register. Therefore, this rule is effective August 31, 1993.

VIII. Regulatory Analyses

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule does not increase the number of situations in which SW-846 test methods are required, but rather provides greater flexibility to the regulated community in testing and monitoring solid waste. The rule entails no additional testing or recordkeeping burden. The effects on the economy for incorporating technical corrections and adding new test methods are essentially zero.

For the same reasons, EPA has also determined that this final rule will not cause a major increase in prices and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. There is no additional economic impact, therefore, due to today's rule. The Agency has determined that today's rule is not a major regulation; thus, no Regulatory Impact Analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. sections 601-612, Pub. L. 96-354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the

head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility to all of the regulated community, including small entities. Therefore, in accordance with 5 U.S.C. section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act). Thus, the regulation does not require an RFA.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Parts 260, 261, 264, 265, 268, and 270.

Administrative practice and procedure, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 24, 1993.

Carol M. Browner,
Administrator

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11(a) is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference; by adding ASTM Method E926-88 to the end of the list of incorporation by reference publications; by removing the undesignated paragraph following the list of incorporation by reference publications, which refers to the 47 analytical testing methods and its footnote 1, to read as follows:

§260.11 References:

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 [Third Edition (September, 1986)], as amended by Update I (July 1992)]. The Third Edition of SW-846 and Update I (document number 955-001-00000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. Copies may be inspected at the Library and RCRA Docket No. F-93-WTME-FFFFF, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

"ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926-88, Test Method C—Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

Subpart C—Rulemaking Petitions

3. Section 260.22(d)(1)(i) is revised to read as follows:

§260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

(d) * * *

(1) * * *

(i) Does not contain the constituent or constituents (as defined in Appendix VII of part 261 of this chapter) that caused the Administrator to list the waste, using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11; or

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

Subpart C—Characteristics of Hazardous Waste

5. Section 261.22 is amended by revising paragraphs (a)(1) and paragraph (a)(2) to read as follows:

§261.22 Characteristic of corrosivity.

(a) * * *

(1) R is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test

Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter.

6. Section 261.24(a) is revised to read as follows:

§261.24 Toxicity characteristic.

(a) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section.

7. Appendix II to part 261 is revised to read as follows:

Appendix II to Part 261—Method 1311
Toxicity Characteristic Leaching Procedure (TCLP)

Note: The TCLP (Method 1311) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter.

8. Appendix III to part 261 is revised to read as follows:

Appendix III to Part 261—Chemical Analysis Test Methods

Note: Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in Chapter Two, "Choosing the Correct Procedure" found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW-846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.

9. Appendix X to part 261 is removed.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart J—Tank Systems

11. Section 264.190 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 264.190 Applicability.

* * * * *

(a) * * * To demonstrate the absence or presence of free liquids in the stored/ treated waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart N—Landfills

12. Section 264.314 is amended by revising paragraph (c) to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

* * * * *

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

13. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

Subpart J—Tank Systems

14. Section 265.190 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 265.190 Applicability.

* * * * *

(a) * * * To demonstrate the absence or presence of free liquids in the stored/ treated waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart N—Landfills

15. Section 265.314 is amended by revising paragraph (d) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

* * * * *

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

16. The authority citation for part 268 continues to read as follows:

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

Subpart A—General

17. Section 268.7 is amended by revising paragraph (a) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using the Toxicity Characteristic Leaching Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using the Extraction Procedure Toxicity Test, Method 1310 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the

waste, to determine if the waste is restricted from land disposal under this part. If the generator determines that this waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37, the generator must determine what underlying hazardous constituents (as defined in § 268.2) are reasonably expected to be present in the D001 or D002 waste.

* * * * *

Subpart D—Treatment Standards

18. Section 268.40 is amended by revising paragraph (a) to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A restricted waste identified in § 268.41 may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using Method 1311, the Toxicity Characteristic Leaching Procedure does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste, with the following exceptions: D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136. These wastes may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using either Method 1310, the Extraction Procedure Toxicity Test, or Method 1311, the Toxicity Characteristic Leaching Procedure, does not exceed the concentrations shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste. Methods 1310 and 1311 are both found in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

19. Section 268.41 is amended by revising paragraph (a) introductory text to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) Table CCWE identifies the restricted wastes and the concentrations of their associated constituents which may not be exceeded in the extract of a waste or waste treatment residual extracted using Method 1311, the Toxicity Characteristic Leaching Procedure, for the allowable land disposal of such wastes. Compliance

with these concentrations is required based upon grab samples. Method 1311 is found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

20. Appendix I to part 268 is revised to read as follows:

Appendix I to Part 268—Toxicity Characteristic Leaching Procedure (TCLP)

Note: The TCLP (Method 1311) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

21. Appendix IX to part 268 is revised to read as follows:

Appendix IX to Part 268—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310)

Note: The EP (Method 1310) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

22. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

23. Section 270.6(a) is revised to read as follows:

§ 270.6 References.

(a) When used in part 270 of this chapter, the following publications are incorporated by reference: (See 40 CFR 260.11 References)

Subpart B—Permit Application

24. Section 270.19 is amended by revising the last sentence of paragraph (c)(1)(iii), and by revising paragraph (c)(1)(iv) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

- (c) * * *
- (1) * * *
- (iii) * * * The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or their equivalent.
- (iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6.

Subpart F—Special Forms of Permits

25. Section 270.62 is amended by revising the last sentence of paragraph (b)(2)(i)(C), and by revising paragraph (b)(2)(i)(D) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

- (b) * * *
- (2) * * *
- (i) * * *
- (C) * * * The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of

this chapter and § 270.6, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or their equivalent.

26. Section 270.66 is amended by revising the last sentence of paragraph (c)(2)(i), and by revising paragraph (c)(2)(ii) to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

- (c) * * *
- (2) * * *
- (i) * * * The waste analysis must be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or their equivalent.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or other equivalent.

[FR Doc. 93-21114 Filed 8-26-93; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL-3981-9]

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to revise certain testing methods used in complying with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA). EPA also is proposing to approve several new testing methods for use in complying with the requirements of Subtitle C of RCRA. These new and revised methods, designated as Update II, are proposed to be added to the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. This action is necessary to provide better and more complete analytical test methods for RCRA-related testing.

DATES: Comments on this proposed rule must be submitted on or before November 1, 1993.

ADDRESSES: The public should submit an original and two copies of their comments on this proposed rule to the Docket Clerk (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The official record for this rulemaking (Docket No. F-93-WT2P-FFFFF) is located at the above address in room M-2427, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost \$0.15 per page.

Copies of the Third Edition of SW-846, Update I, and the proposed Update II to the Third Edition are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 783-3238. The GPO document number is 955-001-00000-1.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or call (703) 920-9810; or, for hearing impaired, call TDD (800) 553-7672. For

technical information, contact Kim Kirkland, Office of Solid Waste (OS-331), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-4761.

SUPPLEMENTARY INFORMATION:

Preamble Outline

- I. Authority
- II. Background Summary and Regulatory Framework
- III. Proposal
 - A. Revised Methods and Chapters
 - B. New Methods
 - C. Free Liquids and Characteristic Tests
 - D. pH Testing
- IV. State Authority
- V. Regulatory Analyses
 - A. Regulatory Impact Analysis
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act

I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended [42 U.S.C. 6905, 6912, 6921, 6922, 6924, 6924, 6925, 6926, 6930, and 6935].

II. Background Summary and Regulatory Framework

EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), and that are required for specific regulations as discussed below. These methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results. In situations where the regulations require the use of appropriate SW-846 methods, the regulations, as amended by a final rule published elsewhere in today's *Federal Register*, specify use of the Third Edition of EPA's SW-846 manual as amended by Update I. SW-846 will be amended further to include the new and revised methods contained in this proposed Update II if these methods are adopted in final form.

Several of the hazardous waste regulations under Subtitle C of RCRA require that specific testing methods described in SW-846 be employed for certain applications. Any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. For the convenience of the reader, the Agency lists below a number of the sections found in 40 CFR parts

of the sections found in 40 CFR parts 260 through 270 that require the use of a specific method for a particular application, or the use of appropriate SW-846 methods in general:

- (1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (i.e., delisting petitions);
- (2) Sections 261.22(a)(1) and (2)—Evaluation of waste against the corrosivity characteristic;
- (3) Sections 261.24(a)—Leaching procedure for evaluation of waste against the toxicity characteristic;
- (4) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of waste to determine if free liquid is a component of the waste;
- (5) Section 266.112(b)(1)—Certain analyses in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;
- (6) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;
- (7) Sections 268.40(a), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste to determine compliance with Land Disposal treatment standards;
- (8) Sections 270.19(c)(1)(iii) and (iv), and 270.62(b)(2)(i)(C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and
- (9) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2)(i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantitation conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

In other situations, this EPA publication functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in responding to RCRA-related sampling and analysis requirements.

SW-846 is a document that will change over time as new information and data are developed. Advances in analytical instrumentation and

techniques are continually reviewed by the Agency and periodically incorporated into SW-846 to support changes in the regulatory program and to improve method performance. Update II represents such an incorporation. Therefore, EPA solicits any available data and information that may affect the usefulness of SW-846.

III. Proposal

A. Revised Methods and Chapters

The Agency is today proposing to revise several methods contained in the Third Edition of SW-846 and its Update I, incorporated by reference into 40 CFR 260.11 by a separate rulemaking published elsewhere in today's Federal Register. These proposed revisions would improve the methods and provide additional performance information for each method. The Agency is also revising SW-846 Chapters Two and Three and section 4.1 of Chapter Four to more accurately reflect SW-846 method improvements. In addition, the Agency is revising section 7.2.1 of SW-846 Chapter Seven. A discussion regarding the Agency's basis for revising Chapter Seven is provided in section III.C of this preamble.

Table 1 lists the methods and chapter sections that are proposed for revision. The revised methods and chapters are available from GPO, and are part of the official docket for this rulemaking. The Agency is soliciting comments on all sections of the methods.

B. New Methods

The Agency is today proposing to add several new methods to the Third Edition of SW-846. These new methods would be added to allow more flexibility of method selection and to

provide methods that may be used for additional analytes. Table 2 lists the methods that are proposed for addition to SW-846. These new methods are available from GPO, and are part of the official docket for this rulemaking. The Agency is soliciting comments on all sections of these methods.

TABLE 1.—PROPOSED REVISED METHODS AND CHAPTERS

Method No.	Title
	Chapter Two—Choosing the Correct Procedure (all sections).
	Chapter Three—Metallic Analytes (sections 3.1–3.3).
	Chapter Four—Organic Analytes (section 4.1).
	Chapter Seven—Introduction and Regulatory Definitions (section 7.2.1).
3510B	Separatory Funnel Liquid-Liquid Extraction.
3520B	Continuous Liquid-Liquid Extraction.
3540B	Soxhlet Extraction.
3550A	Ultrasonic Extraction.
3600B	Cleanup.
3630B	Silica Gel Cleanup.
3640A	Gel-Permeation Cleanup.
5040A	Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): GC/MS Technique.
7060A	Arsenic (Atomic Absorption, Furnace Technique).
7080A	Barium (Atomic Absorption, Direct Aspiration).
7131A	Cadmium (Atomic Absorption, Furnace Technique).
7470A	Mercury in Liquid Waste (Manual Cold-Vapor Technique).
7471A	Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique).
7741A	Selenium (Atomic Absorption, Gaseous Hydride).
8010B	Halogenated Volatile Organics by Gas Chromatography.
8020A	Aromatic Volatile Organics by Gas Chromatography.

TABLE 1.—PROPOSED REVISED METHODS AND CHAPTERS—Continued

Method No.	Title
8021A	Halogenated and Aromatic Volatiles by Gas Chromatography Using Electrolytic Conductivity and Photoionization Detectors in Series: Capillary Column Technique.
8080A	Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography.
8120A	Chlorinated Hydrocarbons by Gas Chromatography.
8141A	Organophosphorus Compounds by Gas Chromatography: Capillary Column Technique.
8150B	Chlorinated Herbicides by Gas Chromatography.
8240B	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
8250A	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
8260A	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique.
8270B	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique.
9020B	Total Organic Halides (TOX).
9040A	pH Electrometric Measurement.
9045B	Soil and Waste pH.
9071A	Oil and Grease Extraction Method for Sludge and Sediment Samples.
9200A	Nitrate.
9252A	Chloride (Titrimetric, Mercuric Nitrate).

Note: A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice).

TABLE 2.—NEW METHODS PROPOSED FOR ADDITION TO SW-846

Method No.	Title
1312	Synthetic Precipitation Leaching Procedure.
3015	Microwave Assisted Acid Digestion of Aqueous Samples and Extracts.
3051	Microwave Assisted Acid Digestion of Sediments, Sludges, Soils, and Oils.
3541	Automated Soxhlet Extraction.
3665	Sulfuric Acid/Permanganate Cleanup.
5041	Protocol for Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): Wide-bore Capillary Column Technique.
5050	Bomb Combustion Method for Solid Waste.
5100	Determination of the Volatile Organic Concentration of Waste Samples.
5110	Determination of Organic Phase Vapor Pressure in Waste Samples.
6020	Inductively Coupled Plasma—Mass Spectrometry.
7062	Antimony and Arsenic (Atomic Absorption, Gaseous Borohydride).
7742	Selenium (Atomic Absorption, Gaseous Borohydride).
8031	Acrylonitrile by Gas Chromatography.
8032	Acrylamide by Gas Chromatography.
8061	Phthalate Esters by Capillary Gas Chromatography with Electron Capture Detection (GC/ECD).
8081	Organochlorine Pesticides and PCBs as Aroclors by Gas Chromatography: Capillary Column Technique.
8121	Chlorinated Hydrocarbons by Gas Chromatography: Capillary Column Technique.

TABLE 2.—NEW METHODS PROPOSED FOR ADDITION TO SW-846—Continued

Method No.	Title
8151	Chlorinated Herbicides by Gas Chromatography Using Methylation or Pentafluorobenzoylation Derivatization: Capillary Column Technique.
8275	Thermal Chromatography/Mass Spectrometry (TC/MS) for Screening Semivolatile Organic Compounds.
8290	Polychlorinated Dibenzodioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High-Resolution Gas Chromatography/High-Resolution Mass Spectrometry (HRGC/HRMS).
8315	Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC).
8316	Acrylamide, Acrylonitrile and Acrolein by High Performance Liquid Chromatography (HPLC).
8318	N-Methylcarbamates by High Performance Liquid Chromatography (HPLC).
8321	Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography/Thermospray/Mass Spectrometry (HPLC/TS/MS) or Ultraviolet (UV) Detection.
8330	Nitroaromatics and Nitramines by High Performance Liquid Chromatography (HPLC).
8331	Tetrazene by Reverse Phase High Performance Liquid Chromatography (HPLC).
8410	Gas Chromatography/Fourier Transform Infrared (GC/FT-IR) Spectrometry for Semivolatile Organics: Capillary Column.
9056	Anion Chromatography Method.
9075	Test Method for Total Chlorine in New and Used Petroleum Products by X-Ray Fluorescence Spectrometry (XRF).
9076	Test Method for Total Chlorine in New and Used Petroleum Products by Oxidative Combustion and Microcoulometry.
9077	Test Methods for Total Chlorine in New and Used Petroleum Products (Field Test Kit Methods).
9096	Liquid Release Test (LRT) Procedure.
9253	Chloride (Titrimetric, Silver Nitrate).

C. Free Liquids and Characteristic Tests

The Agency is today proposing to delete a statement in SW-846 which implies that Method 9095 (the Paint Filter Liquids Test) is the appropriate test to use in determining whether a waste contains a liquid for purposes of testing for the characteristic of corrosivity. More specifically, that statement, which appears in section 7.2.1 of Chapter Seven of SW-846, states that "Method 9095, Paint Filter Liquids Test, Chapter Six [may be used] to determine free liquid" for purposes of testing for the corrosivity characteristic.

While liquids obtained using Method 9095 (or any other common laboratory separation technique such as decanting or pipetting) may be used in testing for corrosivity or ignitability, these methods are not adequate to demonstrate that a waste does not contain a liquid for purposes of testing for those characteristics. In order to demonstrate that a waste does not contain a liquid for purposes of testing for those characteristics, the Agency is today clarifying in section 7.2.1 of Chapter Seven that the pressure filtration technique specified in Method 1311 (the TCLP) is suitable. This technique defines a liquid as the material which passes through a 0.6–0.8 micron filter when subjected to 50 psi pressure. The Agency solicits comments on this clarification.

D. pH Testing

The Agency is requesting comment on whether to add a temperature requirement for the purposes of corrosivity testing in proposed Method 9040A (pH Electrometric Measurement). Specifically, we are requesting comment on whether the following language

should or should not be added to Section 7.1.2 of Method 9040A:

"(. . . also, for corrosivity characterization, the sample must be measured at 25°C±1°C if the pH of the waste is above 12.0.)"

In the alternative, EPA is requesting comment on whether language should be added to Section 7.1.2 requiring samples to be measured at the temperature found at the site where the waste is to be managed.

The Agency is also requesting comment on whether the same language should be added to the proposed Method 9045B (Soil and Waste pH) for consistency.

This language would clarify regulatory requirements as to the temperature at which these tests should be run. This clarification is important because there are wastes (e.g. highly alkaline wastes) for which the temperature affects pH testing results. The temperature at which the corrosivity test is conducted may therefore affect whether or not the wastes are hazardous wastes.

The argument in favor of specifying a temperature is that many hazardous wastes are transported from one site to another, and it is important in a "cradle-to-grave" national hazardous waste regulatory program that the regulatory status of a waste not be dependent on a factor such as temperature which can vary from day-to-day as well as from site-to-site. A standardized temperature in Methods 9040A and 9045B would make clear how to determine the temperature at which to test a waste. A standard temperature might also be more practical for laboratories that routinely run chemical tests at standard temperatures. Twenty-five degrees Centigrade was chosen because the

buffer solutions used to calibrate the pH meter are themselves calibrated to twenty-five degrees Centigrade.

The argument in favor of running these methods at a temperature that is relevant to the site at which a waste is to be managed or conditions under which it will be transported is that the better predictor of a waste's environmental hazard at a site may be a measurement made under conditions that most closely duplicate the conditions at the site. It is not necessarily relevant to environmental determinations that laboratories may routinely run tests at standard temperature, if using a different temperature would provide a better predictor of the environmental hazard.

EPA asks for comments on this issue, and asks that commenters relate their positions to both the better indicator of environmental hazards and the implementation aspects of the two approaches, and to provide scientific/technical support for their position.

EPA also requests comments on whether there are any other aspects of the Agency's rules and standard measurement techniques involving pH that require further clarification.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although

authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorization

Today's rule, if promulgated, will provide standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. Therefore, it is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's proposed rule will be determined based on the date of promulgation of the final rule in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's

proposed rule. These State requirements have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, if today's proposed rule is promulgated, a State will not be authorized to carry out these requirements in fulfillment of the final rule until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

If today's rule is promulgated, States that submit their official applications for final authorization within 12 months after the effective date of the rule are not required to include in their applications requirements equivalent to the requirements in the final rule. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective date of the rule must include requirements at least as stringent as the requirements in the final rule in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

V. Regulatory Analyses

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposed rule will not increase the number of situations in which SW-846 test methods are required; rather, if promulgated, it will provide greater flexibility to the regulated community in testing and monitoring solid waste. The proposed rule entails no additional testing or recordkeeping burden. The effects on the economy for incorporating technical corrections and adding new test methods are essentially zero.

For the same reasons, EPA has also determined that this proposed rule will not cause a major increase in prices and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. There is no additional economic impact, therefore, due to today's rule. The Agency has determined that today's rule is not a major regulation; thus, no Regulatory Impact Analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. section 601-612, Pub. L. 96-354, September 19, 1980), whenever

an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

If promulgated, this rule will not require the purchase of new instruments or equipment. The regulation will not require any new reports beyond those now required. This proposed rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility to the regulated community, including small entities. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act). Thus, this proposed regulation does not require an RFA.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions associated with today's proposed rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

Dated: August 24, 1993.

Carol Browner,
Administrator.

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference of paragraph (a) to read as follows:

§ 260.11 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (Third Edition (September, 1986), as amended by Updates I (July 1992) and II. The Third

Edition of SW-846 and Updates I and II (document number 955-001-00000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. Copies may be inspected at the Library and RCRA Docket No. F-93-

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